

LAW OFFICES OF FARRAH MIRABEL  
FARRAH MIRABEL (CAL. BAR NO. 162933)  
1070 Stradella Rd.  
Los Angeles, CA 90077  
Telephone: (714) 972-0707  
Facsimile: (949) 417-1796  
Email: [fmesq@fmirabel.com](mailto:fmesq@fmirabel.com)

**Attorney for Plaintiff ISRAEL RIOS SANTOS**

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

ISRAEL RIOS SANTOS,  
Plaintiff,

vs.

NEWPORT BEACH CARWASH, LLC, a  
California Corporation; and DOES 1-50 ALL  
INCLUSIVE

Defendants.

Case No.: 30-2020-01141706-CU-WT-CJC  
Assigned for All Purpose to:  
Hon. Peter Wilson  
CX102 (Complex Litigation)

**[PROPOSED] ORDER GRANTING  
APPROVAL OF PAGA SETTLEMENT AND  
ENTERING JUDGMENT**

Action filed: May 26, 2020

Date: August 4, 2022  
Time: 2:00 PM  
Dept.: CX102

1 Under Labor Code §2699(1)(2) of the Private Attorneys General Act of 2004, §§ 2698, *et*  
2 *seq.* (“PAGA”), the Motion for Court Approval of the Parties’ PAGA Settlement by Plaintiff  
3 ISRAEL RIOS SANTOS (“Plaintiff”) came before this Court on August 4, 2022 on a regularly  
4 noticed motion.

5 Plaintiff’s complaint seeks civil penalties on behalf of the State of California and  
6 similarly situated aggrieved employees (“Aggrieved Employees”), as authorized by PAGA  
7 under Labor Code §2699, in relation to alleged violations of the predicate statutes set forth in  
8 Plaintiff’s complaint and the letter to the Labor Workforce and Development Agency  
9 (“LWDA”) dated February 13, 2020 (“LWDA Letter”), on behalf of all current and former non-  
10 exempt, hourly employees of Defendant from January 31, 2019 to the date of this Order,  
11 inclusive.

12 Under PAGA, in any action brought by an aggrieved employee, the Court “shall review  
13 and approve any settlement of any civil action filed pursuant to this part.” Lab. Code  
14 §2699(1)(2). Accordingly, the Court, having considered the proposed settlement set forth in the  
15 Settlement Agreement, including the proposed PAGA penalties, under Labor Code §2699(1)(2),  
16 having considered the papers filed in support of the proposed settlement and the arguments of  
17 counsel, and GOOD CAUSE appearing, HEREBY ORDERS AS FOLLOWS:

- 18 1. The Court finds the instant Action presents a good faith dispute of the claims alleged;
- 19 2. The Court has considered all relevant factors for determining the fairness of the  
20 Settlement and has concluded that all such factors weigh in favor of approving the  
21 Settlement, a copy of which is attached hereto as **Exhibit 1**. In particular, the Court  
22 finds that the Settlement was reached following meaningful discovery and  
23 investigation conducted by Plaintiff; and that the Settlement is the result of serious,  
24 informed, adversarial, and arm’s length negotiations between the Parties.
- 25 3. In so finding, the Court has considered all evidence presented, including evidence  
26 regarding the strength of Plaintiff’s PAGA claims; the risk, expense, and complexity  
27 of the claims presented; the likely duration of further litigation; the extent of  
28 investigation and discovery completed; and the views of counsel. The Parties have

provided the Court with sufficient information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

4. According, the Court hereby finds that the Settlement is, in all respects, fair, reasonable, adequate, and fulfills PAGA's objectives, thus, hereby directs implementation of all remaining terms, conditions, and provisions of the Settlement.
5. The Parties are directed to comply with all terms of the Settlement Agreement, and Defendant is directed to make all payments required by the Settlement Agreement.
6. Under the Settlement Agreement, Defendant agrees to pay an all-in gross amount of One Thousand Dollars (\$1,000.00) ("Gross Settlement Amount"). The Gross Settlement Amount is inclusive of payments to the LWDA (75% - \$750.00) and Aggrieved Employees (25% - \$250.00). No portion of the Gross Settlement Amount will revert to Defendant.
  - a. The Court approves the Notice of PAGA Settlement. Attached as **Exhibit 2** are two copies of the Notice of PAGA Settlement – one in the English language, and the other in a certified Spanish language translation.
7. The Court enters final judgment in accordance with the terms of the Settlement Agreement and this Order.
8. The final accounting shall occur on February 24, 2023 at 9:00 AM in Department CX102. Plaintiff is directed to submit to the Court a final report at least 5 court days prior to the final accounting, including the actual amounts paid to aggrieved employees and the other amounts distributed under the settlement, including to the Unclaimed Property Fund.
9. Plaintiff is directed to submit a copy of this Order and entry of judgment to the LWDA within 10 days of the date of this Order and entry of Judgment.

IT IS SO ORDERED.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: \_\_\_\_\_

HONORABLE PETER WILSON

# **EXHIBIT 1**

## **PAGA SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release (hereinafter “Settlement”, “Agreement”, or “Settlement Agreement”) is made and entered into by and between Plaintiff ISRAEL RIOS SANTOS, (hereinafter “Plaintiff”), individually and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2698 *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and Defendant NEWPORT BEACH CARWASH, (hereinafter, “Defendant” or “NBCW”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Settlement shall be binding on Plaintiff and the PAGA Members he represents (as defined below) and on Defendant, all of their affiliated entities, parents, subsidiaries, owners, officers, executives, directors, and managers, subject to the terms and conditions hereof, the approval of the Court, and notification to the Labor Workforce Development Agency.

### **I. DEFINITIONS**

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. **“PAGA Representative” or “Plaintiff”** shall refer to Named Plaintiff ISRAEL RIOS SANTOS.
2. **“Defendant” or “NBCW”** shall mean and refer to NEWPORT BEACH CARWASH, LLC.
3. **“Released Parties”** shall mean and refer to Defendant and all its affiliated entities, parents, subsidiaries, owners, officers, shareholders, executives and managers.
4. **“Lawsuit”** refers to the civil action pending in Superior Court of California, County of Orange titled, *ISRAEL RIOS SANTOS, Plaintiff v. NEWPORT BEACH CARWASH, LLC; and DOES 1 to 50, Defendants*, Case No. 30-2020-01141706-CU-WT-CJC.
5. **“PAGA Counsel”** shall refer to Farrah Mirabel of Law Offices of Farrah Mirabel, 1070 Stradella Rd., Los Angeles, CA 90077.
6. **“Counsel for Defendant” and “Defense Counsel”** shall refer to Robert W.

Thompson and Alex A. Zolg of Callahan, Thompson, Sherman & Caudill, LLP, 2601 Main Street, Suite 800, Irvine, CA 92614.

7. **“Covered Period”** shall mean the period from January 31, 2019 through the date of the Order of Final Approval and the date of the Final Judgment.

8. **“PAGA Member”** or **“PAGA Members”** shall mean any and all individuals who were employed by Defendant as a non-exempt, hourly paid employee who worked at any time on or between January 31, 2019 through the date of the Order of Final Approval and the date of the Final Judgment.

9. **“Court”** refers to the Superior Court of California, County of Orange.

10. **“PAGA Member Share”** shall mean and refer to each PAGA Members’ share of the 25% of PAGA penalties allocated to the PAGA Members in accordance with Labor Code section 2699(i).

11. **“Covered Claims”** means and refers to any and all claims, demands, rights, liabilities, and/or causes of action for PAGA penalties for the following Labor Code violations alleged in Plaintiff’s January 30, 2020 LWDA Notice and the Operative Complaint: (1) any and all claims involving any alleged failure to provide rest periods, (2) any and all claims involving any alleged failure to provide meal periods, (3) any and all claims involving any alleged failure to pay overtime wages, (4) any and all claims involving any alleged failure to pay minimum wage, (5) any and all claims involving any alleged failure to pay wages due upon termination, (6) any and all claims involving any alleged failure to pay employees for all hours worked, (7) any and all claims involving any alleged failure to maintain accurate payroll records, (8) any and all claims involving any alleged failure to issue proper wage statements, and (9) any and all claims involving any alleged failure to pay for paid sick days.

12. **“Eligible Pay Periods”** means the total number of pay periods that each PAGA Member received a wage statement during the Covered Period.

13. **“Settlement”** shall mean this PAGA Settlement and Release Agreement.

14. “**Effective Date**” and “**Final**” shall mean the date that the Court has signed and entered the Order of Final Approval or the Final Judgment, whichever is sooner.

15. “**Gross Settlement Amount**” or “**GSA**” shall mean and refer to the \$1,000.00 that Defendant is obligated to pay under the terms of this proposed settlement. The Gross Settlement Amount is non-reversionary, such that the entire amount will be disbursed and none will revert to Defendant.

16. “**Individual Settlement**” shall mean and refer to the individual settlement between Plaintiff and Defendant for individual claims, including wrongful termination, discrimination, and retaliation that are not at issue in this PAGA action.

## **II. RECITALS**

17. Plaintiff was an employee of Defendant during the PAGA Period.

18. On January 31, 2020, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of his intent to pursue a representative PAGA action, on behalf of himself and the State of California as well as on behalf of other aggrieved employees (LWDA No. LWDA-CM-769865-20). In Plaintiff’s notice, he expressed intent to pursue the following claims against Defendant under PAGA: (1) Missed Rest Breaks (Cal. Labor Code § 226.7(a)); (2) Missed Meal Breaks (Cal. Labor Code § 226.7, 512, 1198); (3) Failure to Pay All Overtime Worked (Cal. Labor Code § 510, 1194, 1198); (4) Failure to Pay All Wages Earned (Cal. Labor Code § 204); (5) Improper Wage Statements (Cal. Labor Code § 226(a), 1174); (6) Failure to Pay for Sick Days (Cal. Labor Code § 246(a)); (7) Failure to Maintain Records (Cal. Labor Code § 1174, 1198.5 226(b)); and (8) Failure to Pay Wages Upon Separation (Cal. Labor Code § 201-203).

19. On May 26, 2020, Plaintiff filed a Complaint in the Superior Court of the State of California, County of Orange, entitled *ISRAEL RIOS SANTOS, Plaintiff v. NEWPORT BEACH CARWASH, LLC; and DOES 1 to 50, Defendants*, Case No. 30-2020-01141706-CU-WT-CJC. Plaintiff’s Complaint alleges claims of: (1) Missed Rest Breaks (Cal. Labor Code § 226.7(a)); (2) Missed Meal Breaks (Cal. Labor Code § 226.7, 512, 1198); (3) Failure to Pay All Overtime

Worked (Cal. Labor Code § 510, 1194, 1198); (4) Failure to Pay Minimum Wage and Pay All Wages Earned (Cal. Labor Code § 204); (5) Failure to Maintain Accurate Payroll Records (Cal. Labor Code § 226(a), 1174); (6) Failure to Pay Wages Upon Separation (Cal. Labor Code § 201-203); (7) Unlawful Discrimination (Cal. Gov Code § 12940); (8) Wrongful Termination in Violation of Public Policy; (9) Retaliation (Cal. Gov Code § 12940(h)); (10) Failure to Accommodate (Cal. Gov Code § 12940(m)); (11) Failure to Engage in the Interactive Process (Cal. Gov Code § 12940(n)); (12) Failure to Pay for Sick Days (Cal. Labor Code § 246(a)); (13) Violation of California Business & Professions Code § 17200; and (14) Civil Penalties Pursuant to PAGA for all claims listed in Plaintiff's January 31, 2020 written notice to the LWDA.

20. The Parties engaged in formal and informal discovery, exchanging information, documents and reviewing and analyzing extensive time and payroll data made available by Defendant which enabled the parties to thoroughly evaluate Plaintiff's claims, Defendant's defenses, and the likely outcomes, risks, and expense of pursuing litigation.

21. On June 2, 2021, the Parties engaged in mediation before mediator Jonathan Adler, Esq. of Judicate West. Thereafter, the Parties continued informal settlement negotiations.

22. The Parties agree a bona fide dispute exists as to whether any amount of penalties are due from Defendant to any California employees, including Plaintiff, and to the California Labor Workforce and Development Agency.

23. The Parties intend to fully and finally resolve the Covered Claims as to Plaintiff and the PAGA Group Members.

24. The Parties are not aware of any other cases that may be impacted by the Settlement.

25. The Parties further agree that the Agreement, the fact of this Settlement, any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or evidence of: (i) any wrongdoing by any Released Parties (defined above), (ii) any violation of any statute or law by Released Parties, (iii) any liability on the claims or allegations in the Action

on the part of any Released Parties, (iv) any waiver of Defendant's right to arbitration or the enforceability of any arbitration agreement, or (v) the propriety of certifying a litigation class or collective (conditionally or otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any Person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement.

26. *NOW, THEREFORE, IT IS HEREBY CONSENTED TO, AND AGREED*, by Plaintiff for himself and on behalf of the State of California and aggrieved employees and by Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and the Covered Claims shall be finally and fully compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

### **III. TERMS OF SETTLEMENT**

27. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of the State of California as a Private Attorney General and Defendant agree to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

28. The Amount of Settlement. As consideration for the settlement described herein and the release contained in this Settlement, Defendant agrees to pay the following Gross Settlement Amount of \$1,000.00 in connection with the PAGA Settlement.

The Gross Settlement Amount will be allocated as follows:

- (a) 75% (\$750.00) paid to the Labor Workforce Development Agency (LWDA);
- (b) 25% (\$250.00) paid to the PAGA Members on a pro-rata basis.

29. Attorney's Fees and Attorney's Costs: Plaintiff's counsel is not receiving any separate or additional consideration for attorney's fees or costs in connection with the PAGA Settlement.

30. Plaintiff's Enhancement: Plaintiff is not receiving any separate or additional

enhancement or consideration in connection with the PAGA Settlement.

31. Allocation and Calculation of the PAGA Penalties. Each PAGA Member shall receive a portion of the PAGA Penalties on a pro-rata basis using a ratio of (a) the number of Eligible Pay Periods worked by the PAGA Member during the Covered Period to (b) the total number of Eligible Pay Periods worked by all PAGA Members during the Covered Period. As stated above, the Gross Settlement Amount is \$1,000. Seventy-five percent (\$750.00) of the Gross Settlement Amount will be paid to the LWDA, as required by Labor Code section 2699(i). The remaining 25% (\$250.00) of the Gross Settlement Amount will be distributed to PAGA Members on a pro-rata basis based on the formula set forth below. Each PAGA Member's pro-rata share of the Gross Settlement Amount represents their PAGA Member Share.

- (a) PAGA Member Share. Plaintiff and the PAGA Members shall receive a pro rata share of the 25% (\$250.00) of the Gross Settlement Amount. Plaintiff and each PAGA Member shall receive a pro rata value equal to PAGA Members' 25% of the Gross Settlement Amount (\$250.00) multiplied by the ratio of (a) the number of Eligible Pay Periods worked by that Member to (b) the total number of Eligible Pay Periods worked by all Members included in the PAGA Member group. All Individual Settlement Payments made to PAGA Members will be reported on an IRS Form 1099.

32. Tax Treatment of Settlement Amounts. Regarding settlement payments to PAGA Members, IRS Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used,

by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any PAGA Member tax obligations regarding the allocation of the settlement payments.

#### IV. RELEASE

33. Release By All PAGA Members. Upon the approval by the Court of this Settlement, each PAGA Member (including Plaintiff), shall, for the Covered Period, fully release and forever discharge Defendant ("Releasees") from the Covered Claims.

34. Release by Plaintiff. In addition to his participation in the Release By all PAGA Members, upon the Effective Date of this Settlement Plaintiff has agreed to a separate Individual Settlement that is intended to compensate Plaintiff for his individual claims, including wrongful termination, discrimination, and retaliation that are not at issue in the cause of action for PAGA. Plaintiff is providing a full release of individual claims to the extent permitted by law, other than non-releaseable claims such as workers' compensation claims, as part of that Individual Settlement agreement. The payment set forth in the Individual Settlement is contingent on the approval of this PAGA Settlement by the Court. In the event this PAGA settlement is not approved by the Court, the Individual Settlement agreement shall have no effect.

35. Waiver of Right to Appeal. Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until such time as their appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.

36. No Right to Opt-Out or Object. The Parties agree there is no statutory right for any

PAGA Settlement Group Member to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any PAGA Settlement Group Member to appeal the approval of the Settlement by the Court.

**V. MOTION FOR APPROVAL OF PAGA SETTLEMENT**

37. The Parties recognize that in accordance with Labor Code Section 2699(l) Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal.4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza vs. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification.”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”); *Williams vs. Sup. Ct.*, 3 Cal.5th 531, 546-547 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”)

38. Instead, in order to comply with the requirements of Labor Code Section 2699(l), Plaintiff shall submit a motion for approval of the PAGA Settlement to the Court, identifying the key terms of the PAGA Settlement and requesting that the Court approve the PAGA Penalties provided for in this Settlement Agreement (“Approval Motion”). Plaintiff shall concurrently apply to the Court for the entry of an Order approving the PAGA Penalties provided for in the Settlement and entering judgment in the Lawsuit (“Approval Order and Judgment”).

39. If the Court should fail to approve the PAGA Settlement as agreed upon by the Parties, the Parties shall coordinate efforts to address the Court’s questions or concerns and resubmit the Approval Motion or other action as required by the Court. If, after the Parties make a second attempt to obtain approval of the terms of the PAGA Settlement, unless the Parties

specifically agree to continue with their coordinated efforts to obtain Court approval, (a) the Court fails to approve this Settlement in the form agreed to by the Parties, or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this PAGA Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) the Parties shall stand in the same position, without prejudice, as if the Settlement and Approval Motion had been neither entered into nor filed with this Court. Invalidation of any material portion of this Settlement, shall invalidate this Settlement, unless the Parties subsequently agree in writing that the remaining provisions shall remain in full force and effect.

#### **VI. ADMINISTERING THE SETTLEMENT**

40. Within fifteen (15) calendar days after the Effective Date, Defendants will compile a PAGA Member list ("PAGA Member List") containing: (1) name; (2) last known home address and telephone number; (3) number of pay periods as a PAGA Member during the Covered Period; and (4) social security number.

41. Defendants shall make the payments identified in Paragraph 28 of this Agreement within forty-five (45) calendar days of the Effective Date.

42. The payment checks for each PAGA Member Share shall be sent to each PAGA Member by U.S. First Class mail to the PAGA Member's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to Defendants. A letter approved by the Parties, in advance of Plaintiff filing the Approval Motion, explaining this Settlement will be included in the mailing of each PAGA Members' check and submitted to the Court for its review and approval. **The letter is attached hereto as Exhibit 1.** It will be conclusively presumed that a PAGA Members' Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Defendant.

43. Defendant shall ensure that 75% of the Gross Settlement Amount is paid to the

LWDA.

44. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, Defendant will ensure that uncashed funds shall be forwarded the State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the PAGA Member who did not cash his or her PAGA Member Share.

**VII. DUTIES OF THE PARTIES REGARDING APPROVAL**

45. Promptly upon execution of this Settlement, Plaintiff shall apply to the Court for approval of the proposed Settlement. Plaintiff shall also apply to the Court for the entry of an order and final judgement approving this Settlement, as required by Labor Code section 2699(I).

46. At the same time the proposed Settlement is submitted to the Court, Plaintiff shall submit the proposed Settlement to the Labor and Workforce Development Agency (LWDA), as required by Labor Code section 2699(I).

**VIII. PARTIES' AUTHORITY**

47. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

**IX. MUTUAL FULL COOPERATION**

48. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Settlement from the Court.

**X. CONFIDENTIALITY**

49. Other than information necessary to secure Court approval of this settlement, the

Parties agree to keep confidential all matters relative to this Settlement, including the terms of the Settlement and the facts and circumstances leading up to it. If asked about the disputes between the Parties, the Parties shall provide no other statement than "the matter has been resolved" or "the matter has settled." The Parties may, however, discuss the terms of this Settlement with their spouses, attorneys, financial advisors, tax advisors, and accountants, or upon a valid court order, at which time the individual receiving information about the terms of this Settlement shall be informed that the terms of this Settlement are confidential, and the individual may not reveal or disclose to any third party the terms of the Settlement. Nothing in this Agreement shall prohibit PAGA Counsel from disclosing this Settlement in declarations concerning their qualifications to serve as Class and/or PAGA Counsel.

**XI. NO PRIOR ASSIGNMENTS**

50. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or purported to assign, or transfer to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

**XII. NO ADMISSION**

51. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Released Parties. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law, or that it has any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

### **XIII. NON-EVIDENTIARY USE**

52. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a PAGA Member has resolved any of his/her claims released through this Agreement.

### **XIV. ATTORNEYS' FEES, COSTS AND EXPENSES**

53. Each party shall bear its/ his own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by it/ him arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

### **XV. CONSTRUCTION**

54. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of himself and all other PAGA Members) and Defendant regarding actual or potential claims asserted by Plaintiff against Released Parties. Excluding the Individual Settlement Agreement between the Parties, and any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendant, all of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

### **XVI. CAPTIONS AND INTERPRETATIONS**

55. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

#### **XVII. MODIFICATION**

56. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

#### **XVIII. MISCELLANEOUS**

57. This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's Released Claims, and all prior or contemporaneous agreements (except any Arbitration Agreement and the Individual Settlement Agreement), understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

58. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

59. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and,

when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

60. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

61. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

62. The Orange County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and PAGA Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

63. This Agreement shall not be subject to collateral attack by any PAGA Member. Such prohibited collateral attack shall include, but not be limited to, claims that the PAGA Member failed, for any reason, to timely receive his or her Individual Settlement Payment.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

**[SIGNATURES ON FOLLOWING PAGE]**

Dated: 03/22/2022

  
\_\_\_\_\_  
ISRAEL RIOS SANTOS

Dated: \_\_\_\_\_

By: \_\_\_\_\_

For: NEWPORT BEACH CARWASH,

LLC

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

ISRAEL RIOS SANTOS

Dated: 3/11/2022

By: \_\_\_\_\_



For: NEWPORT BEACH CARWASH,

LLC

Its: Manager

## **AMENDMENT TO PAGA SETTLEMENT AND RELEASE AGREEMENT**

*Paragraph 42 of the PAGA Settlement and Release Agreement is presently:*

42. The payment checks for each PAGA Member Share shall be sent to each PAGA Member by U.S. First Class mail to the PAGA Member's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to Defendants. A letter approved by the Parties, in advance of Plaintiff filing the Approval Motion, explaining this Settlement will be included in the mailing of each PAGA Members' check and submitted to the Court for its review and approval. **The letter is attached hereto as Exhibit 1.** It will be conclusively presumed that a PAGA Members' Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Defendant.

*Paragraph 42 of the PAGA Settlement and Release Agreement is hereby amended as follows:*

42. The payment checks for each PAGA Member Share shall be sent to each PAGA Member by U.S. First Class mail to the PAGA Member's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to Defendant. In the event that any checks are returned to Defendant as undeliverable, Defendant will make a reasonable attempt to find an alternative address. If Defendant's attempt indicates that the employee is located at an alternative address, Defendant will re-mail the check accordingly. However, Defendant will not be required to incur additional expenses related to finding alternative addresses. A letter approved by the Parties, in advance of Plaintiff filing the Approval Motion, explaining this Settlement will be included in the mailing of each PAGA Members' check and submitted to the Court for its review and approval. **The letter is attached**

**hereto as Exhibit 1.** It will be conclusively presumed that a PAGA Members' Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Defendant.

Dated: 7/26/22

  
\_\_\_\_\_  
ISRAEL RIOS SANTOS

Dated: 7/25/2022

By:   
For: NEWPORT BEACH CARWASH, LLC  
Its: Manager

## **EXHIBIT 2**

[LETTERHEAD]

Mailing Date

## NOTICE OF PAGA SETTLEMENT

*Re: ISRAEL RIOS SANTOS, Plaintiff v. NEWPORT BEACH CARWASH, LLC, Defendant*  
*Superior Court of California, County of Orange*  
*Case No. 30-2020-01141706-CU-WT-CJC, filed on May 26, 2020*

Dear Current or Former Newport Beach Carwash, LLC Employee:

You are receiving this notice because Newport Beach Carwash, LLC's ("Employer") records indicate that you work or have worked for Employer at some time between January 31, 2019 and [Date of Approval]. This notice relates to the settlement of the lawsuit entitled *ISRAEL RIOS SANTOS v. NEWPORT BEACH CARWASH, LLC*, Case No. 30-2020-01141706-CU-WT-CJC, Orange County Superior Court. Your settlement amount is \$[X].

In the lawsuit, Plaintiff Israel Rios Santos sought civil penalties pursuant to the California Private Attorneys General Act ("PAGA"). This is a law that allows Plaintiff to attempt to recover civil penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were "aggrieved" by alleged wage and hour violations on the part of the Employer.

The scope of the released claims is: any claim or cause of action against Newport Beach Carwash, LLC under PAGA for : (1) Missed Rest Breaks (Cal. Labor Code § 226.7(a)); (2) Missed Meal Breaks (Cal. Labor Code § 226.7, 512, 1198); (3) Failure to Pay All Overtime Worked (Cal. Labor Code § 510, 1194, 1198); (4) Failure to Pay Minimum Wage and Pay All Wages Earned (Cal. Labor Code § 204, 1194, 1197); (5) Improper Wage Statements (Cal. Labor Code § 226(a), 1174); (6) Failure to Pay for Sick Days (Cal. Labor Code § 246(a)); (7) Failure to Maintain Records (Cal. Labor Code § 1174, 1198.5 226(b)); and (8) Failure to Pay Wages Upon Separation (Cal. Labor Code § 201-203).

Employer strongly disputes Plaintiff's allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the lawsuit, and this notice is not an expression of any opinion by the Court as to the merits of this lawsuit. Nonetheless, to avoid the cost and distraction of litigation, Employer has made a business decision to settle the lawsuit, and the settlement has been approved by the Court.

**The enclosed settlement check represents your portion of the Court-approved PAGA Settlement. Employer will issue IRS Form 1099 for all settlement checks. You are responsible for any taxes payable on the amount received.**

The Court approved a settlement of \$1,000. 75% of the settlement (\$750) shall be paid to the California Labor and Workforce Development Agency, as required under PAGA. The remaining 25% of the settlement (\$250) shall be paid to the Aggrieved Employees on a pro-rata basis based upon the pay periods he/she worked for Employer from January 31, 2019 through [Date of Approval].

**You will not be retaliated against for cashing your check. Checks that are not cashed within 120-days of issuance will be voided and the funds will be transmitted to the state controller unclaimed payment fund in your name. In the event that any checks are returned to Employer as undeliverable, Employer will attempt to find an alternative address and will re-mail the check(s).**

Regardless of what you do with the settlement check, you will have released any claims for PAGA penalties for the wage and hour claims asserted in this lawsuit.

Lastly, this is not a communication from the Court, and you are directed to NOT contact the Court or Clerk of Court regarding this settlement. Should you have any questions regarding this Notice, you may contact Newport Beach Carwash, LLC at (949) 644-4450 for further information.

Sincerely,  
Newport Beach Carwash, LLC

# CERTIFICATE

## OF TRANSLATION

July 26, 2022

To: Whom it may concern,

Subject: Order #71475: Translation of NOTICE OF PAGA SETTLEMENT of ISRAEL RIOS SANTOS, Plaintiff v. NEWPORT BEACH CARWASH, LLC, Defendant from English to Spanish.

We Languex LLC, a professional translation company, hereby certify that the above mentioned document(s) have been translated by experienced and qualified professional translators and that, in our best judgment the translated text truly reflects the content, meaning, and style of the original text and constitute in every aspect a correct and true translation of the original document.

This is to certify the correctness of the translation only. We do not guarantee that the original is a genuine document or that the statements contained in the original document are true. Further Languex, LLC assumes no liability for the way in which translation is used by the customer or any third party, including end user of the translation.

A copy of the translation is attached to this certification.



Ebad Akbari  
Managing Director  
Languex LLC

I, **David Ortega** am competent to translate from **English to Spanish** and certify that the translation of the document mentioned in the above subject line of this certification is true and accurate to the best of my abilities.



David Ortega  
Translator  
Languex Translation LLC  
Dated: 07/26/2022



[LETTERHEAD]

Fecha de envío

## AVISO DE CONCILIACIÓN DE –PAGA–

*Re: ISRAEL RIOS SANTOS, demandante contra NEWPORT BEACH CARWASH, LLC, demandado  
Tribunal Superior de California, Condado de Orange  
Caso No. 30-2020-01141706-CU-WT-CJC, presentado el 26 de mayo de 2020*

Estimado empleado actual o anterior de Newport Beach Carwash, LLC:

Usted está recibiendo este aviso porque los registros de Newport Beach Carwash, LLC ("Empleador") indican que usted trabaja o ha trabajado para el Empleador en algún momento entre el 31 de enero de 2019 y [Fecha de aprobación]. Esta notificación se relaciona con la conciliación de la demanda titulada ISRAEL RIOS SANTOS v. NEWPORT BEACH CARWASH, LLC, Caso No. 30-2020-01141706-CU-WT-CJC, Tribunal Superior del Condado de Orange. El monto de su conciliación es de \$[X].

En la demanda, el demandante Israel Ríos Santos solicitó sanciones civiles de conformidad con la Ley General de Abogados Privados de California ("PAGA"). Esta es una ley que permite al Demandante intentar recuperar sanciones civiles en nombre del Estado de California y en nombre de los empleados que el Demandante afirma que fueron "agraviados" por supuestas violaciones de salarios y horas por parte del Empleador.

El alcance de los reclamos liberados es: cualquier reclamo o causa de acción contra Newport Beach Carwash, LLC bajo PAGA por: (1) Pérdida de descansos (Código Laboral de California § 226.7(a)); (2) Pérdida de descansos para comer (Código Laboral de California § 226.7, 512, 1198); (3) Falta de pago de todas las horas extras trabajadas (Código Laboral de California § 510, 1194, 1198); (4) Falta de pago del salario mínimo y de todos los salarios ganados (Código Laboral de California § 204, 1194, 1198). Código Laboral de California § 204, 1194, 1197); (5) Declaraciones inadecuadas de salarios (Código Laboral de California § 226(a), 1174); (6) Falta de pago de días de enfermedad (Código Laboral de California § 246(a)); (7) Falta de mantenimiento de registros (Código Laboral de California § 1174, 1198.5 226(b)); y (8) Falta de pago de salarios tras la separación (Código Laboral de California § 201-203).

El empleador refuta enérgicamente las alegaciones del demandante y sostiene que ha cumplido plenamente con todas las leyes aplicables en materia de salarios y horarios. El Tribunal no ha emitido ningún fallo con respecto al fondo de la demanda, y esta notificación no es una expresión de ninguna opinión por parte del Tribunal en cuanto al fondo de esta demanda. Sin embargo, para evitar el costo y la distracción del litigio, el Empleador ha tomado la decisión comercial de llegar a una conciliación en la demanda, y la conciliación ha sido aprobado por el Tribunal.

**El cheque de conciliación adjunto representa su parte de la Conciliación PAGA aprobado por el Tribunal. El empleador emitirá el formulario 1099 del IRS para todos los cheques de conciliación. Usted es responsable de cualquier impuesto pagadero sobre la cantidad recibida.**

El Tribunal aprobó una conciliación de 1.000 dólares. El 75% de la conciliación (\$750) se pagará a la Agencia del Desarrollo del Trabajo y la Fuerza laboral de California, como se requiere bajo PAGA. El 25% restante de la conciliación (\$250) se pagará a los Empleados Agraviados en forma pro-rata sobre la base de los períodos de pago que él/ella trabajó para el Empleador desde el 31 de enero de 2019 hasta [Fecha de Aprobación].

**No se tomarán represalias contra usted por cobrar su cheque. Los cheques que no se cobren en un plazo de 120 días a partir de su emisión se anularán y los fondos se transmitirán al fondo de pagos no reclamados del controlador estatal a su nombre. En el caso de que cualquier cheque sea devuelto al empleador como imposible de entregar, el empleador intentará encontrar una dirección alternativa y volverá a enviar el cheque(s).**



Independientemente de lo que haga con el cheque de conciliación, usted habrá renunciado a cualquier reclamo de penalidades PAGA por las reclamaciones de salarios y horas afirmadas en esta demanda.

Por último, esta no es una notificación del Tribunal, y se le indica que NO se ponga en contacto con el Tribunal o el Secretario del Tribunal en relación con este arreglo. Si tiene alguna pregunta con respecto a este aviso, puede ponerse en contacto con Newport Beach Carwash, LLC al (949) 644-4450 para obtener más información

Atentamente,  
Newport Beach Carwash, LLC



**PROOF OF SERVICE**

STATE OF CALIFORNIA    )  
                                          )  
COUNTY OF ORANGE    )

I am employed in the County of Orange, State of California, I am over the age of 18 years and not a party to the within action; my business address is 2601 Main Street, Suite 800, Irvine, California.

On this date, July 27, 2022, I served the foregoing document described as:

**[PROPOSED] ORDER GRANTING APPROVAL OF PAGA SETTLEMENT AND ENTERING JUDGMENT**

I enclosed a true copy of said documents in a sealed envelope or package addressed to the persons noted below.

\_\_\_\_ (By United States Mail) I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am familiar with our firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

\_\_\_\_ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

\_\_\_\_ (By messenger service) I served the documents by placing them in an envelope or package addressed to the persons at the addresses below and providing them to a professional messenger service for service.

\_\_\_\_ (By fax transmission) Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

  X   (By electronic service) ONLY BY ELECTRONIC TRANSMISSION by emailing the document(s) to the persons at the email address(es) listed during the Coronavirus (COVID-19) pandemic. This office will be working remotely and is not able to send physical mail as usual and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

\_\_\_\_ (By personal service) I served the documents by delivering the envelope, by hand, to the persons listed below.

\_\_\_\_ (By [Insert Electronic Service Provider]) I caused the above-entitled documents to be served through [Insert Electronic Service Provider]) addressed to all parties appearing on the [Insert Electronic Service Provider]) electronic service list for the above-entitled case. The file transmission was reported as completed and a copy of the [Insert Name of Electronic Service Filing Receipt]) pages will be maintained with the original documents in our office. Service will be deemed effective as provided for in the Electronic Case Management Order. I have complied with

California Rules of Court, Rule 2.257(a) and the original, signed Proof of Service is available for review and copying at the request of the court or any party.

Executed on July 27, 2022, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Jackie Huynh  
JACKIE HUYNH

**SERVICE LIST**

Case Name : Santos v. Newport Beach Carwash LLC  
Court : Orange County Superior Court  
Case Number : 30-2020-01141706-CU-WT-CJC

Farrah Mirabel  
Law Offices of Farrah Mirabel  
1070 Stradella Rd.  
Los Angeles, CA 90077  
Tel: (714) 972-0707  
Fax: (949) 417-1796  
Email: [fmesq@fmirabel.com](mailto:fmesq@fmirabel.com)

Attorney for Plaintiff  
**ISRAEL RIOS SANTOS**