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 8 CBRE GROUP, INC. AND CBRE, INC.

9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12

13
 14 STEVE THOMA,

15 Plaintiff,

16 v.

17
 18 CBRE GROUP, INC.; CBRE, INC.;
 19 J.P. MORGAN CHASE NATIONAL
 CORPORATE SERVICES, INC.; J.P.
 20 MORGAN CHASE BANK, NA; J.P.
 MORGAN CHASE & CO; and DOES
 21 1 THROUGH 50,

22 Defendants.
 23

Case No. 2:16-CV-06040-CBM-AJW

ASSIGNED TO HON. CONSUELO B.
 MARSHALL

**JOINT STIPULATION FOR
 APPROVAL OF PAGA
 SETTLEMENT BETWEEN
 PLAINTIFF AND DEFENDANTS
 CBRE GROUP, INC. AND CBRE,
 INC.**

Trial Date: None

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JOINT STIPULATION OF PAGA SETTLEMENT

Plaintiff Steve Thoma (“Plaintiff”) and Defendants CBRE, Inc. and CBRE Group, Inc. (together, “Defendants” or “CBRE”) (collectively, the “Parties”) by and through their respective counsel of record, hereby enter into the following stipulation for court approval of the settlement of Plaintiff’s action filed pursuant to the California Labor Code Private Attorneys General Act (“PAGA”) as follows:

Whereas, on March 7, 2016, Plaintiff served a letter to the Labor Workforce and Development Agency (LWDA) and Defendants (“March 2016 Letter”), to notify the LWDA of alleged violations of the California Labor Code by Defendants arising from Plaintiff’s employment with Defendants. (See Dkt. # 104, Ex. B.) The March 2016 Letter alleged that Defendants had violated California Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1198. The March 2016 Letter also indicated that Plaintiff intended to pursue a representative civil action under the PAGA against Defendants pursuant to Labor Code section 2699 et seq. The LWDA declined to investigate the alleged violations, permitting Plaintiff to initiate a PAGA action in court.

Whereas, on August 11, 2016, Plaintiff filed a Class Action, Collective Action and Representative Action Complaint in the U.S. District Court for the Central District of California against Defendants and J.P. Morgan Chase National Corporate Services, Inc., and JPMorgan Chase Bank, N.A., and JPMorgan Chase & Co. (“Chase”) for eight claims: 1) unpaid overtime pursuant to FLSA; 2) unpaid overtime pursuant to California law; 3) failure to pay wages upon termination; 4) waiting time penalties pursuant to Labor Code § 203; 5) unpaid premium pay for missed meal and rest periods; 6) failure to provide accurate wage statements; 7) unfair business practices; and 8) PAGA. The eighth cause of action was pleaded only against Defendants, not Chase. The causes of action against Defendants all stem from an allegation that the Putative Aggrieved Employees (all Facilities

1 Managers employed by Defendants in California) were improperly classified as
2 exempt from state and federal overtime and other wage and hour laws. Defendants
3 take the position that the Putative Aggrieved Employees have at all relevant times
4 been properly classified as exempt under state and federal laws.

5 Whereas, on February 14, 2017, CBRE moved to compel arbitration of
6 Plaintiff's first through seventh causes of action (excluding PAGA claims) or
7 alternatively stay proceedings pending the decision in *Morris v. Ernst & Young,*
8 *LLP*, 834 F.3d 975 (9th Cir. 2016), cert. granted (U.S., Jan. 13, 2017, No. 16-300)
9 2017 WL 125665, which the Court denied on March 9, 2017.

10 Whereas, the parties have diligently litigated the case to date. Plaintiff has
11 served four sets of discovery on CBRE. CBRE has engaged in a rolling document
12 production in response to Plaintiff's requests and has produced close to 20,000
13 documents. CBRE deposed Plaintiff.

14 Whereas, Plaintiff and Chase engaged in mediation on September 16, 2017,
15 shortly after which they reached a settlement in principle resolving Plaintiff's
16 claims against Chase.

17 Whereas, on September 26, 2017, this Court stayed this case as to Plaintiff
18 and CBRE, pending the Supreme Court's decision in *Morris v. Ernst & Young,*
19 *LLP*, 834 F.3d 975 (9th Cir. 2016), cert. granted (U.S., Jan. 13, 2017, No. 16-300).
20 Plaintiff and CBRE were ordered to conduct a mediation within sixty (60) days of
21 the Morris decision being issued, and the trial date was vacated.

22 Whereas, pursuant to the Settlement Agreement between Plaintiff and Chase,
23 and as a condition of the settlement, Plaintiff and Chase agreed to Plaintiff's filing a
24 First Amended Complaint ("FAC"). The FAC does not allege any new claims or
25 make any new allegations against CBRE, but paragraphs have been renumbered in
26 connection with adding the new allegations against Chase.

27 Whereas, on January 12, 2018, Plaintiff filed a First Amended Complaint.
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- \$239,250 will be paid to Plaintiff’s counsel as attorneys’ fees (§ III(C)(a)(1));
- \$13,317 will be paid to Plaintiff’s counsel to reimburse costs of litigation (*Id.*, Curtis Decl. Ex. D);
- \$1000 will be paid to Plaintiff as enhancement payment for his service in this litigation (§ III(C)(a)(2));
- \$3,300 will be paid to a third party to administer the settlement (§ I(v));
- Of the remaining \$468,133, 75% of that amount (\$351,100) will be paid to the LWDA and 25% (\$117,033) will be allocated to the 156 PAGA Settlement Group Members based on the amount of weeks each worked during the relevant period (§ II(C)(a)(3)), which results in an average payment of \$750 to each of them.
- “PAGA Settlement Group Members” means Plaintiff and all current and former employees employed by Defendants in the position of Facilities Manager in the state of California at any time from March 7, 2015 through the Approval Date.” (§ I(p).)
- PAGA Settlement Group Members, and the State of California release the Released Parties from any and all PAGA penalties, pursuant to Labor Code section 2699 *et seq.* that: (1) arose or may be alleged to have arisen at any time from March 7, 2015 up to and including the Approval Date, and (2) are based on or arise from alleged violations of the following Labor Code provisions: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1198, which arise from the facts alleged in the Complaint; and the related California Code of Regulations and related sections of the applicable Industrial Welfare Commission Wage Orders, which arise from the facts alleged

1 in the Complaint. (§ I(o).) This Release only extends to the claims for
2 civil penalties, and not any underlying wage claims. (Curtis Decl., Ex.
3 B.)

- 4 • Defendants will pay the Settlement Sum to the administrator, who will
5 then, pursuant to the schedule in the Settlement Agreement, make the
6 payments to the LWDA, Plaintiff, Plaintiff’s counsel, and the
7 Aggrieved Employees, the latter of whom will receive a check and an
8 individualized version of Exhibit B mailed to their last known address
9 (following an attempt to update addresses), with funds not claimed
10 within 180 days of mailing, and after a reminder postcard is sent 60
11 days after mailing, sent to the California State Controller’s Office
12 Unclaimed Property Fund (§ III(C)(b).

13 WHEREAS, the proposed letter notifying the aggrieved employees of the
14 PAGA Settlement is attached to the Curtis Decl. as Exhibit B;

15 WHEREAS, on September 10, 2018, Plaintiff’s Counsel provided a copy of
16 the Settlement Agreement to the LWDA through its on-line portal. See Curtis
17 Decl. Ex. C.

18 WHEREAS, in a settlement of a PAGA action brought by an aggrieved
19 employee, the court must “review and approve” the settlement (Cal. Lab. Code §
20 2699(1)(2));

21 WHEREAS, there are no statutory or common law standards for approval of
22 PAGA settlements, but the legislative history of the PAGA sheds some light on the
23 approval requirement as it was phrased in § 2699, subdivision (l) prior to the July 1,
24 2016 amendments (see Cal. Lab. Code § 2699(l) (2015) (amended 2016) (“The
25 superior court shall review and approve any penalties sought as part of a proposed
26 settlement...”));

27 WHEREAS, to the Parties’ knowledge, there is limited legislative history
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1 directly addressing the purpose of the court approval requirement, and while the
2 Parties are not aware of anything specifically addressing any specific factual issues
3 to be considered, the Parties are aware that the general broad criteria that the courts
4 should consider whether the penalties are so small as to “undercut the dual purposes
5 of punishment and deterrence” or so large that they may result in an “unjust,
6 arbitrary and oppressive, or confiscatory” settlement;

7 WHEREAS, these broad criteria appear to give the Court wide latitude in
8 determining whether to approve the penalties proposed as part of a PAGA
9 settlement.

10 WHEREAS, the criteria focus on the effect the penalties may have on the
11 defendant/employer rather than the LWDA or the aggrieved employees who will
12 receive the penalties. *See Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59
13 Cal.4th 348, 379 (PAGA enacted to create “civil penalties for Labor Code violations
14 significant enough to deter violations.”) This is different than the analysis of a class
15 action settlement, which typically focuses on the amount received by the class and
16 compares that to the reasonable range of potential outcomes in the case (*see, e.g.,*
17 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008); *Munoz v. BCI*
18 *Coca-Cola Bottling Co. of L.A.*, 186 Cal.App.4th 399, 407 (2010); *State Farm Mut.*
19 *Ins. Co. v. Campbell*, 538 U.S. 408, 426 (2003));

20 WHEREAS, in the instant case, the \$725,000.00 PAGA Settlement Sum for
21 the estimated 156 Putative Aggrieved Employees (who worked 8,241 pay periods at
22 the time the settlement was initially reached) is reasonable in light of the substantial
23 benefits conferred on the Putative Aggrieved Employees and the State of
24 California, and when considered in light of the following:

25 Defendants maintain that they have had, and continue to have, legally-
26 compliant employment policies and deny all of the allegations asserted in this
27 Action, deny that they failed to comply with all applicable provisions of the

1 California Labor Code and other applicable statutes and regulations, deny any and
2 all fault or liability, are entering into this Joint Stipulation for the sole purpose of
3 complying with section 2699(1)(2) of the California Labor Code, and therefore
4 their entering into this Joint Stipulation cannot be construed as an admission of
5 fault or liability.

6 A penalty of \$725,000.00 is large enough to satisfy the dual statutory purpose
7 of the PAGA, considering the company's potential exposure explained below.

8 Plaintiff analyzed over 20,000 pages of documents provided by Defendants,
9 showing the job duties assigned to and performed by the Putative Aggrieved
10 Employees, the training undertaken by the Putative Aggrieved Employees, and the
11 decisions made and authority accorded to the Putative Aggrieved Employees.

12 If this case had proceeded to trial, Defendants would have presented evidence
13 that they contend demonstrates that Plaintiff was properly classified as an exempt
14 employee under the California Labor Code. Plaintiff managed 61 commercial
15 properties and Defendants contend his position as a Facilities Manager was the
16 managerial contact between the client and all of the vendors, contractors and other
17 employees. Defendants contend Plaintiff managed these teams of people and
18 prioritized demands based on the client, budgets and the properties. Defendants
19 contend he was responsible for maximizing efficiencies and managing these
20 properties in an optimal way that was cost effective. Plaintiff would contend that
21 he actually had very little power to do anything as he was subject to tight limits and
22 significant oversight, that his work did not relate to Defendants' overall course or
23 policies, and that his work was not substantially important to Defendants'
24 operations, but he recognizes the risk of proving his claims.

25 If this case had proceeded to trial, Defendants would have presented evidence
26 and argued that that Defendants' policies did not result in systematic denials of
27 proper meal and rest periods. The Putative Aggrieved Employees were in charge of
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1 their own schedules and often worked without direct supervision, and as such,
2 Defendant would contend they could take meal and rest periods at their own
3 discretion. Plaintiff set his own hours and determined if he was working from his
4 home office or was visiting sites, but he would contend the workload made the
5 required breaks impossible.

6 Defendants would have also argued that the trial would not be “manageable”
7 as a representative action because the alleged violations were too disparate and
8 individualized to be adjudicated in one action. The Putative Aggrieved Employees
9 served over 40 clients and commercial properties, ranging from hospitals and
10 retailer warehouses to data center “critical sites” and large tech campuses.
11 Defendants would contend that these clients had varying levels of service
12 requirements and expectations, which affected the Putative Aggrieved Employees’
13 responsibilities, hours and priorities. Plaintiff would contend that there is no
14 manageability criteria for PAGA trials and that, regardless, the trial would be
15 manageable because Defendants uniformly decided to make Facilities Managers
16 exempt and employed them under the same job description, which shows a
17 reasonably finite set of job duties, but, again, Plaintiff recognizes a considerable
18 risk in proceeding.

19 Finally, Defendants would have argued that even if Plaintiff could show that
20 he was improperly classified as exempt and that this status could be resolved on a
21 representative basis, Plaintiff still would have had to establish each underlying
22 violation of the Labor Code for each Putative Aggrieved Employee.

23 Moreover, all PAGA awards are discretionary and can be reduced by the
24 Court under Labor Code § 2699(e)(2), “if, based on the facts and circumstances of
25 the particular case, to do otherwise would result in an award that is unjust, arbitrary
26 and oppressive, or confiscatory.” Thus, were this matter to go to trial, any award
27 granted would be at the discretion of the Court. Plaintiff recognizes that the Court

1 could significantly reduce any PAGA penalties.

2 Given these risks, Plaintiff believes the additional delays and risks of trial
3 justified settling at this point to ensure recovery for the LWDA and Putative
4 Aggrieved Employees, particularly because, as explained further in the Declaration
5 of Michael Curtis, the Settlement Sum is 88% of the amount of the most likely
6 PAGA penalty under Labor Code section 2699(f)(2) and there is even greater
7 uncertainty with recovering any other penalties.

8 THEREFORE, the Parties believe that the Settlement Agreement is fair and
9 reasonable and should be approved in its entirety because the total settlement
10 amount of \$725,000.00 is sufficient to deter and punish alleged but unproven Labor
11 Code violations, especially when the penalty for the violations, if proven, is so
12 uncertain.

13 IT IS SO STIPULATED.

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15 Dated: September 12, 2018

/S/ Demery Ryan
KEITH A. JACOBY
DEMERY RYAN
CHELSEA HADAWAY
LITTLER MENDELSON, P.C.
Attorneys for Defendants
CBRE GROUP, INC. AND CBRE, INC.

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19 Dated: September 12, 2018

/S/ Michael Curtis
MICHAEL CURTIS
CHRIS BAKER
BAKER CURTIS & SCHWARTZ, P.C.
Attorneys for Plaintiff
STEVE THOMA

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25 Pursuant to Local Rule 5-4.3.4, the filing party has obtained the authorization
26 and approval of all signatories.

Deborah Schwartz

From: cacd_ecfmail@cacd.uscourts.gov
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Subject: Activity in Case 2:16-cv-06040-CBM-AJW Steve Thoma v. CBRE Group Inc et al Stipulation for Settlement

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered by Curtis, Michael on 9/12/2018 at 5:48 PM PDT and filed on 9/12/2018

Case Name: Steve Thoma v. CBRE Group Inc et al

Case Number: [2:16-cv-06040-CBM-AJW](#)

Filer: Steve Thoma

Document Number: [124](#)

Docket Text:

Joint STIPULATION for Settlement OF PAGA CLAIMS BETWEEN PLAINTIFF AND CBRE DEFENDANTS filed by plaintiff Steve Thoma. (Attachments: # (1) Proposed Order GRANTING JOINT STIPULATION FOR APPROVAL OF PAGA SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS CBRE GROUP, INC. AND CBRE, INC. AND DISMISSING PAGA CLAIMS, # (2) Declaration OF MICHAEL CURTIS IN SUPPORT OF JOINT STIPULATION FOR APPROVAL OF PAGA SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS CBRE GROUP, INC. AND CBRE, INC.)(Curtis, Michael)

2:16-cv-06040-CBM-AJW Notice has been electronically mailed to:

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2:16-cv-06040-CBM-AJW Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\2018-09-12 Joint stipulation for approval and fees etc..pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=9/12/2018] [FileNumber=26258115-0]
] [8400d15feea09c7f214137995b035912d43aada88ef55da29907ff2391928b78a00
011774cc00b364172bdf26f22c27ffd3534649aa7204c9364ad442e9b8923]]

Document description:Proposed Order GRANTING JOINT STIPULATION FOR APPROVAL OF PAGA SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS CBRE GROUP, INC. AND CBRE, INC. AND DISMISSING PAGA CLAIMS

Original filename:C:\fakepath\2018-09-12 [Proposed] Order and Judgment re Joint Stipulation to Approve PAGA Settlement.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=9/12/2018] [FileNumber=26258115-1]
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480b2a5d186c4efcb624f9f9d7da274c9f50713eac6193e193a65dd787de8]]

Document description:Declaration OF MICHAEL CURTIS IN SUPPORT OF JOINT STIPULATION FOR APPROVAL OF PAGA SETTLEMENT BETWEEN PLAINTIFF AND DEFENDANTS CBRE GROUP, INC. AND CBRE, INC.

Original filename:C:\fakepath\2018-09-12 Curtis declaration in support of stipulation for approval and fees etc..pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=9/12/2018] [FileNumber=26258115-2]
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