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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JOSE JIMENEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

FENCEWORKS, INC., a California Corporation;
and DOES 1 through 100,

Defendants.

Case No. 30-2018-01034150-CU-OE-CXC

CLASS ACTION

*[Assigned for all purposes to the Hon.
William D. Claster; Dept. CX104]*

**PLAINTIFF'S SUPPLEMENTAL
BRIEF IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 16, 2020
Time: 9:00 a.m.
Dept.: CX104

Complaint Filed: November 26, 2018
Trial Date: None.

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 Plaintiff Jose Jimenez (“Plaintiff”) hereby submits the following supplemental brief in
3 response to the Court’s September 11, 2020 Minute Order (the “Order”). After reviewing the
4 Court’s Order, Plaintiff and Defendant Fenceworks, Inc. (“Defendant”) (Plaintiff and Defendant
5 are collectively referred to as the “Parties”) amended the Stipulation of Settlement (“Settlement
6 Agreement”) and the Notice of Pendency of Class Action and Proposed Settlement (“Class
7 Notice”) in accordance with the issues identified by the Court.

8 Plaintiff addresses each issue raised in the Court’s Order. The Amended Settlement
9 Agreement and Class Notice are attached as Exhibits 1 and 2, respectively, to the Declaration of
10 Paul K. Haines, filed concurrently herewith. Red-line versions of the Settlement Agreement and
11 Class Notice showing all changes are attached as Exhibits 3, and 4, respectively, to the
12 Declaration of Paul K. Haines (“Haines Decl.”).

13 **1. Other Actions**

14 The Court’s Order states: “*Are there any other PAGA complaints pending against*
15 *Defendant – whether filed in a court or in pre-filing status before the LWDA – that would be*
16 *affected by this settlement? Are there any other class or individual actions pending against*
17 *Defendant that would be affected by this settlement?”*

18 Defendant represents that other than this instant action, there are no other lawsuits
19 currently pending against Defendant that allege any of the same claims or causes of action that
20 are alleged in this action. *See* Declaration of Javier Valenzuela of Fenceworks, Inc. in Support of
21 Preliminary Approval of Class Action Settlement, ¶ 2. Additionally, other than Plaintiff, no other
22 current or former employee of Defendant has submitted a letter to the LWDA regarding any
23 alleged violations of the California Labor Code. *Id.* Defendant also represents there are no
24 individual actions currently pending against Defendant that allege any of the same claims or
25 causes of action that are alleged in this instant action. *Id.*

26 **2. Class Size and Number of Workweeks**

27 The Court’s Order states: “*Defendant made representations regarding the class size, the*
28 *number of workweeks at issue, and the average rate of pay that form the basis of the settlement*

1 valuation. Did Plaintiff independently confirm these representations?”

2 Prior to mediation, Plaintiff served Special Interrogatories to Defendant asking for, among
3 other items, the total number of non-exempt field employees employed by Defendant in California
4 during the putative class period. Haines Decl., ¶ 5. Defendant issued a verified response to this
5 interrogatory, thereby confirming the size of the putative class prior to mediation. *Id.*

6 With respect to the average rate of pay, in connection with mediation, Defendant produced
7 a sampling of payroll records for the putative class in addition to providing relevant data points,
8 including the average rates of pay during the putative class period. Haines Decl., ¶ 5. As part of
9 Plaintiff’s analysis for mediation, Plaintiff independently developed an average rate of pay for
10 putative class members by analyzing the payroll records produced for mediation. *Id.* Plaintiff’s
11 findings with respect to the average rate of pay were consistent with Defendant’s representations.
12 *Id.*

13 With respect to the number of workweeks at issue, Plaintiff sought to protect the
14 Settlement Class against the chance that the workweeks were inadvertently underreported at
15 mediation, or that the number of workweeks could unnaturally increase between the date of the
16 mediation and the end of the Class Period, by insisting that the Parties include an “Escalator
17 Clause” in the Settlement Agreement. *See* Exh. 1 to Haines Decl., at ¶ 3. E.

18 **3. Sampling of Records for Mediation**

19 The Court’s Order states: “*Defendant provided a sample of relevant time and pay data*
20 *from the class period. How large a sample? How did the parties ensure it was representative?*”

21 In connection with mediation, Defendant provided a random sampling of timekeeping and
22 payroll data for approximately 10% of the putative class. Haines Decl., ¶ 6. The sampled
23 employees were selected as follows: Defendant created a class list containing all putative class
24 members, the list was sorted alphabetically, and then every 10th employee was selected for the
25 sampling. *Id.* Defendant further confirmed that the sampling included both current employees and
26 former employees. *Id.* Plaintiff contends that a 10% sampling of records is statistically significant
27 and reliable. *See e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016). The “Weekly
28 Time Card Detail” (timekeeping data) and “Compensation Reports” (payroll data) produced for

mediation were generated from uniform electronic timekeeping and payroll systems, which allowed Plaintiff to extrapolate his findings with confidence. Haines Decl., ¶ 6.

4. Adequacy of Diana Martinez

The Court's Order states: "*The Court questions appointing Diana Martinez as class counsel in her own right. Per her declaration, Ms. Martinez has been admitted to the bar for less than two years, with only a year of class action-related experience. The Court does not doubt that Ms. Martinez is a competent attorney, but wonders whether she has sufficient experience to be appointed class counsel in her own right.*"

Plaintiff is requesting the appointment of Mr. Haines, Mr. Blakely, and Ms. Martinez as Class Counsel. Ms. Martinez has been a licensed attorney for nearly two years, almost exclusively working on wage and hour class actions. Prior to joining Haines Law Group, APC, Ms. Martinez represented employers in a variety of employment claims, including wage and hour class actions. Since joining Haines Law Group, APC in July 2019, Ms. Martinez has worked almost exclusively on wage and hour class and representative actions, and is currently staffed on approximately thirty (30) active wage and hour class actions in both state and federal courts.

Ms. Martinez has been staffed on this matter since joining Haines Law Group, APC and Ms. Martinez's work on this matter has at all times been supervised by Mr. Haines and Mr. Blakely, both of whom have extensive experience in litigating wage and hour class actions. Mr. Haines has been appointed as Class Counsel in over three hundred (300) wage and hour class action settlements, and has received an order certifying a class action and/or conditionally certifying a collective action in at least twelve (12) cases in state and federal courts. *See* Declaration of Paul K. Haines in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, ROA # 50, ¶¶ 6-7. Similarly, Mr. Blakely has been appointed as Class Counsel in dozens of wage and hour class action settlements in both state and federal courts. *See* Declaration of Sean M. Blakely in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, ROA # 51, ¶¶ 4-5. Because Ms. Martinez is supervised by two experienced wage and hour class action litigators, Plaintiff submits that Ms. Martinez is sufficiently qualified to serve as Class Counsel in her own right.

1 **5. PAGA Claim**

2 The Court’s Order states: “*The Court has concerns about how the opt-out nature of the*
3 *settlement and the release interact with the PAGA claim. As the Court understands the settlement,*
4 *class members who opt out will receive nothing, including an individual share of the PAGA*
5 *payment. Meanwhile, the class release and Plaintiff’s individual release together release PAGA*
6 *claims on behalf of both absent class members and Plaintiff. As the Court understands how PAGA*
7 *operates, Plaintiff is the LWDA’s proxy, so Plaintiff’s individual release of the PAGA claim binds*
8 *the LWDA. As a result, other potentially aggrieved employees may not bring PAGA claims*
9 *covered by the release. Reading the payment provisions and the release together, it appears to*
10 *the Court that a class member could opt out of the settlement, receive no PAGA payment, and yet*
11 *still be barred from bringing a PAGA claim against Defendant. Is this correct? If so, given that*
12 *PAGA is not a class action device, why are aggrieved employees allowed to opt out of the PAGA*
13 *portion of the settlement at all?”*

14 The Parties have amended the Settlement Agreement to address the Court’s concerns.
15 Specifically, the Parties amended the Settlement Agreement to provide that Settlement Class
16 members who opt-out of the settlement will still be entitled to a share of the PAGA Amount. *See*
17 *Exh. 1 to Haines Decl., ¶ 4.B.iv.* Furthermore, the Parties’ revisions to the Settlement Agreement
18 make clear that the PAGA settlement and release provisions apply to all Settlement Class
19 members, whether or not they exclude themselves from the class action settlement. *See Id., ¶ 9.C.*

20 **6. Billing Records**

21 The Court’s Order states: “*At final approval please submit billing records for attorney’s*
22 *fees and costs. The Court will not be inclined to award an amount of fees and costs greater than*
23 *the amounts stated in the class notice.”*

24 In connection with his Motion for Final Approval of Class Action Settlement, Plaintiff
25 will submit Class Counsel’s billing records for attorneys’ fees and costs. Haines Decl., ¶ 7.

26 **7. Administrative Costs**

27 The Court’s Order states: “*At final approval, please submit billing records for*
28 *administrative costs. The Court will not be inclined to award administrative costs in an amount*

greater than the amount stated in the notice.”

In connection with his Motion for Final Approval of Class Action Settlement, Plaintiff will provide a declaration from the Settlement Administrator which contains records supporting settlement administrative costs. Haines Decl., ¶ 8.

8. Declarations for Plaintiff and the Settlement Administrator at Final Approval

The Court’s Order states: “*At final approval plaintiffs are to provide a declaration addressing the enhancement factors... including the amount of time and effort spent on the litigation. In addition, the administrator is to provide a high and low for individual settlement payments, along with Plaintiff’s net individual payout.*”

In connection with his Motion for Final Approval of Class Action Settlement, Plaintiff will provide a declaration addressing the enhancement factors identified by the Court and case law, and a declaration from the Settlement Administrator addressing the high and low individual settlement payments, and Plaintiff’s net individual payment. Haines Decl., ¶ 9.

9. Class Notice

The Court’s Order states: “*Should the notice be printed in languages other than English? . . . The font size in the actual notice may not be smaller than the font size in the proposed notice provided to the Court.*”

The Class Notice will be sent in Spanish as well as English. The bid for settlement administration includes a Spanish translation. See Exhibit B to Declaration of Jodey Lawrence in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, ROA # 57. The Parties will ensure that the font size in the notice will not be smaller than the font size in the proposed notice provided to the Court.

Respectfully submitted,

Dated: October 7, 2020

HAINES LAW GROUP, APC

By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff