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Attorneys for Plaintiff
SERENA CARNES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SERENA CARNES, as an “aggrieved
employee” and on behalf of “aggrieved
employees” under the California Labor Code
Private Attorneys General Act,

Plaintiff,

v.

THE SALVATION ARMY, THE
SALVATION ARMY ARC SAN DIEGO; and
DOES 1 through 10, inclusive,
Defendants.

) Case No: 37-2021-00020557-CU-OE-CTL

) REPRESENTATIVE ACTION

) **NOTICE OF ENTRY OF ORDER**
) **GRANTING MOTIONS FOR AN**
) **ORDER APPROVING SETTLEMENT**
) **OF PAGA ACTION AND DISMISSING**
) **ACTION WITH PREJUDICE AND FOR**
) **AN ORDER AWARDING ATTORNEYS’**
) **FEES, COSTS, AND SETTLEMENT**
) **ADMINISTRATION FEES**

) ASSIGNED FOR ALL PURPOSES TO
) JUDGE MACELLA O. MCLAUGHLIN

) Trial Date: February 16, 2024

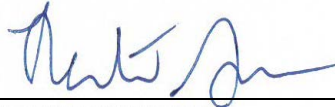
) Complaint Filed: May 7, 2021

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 3, 2023 the court entered the Order Granting
3 Motions for an Order Approving Settlement of PAGA Action and Dismissing Action with
4 prejudice, and for an Order Awarding Attorneys' Fees, Costs, and Settlement Administration
5 Fees, a copy of which is attached hereto as **Exhibit 1**.

6
7
8 Dated: November 13, 2023

KELLER GROVER LLP

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10 By: 

11 ERIC A. GROVER
12 ROBERT W. SPENCER
13 Attorneys for Plaintiff
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EXHIBIT 1

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SERENA CARNES

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/03/2023 at 03:51:00 PM
Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

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) **ADMINISTRATION FEES**

) ASSIGNED FOR ALL PURPOSES TO
) JUDGE MARCELLA O. MCLAUGHLIN

) Trial Date: February 16, 2024
) Complaint Filed: May 7, 2021

The Motions for an Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice, and for an Order Awarding Attorneys’ Fees and Costs, Enhancement Payment and Settlement Administration Fees, filed by Serena Carnes (“Plaintiff”) came on for hearing regularly on October 20, 2023 in the above captioned Court, the Honorable Marcella O. McLaughlin presiding. All parties appeared by counsel of record. The above-captioned action (“Action”) is a Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, (“PAGA”) representative action brought by Plaintiff against The Salvation Army (“Defendant”). The Court grants Plaintiff’s motions as follows:

1. Overview and Procedural Posture.

This is a PAGA action challenging the employment practices of defendants, for which the Plaintiff worked as a cashier in 2019 and 2020. The complaint was filed in May 2021; the defendant answered seasonably. ROA 11, 27-28. The focus of the case is defendants' failure to provide seating. Since the case was filed, the Court of Appeal in Los Angeles decided *LaFace v. Ralphs Grocery Company* (2022) 75 Cal.App.5th 388. There, the court held, in a matter of apparent first impression, that no right to jury trial existed for PAGA action, and that a grocery store employer was not required to provide its cashiers with seating under an Industrial Welfare Commission (IWC) Wage Order because sitting when they had no customers in their checkout lines would interfere with their expected other duties such as cleaning, restocking, assisting in other departments, and there was no showing that such expectations were unreasonable. At a continued CMC, the Court set the case for trial in February of 2024 (an uncommonly generous schedule). ROA 22-26.

Defendant sought an order compelling arbitration based on the decision of the US Supreme Court in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. , 142 S.Ct. 1906. Following full briefing and a hearing on Sept. 30, 2022, the Court denied the motion in a detailed ruling. ROA 51.

The parties reached a settlement, and now seek approval of same. ROA 58-64. By design, the motion is unopposed. The Court has reviewed the papers; no further submissions are authorized in connection with this motion.

1 **2. Applicable Standards.**

2 A. Two decades ago, the California Legislature enacted PAGA to address a perceived
3 deficit in the enforcement of the Labor Code. *Viking River, supra*, 142 S.Ct. at 1913. By its terms,
4 PAGA authorizes any "aggrieved employee" to initiate an action against a former employer "on
5 behalf of himself or herself and other current or former employees" to obtain civil penalties that
6 previously could have been recovered only by the State in an LWDA enforcement action. Lab.
7 Code Ann. § 2699(a). The non-party aggrieved workers in a PAGA case are entitled to no notice
8 and have no opt out rights. *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 985-86.

9 B. PAGA settlements are subject to trial court review and approval. Lab. Code §
10 2699(l)(2). "[A] trial court should evaluate a PAGA settlement to determine whether it is fair,
11 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
12 deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.*
13 (2021) 72 Cal.App.5th 56, 77. Many of the same factors used to evaluate the fairness of a class
14 action settlement – i.e., the strength of the Plaintiff's case, the risk, the stage of the proceeding,
15 the complexity and likely duration of further litigation, and the settlement amount – can be
16 "useful" in evaluating the fairness of a PAGA settlement. *Id.*

17 C. "The law empowers the court to set the amount of fees independently without
18 disapproving the entire settlement." *Garabedian v. Los Angeles Cellular Telephone Co.* (2004)
19 118 Cal.App.4th 123, 129. The benchmark for determining attorney fees is reasonableness.
20 *Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 744. The determination of
21 what constitutes a reasonable fee generally begins with the lodestar, i.e., the number of hours
22 reasonably expended multiplied by the reasonable hourly rate. *Graciano v. Robinson Ford Sales,*
23 *Inc.* (2006) 144 Cal.App.4th 140, 154. The lodestar figure may then be adjusted, based on factors
24 specific to the case, to fix the fee at the fair market value for the legal services provided. *PLCM*
25 *Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.

26 **3. Discussion and Ruling.**

27 A. The Court discusses the factors from Section 2B as follows:
28

1 1. Strength of Plaintiff's case: Plaintiff's counsel acknowledges that *Laface*,
2 *supra*, changed "the legal landscape" regarding seating requirements. (Spencer Decl., ¶ 13.) The
3 very essence of a settlement is compromise, i.e., the "yielding of absolutes and an abandoning of
4 highest hopes." *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242.

5 2. Expense associated with taking the case to trial, i.e., the avoided cost of
6 further litigation: Although not expressly monetized in the moving papers, the Court can easily
7 imagine attorneys' fees and costs exceeding \$100,000 per side just to prepare the matter for trial.

8 3. Amount or value offered in settlement: The total amount offered in
9 settlement is \$150,000.00, with no reversion. The parties intend to allocate these funds as follows:

10 -Attorneys' fees: \$50,000 to Plaintiff's counsel.

11 -Litigation costs/expenses: \$5,000 to Plaintiff's counsel.

12 -Administration costs: \$12,000 to Simpluris.

13 -Enhancement payment to Plaintiff: \$5,000.

14 These deductions result in a net settlement amount of \$78,000. After sending 75%, or
15 \$58,500, to the LWDA, the 3,072 aggrieved employees will receive a total of \$19,500. This
16 comes out to an average payment of approximately \$6.35 for each aggrieved employee.

17 4. Extent of discovery completed and state of proceedings: Written discovery
18 and informal exchange of information. (Spencer Decl., ¶¶ 15-16.)

19 5. Experience and views of counsel: Plaintiff's counsel claim to have
20 significant experience litigating wage and hour actions, including claims seeking PAGA
21 penalties, and recommend the settlement. (Spencer Decl., ¶¶ 2-5, 24, 32.)

22 6. Presence of a governmental participant: Plaintiff's counsel provided notice
23 of the settlement to the LWDA at the same time the instant motion was filed with the Court.
24 (Spencer Decl., ¶ 22.)

25 Based on the foregoing, the Court finds that the PAGA settlement is fair, adequate, and
26 reasonable in light of PAGA's policies and purposes (and in light of the substantial doubts the
27
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1 Court has regarding the viability of the case in light of *Laface, supra*). Accordingly, the Court
2 approves the parties' proposed settlement.

3 B. As for the attorneys' fees, the proposal of \$50,000 represents one-third of the total
4 settlement amount. According to the supporting declaration submitted with the moving papers,
5 Plaintiff's counsel expended a total of 238.25 hours prosecuting this action. (Spencer Decl., ¶ 41.)
6 This results in a blended hourly rate of approximately \$209.86 (\$50,000 divided by 238.25),
7 which is lower than what the Court would expect for attorneys with similar skills and experience
8 in the San Diego community. Moreover, the requested fee award is over \$100,000 less than
9 counsel's theoretical lodestar of \$165,975 (using their design hourly rates, which are significantly
10 higher than the one calculated by the Court immediately above). (*See id.*) Accepting for these
11 purposes the validity of the design rates, the requested fees represent, in effect, a negative
12 multiplier. Accordingly, the Court finds that \$50,000 is reasonable under the circumstances and is
13 hereby granted. *See Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651 ("The amount to
14 be awarded as attorney fees is left to the sound discretion of the trial court, which is in the best
15 position to evaluate the services rendered by an attorney in his courtroom.").

16 C. The litigation costs of \$5,000, payable to Plaintiff's counsel, and the administration
17 costs of \$12,000, payable to Simpluris, are reasonable for a case of this type and are hereby
18 approved.

19 D. The request for a \$5,000.00 "enhancement" payment to Plaintiff is denied. The
20 Legislature's "sole purpose" in enacting PAGA was to ensure effective enforcement of the Labor
21 Code. *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86-87. As such,
22 "[p]laintiffs may bring a PAGA claim only as the state's designated proxy, suing on behalf of all
23 affected employees." *Id.* at 87. Awarding an incentive payment to the state's designated proxy is,
24 in the Court's view, inconsistent with PAGA's statutory purpose. Although incentive payments are
25 well-established in the class action setting,¹ Plaintiff has not cited, nor has the Court located, any

26 _____
27 ¹ They are not, however, without detractors. *See, e.g., Johnson v. NPAS Solutions* (11th Cir. 2020)
28 975 F.3d 1244, 1255.

1 authority holding that such payments are authorized in a PAGA-only action. Accordingly, the
2 \$5,000 set aside for the enhancement award will be poured over into the net settlement fund for
3 distribution to the LWDA and the aggrieved employees in accordance with the statutory 75/25
4 split. This results in a very modest increase in the already modest result for the aggrieved
5 employees.

6 E. Upon entry of this Order, and upon all additional conditions being met by the Parties as
7 outlined in the Settlement Agreement, this Action shall be dismissed with prejudice. This Order is
8 intended to be a final disposition of the Action in its entirety, and is intended to be immediately
9 appealable. This Court shall retain exclusive and continuing jurisdiction over the Action and the
10 Parties for purposes of enforcing and interpreting this Order, the Settlement Agreement, and the
11 settlement funding and distribution process.

12 **IT IS SO ORDERED.**

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14 Dated: 11/03/2023

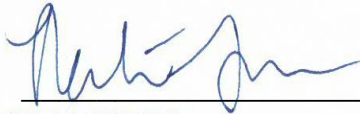


HON. MARCELLA O. MCLAUGHLIN

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16 Approved to as to form:

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18 Dated: October 31, 2023

KELLER GROVER LLP

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20 By: 

ERIC A. GROVER
ROBERT SPENCER
Attorneys for Plaintiff

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22
23 Dated: October 31,, 2023

LITTLER MENDELSON P.C.

24
25 By: 

JOSHUA Z. FELDMAN
Attorneys for Defendants

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **November 13, 2023**, in the case of *Carnes v. Salvation Army, et al.*, San Diego Superior Court Case Number 37-2021-00020557-CU-OE-CTL I served the foregoing document(s):

NOTICE OF ENTRY OF ORDER GRANTING MOTIONS FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION AND DISMISSING ACTION WITH PREJUDICE AND FOR AN ORDER AWARDING ATTORNEYS' FEES, COSTS, AND SETTLEMENT ADMINISTRATION FEES

on the interested party(ies) below, using the following means:

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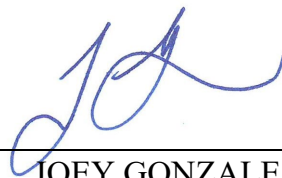
THE SALVATION ARMY



(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.



(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JOEY GONZALEZ