

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

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)

**NOTICE OF MOTION AND MOTION FOR
COURT APPROVAL OF THE PARTIES'
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

*[Filed Concurrently with Declaration of Farrah
Mirabel in support thereof; and [Proposed]
Order Granting Approval of PAGA Settlement
and Entering Judgment]*

Action filed: May 26, 2020

Date: May 12, 2022
Time: 2:00 PM
Dept.: CX102

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on May 12, 2022, at 2:00 PM, or as soon thereafter as
3 counsel may be heard, in Department CX102 of the above entitled court, located at 751 W Santa
4 Ana Blvd., Santa Ana, CA, Plaintiff ISRAEL RIOS SANTOS ("Plaintiff") will, and hereby
5 does, move this Court for entry of an order and judgment approving the Parties' PAGA
6 settlement pursuant to Labor Code §2699(1)(2).

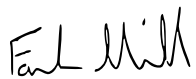
7 The grounds for this Motion, as set forth in the attached memorandum of points and
8 authorities and supporting declaration, are that this is a fair and reasonable settlement in light of
9 Defendant's defenses and was the product of informed, non-collusive negotiations by parties
10 who were represented by experienced and able counsel. See *Wershba v. Apple Computer, Inc.*,
11 (1996) 91 Cal.App.4th 224, 244-245; *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794,
12 1802.

13 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum
14 of Points and Authorities in Support of Motion for Court approval of the PAGA Settlement; (3)
15 the Declaration of Farrah Mirabel, which attaches the PAGA Settlement Agreement; (4) the
16 [Proposed] Order Granting Approval of PAGA Settlement and Entering Judgment; (5) the
17 records, pleadings, and papers filed in this action; and (6) upon such other documentary and oral
18 evidence or argument as maybe presented to the Court at or prior to the hearing of this Motion.

19
20 Dated: February 25, 2022

Respectfully submitted,

21 LAW OFFICES OF FARRAH MIRABEL

22
23 By: 
24 Farrah Mirabel
25 **Attorney for PLAINTIFF,**
26 **ISRAEL RIOS SANTOS**
27
28

1 **I. INTRODUCTION**

2 Pursuant to the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §2698.
3 *et seq.*, “PAGA”), Plaintiff Israel Rios Santos (“Plaintiff”) seeks Court approval of the settlement
4 of Plaintiff’s claim for PAGA civil penalties (“PAGA Claims”). The Parties settled the PAGA
5 Claims for \$1,000.00.

6 Under Section 2699(1)(2) of the California Labor Code, the “court shall review and
7 approve any settlement of any civil action filed” under PAGA. The statute does not require the
8 two-step process utilized on class actions. See *Salamar v. Sysco Central Cal.*, No. 15-0785-DAD,
9 2017 WL 1135801 at 2 (E.D. Cal. Feb. 2, 2017) (rejecting the application of class action
10 settlement rules and procedures for PAGA settlement approval). The California Labor Workforce
11 and Development Agency (“LWDA”) has advocated that:

12
13 When a PAGA clam is settled, the relief provided for under the PAGA be genuine and
14 meaningful, consistent with the underlying propose of the statute to benefit the public,
15 and, in the context of a class action, the court [should] evaluate whether the settlement
16 meets the standards of being ‘fundamentally fair, reasonable, and adequate’ with reference
17 to the public policies underlying PAGA.

18 *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1131-1132 (N.D. Cal. 2016)
19 (“*O’Connor*”). Here, Plaintiff has secured such a settlement on behalf of himself, the State of
20 California, and approximately 120 (one-hundred and twenty) non-exempt, hourly employees.

21 The proposed settlement will dispose of the PAGA claim alleged in the Action, which is
22 predicated upon various alleged violations of the California Labor Code, stemming from
23 Defendant’s alleged employment practices with regard to the non-exempt employees of
24 Defendant (hereinafter “Aggrieved Employees”)

25 The civil penalties secured through this settlement by Plaintiff’s counsel provide for a fair
26 compromise of the PAGA Claims considering the risks of continued litigation and the potential
27 persuasiveness of Defendant’s defenses. This settlement is also consistent with PAGA’s statutory
28 purpose of providing increased enforcement of California’s labor laws. See *Iskanian v. CLS*
Transp. Los Angeles, LLC (2014) 59 Cal.4t h 348, 383-384 (“*Iskanian*”). This settlement also

ensures that the penalties secured were not “unjust, arbitrary and oppressive, or confiscatory”.
Cal. Lab. Code §2699(e)(2).

For these reasons, Plaintiff requests that the Court approve the Settlement and enter the proposed Order Granting Approval of the PAGA Settlement and Entering Judgment.

II. PROCEDURAL HISTORY

Defendant Newport Beach Carwash, LLC (“Defendant”) employed Plaintiff from January 2014 to May 2019. Plaintiff retained counsel after raising his concerns about his compensation and time worked with Defendant, in addition to his concerns about whether Defendant accommodated his disability and wrongfully terminated him. Plaintiff and his counsel diligently investigated each of Plaintiff’s claims by reviewing documents.

On January 31, 2020, Plaintiff provided the LWDA with written notice of his intent to file a representative action for civil penalties under PAGA concerning claims against Defendant on behalf of him, the State of California, and other non-party Aggrieved Employees¹. Plaintiff’s LWDA Notice is attached hereto as **Exhibit A**.

On May 26, 2020, Plaintiff filed his complaint entitled *Israel Rios Santos v. Newport Beach Carwash, LLC*, alleging both individual and PAGA claims under the California Labor Code.

On or about November 5, 2020, Plaintiff served discovery requests to Defendant, and the discovery requests served included Form Interrogatories, Set One, Request for Admissions, Set One, Requests for Production of Documents, Set One, and Special Interrogatories, Set One (collectively “Plaintiff’s First Requests”). After certain extensions, Defendant provided responses to Plaintiff’s Requests on or about January 15, 2021.

On or about October 21, 2020, Defendant served discovery requests to Plaintiff, including Form Interrogatories, Set One, Request for Production of Documents, Set One, and Special Interrogatories, Set One. (collectively “Defendant’s Requests”). Plaintiff provided responses to Defendant’s Requests on or about December 28, 2020.

¹ Plaintiff defines “Aggrieved Employees” as “other current and former non-exempt, hourly employees against whom one or more of the alleged violations was committed”.

1 After exchanging and reviewing discovery requests/responses, as well as engaging in
2 numerous telephonic meet and confer discussions regarding Plaintiff's PAGA claims and
3 Defendant's defenses to the same, both Parties agreed to mediate. In preparation for the
4 mediation, Defendant agreed to provide Plaintiff with a reasonable and random sampling of the
5 time and payroll records of the "Aggrieved Employees." In total, the sampling provided consisted
6 of approximately 770 pages of time and payroll records.

7 On June 2, 2021, the Parties participated in a mediation with Jonathan S. Adler, Esq., of
8 Judicate West. Mr. Adler is a well-respected mediator who is experienced in mediating complex
9 labor and employment matters. During the mediation, the Parties were not able to negotiate a
10 complete settlement of Plaintiff's individual and PAGA claims.

11 Shortly after mediation, Plaintiff served additional PAGA discovery requests on
12 Defendant on June 9, 2021. The discovery requests served included Form Interrogatories, Set
13 Two, Request for Admissions, Set Two, Requests for Production of Documents, Set Two, and
14 Special Interrogatories, Set Two (collectively "Plaintiff's Second Requests"). Defendant provided
15 responses to Plaintiff's Requests on or about August 4, 2021.

16 In the months following Defendant's responses to Plaintiff's Second Requests, the Parties
17 engaged in many additional telephonic meet and confer discussions regarding Plaintiff's PAGA
18 claims and Defendant's defenses to the same, and the Parties continued informal settlement
19 negotiations of Plaintiff's individual and PAGA claims. At all times, the Parties' negotiations
20 were adversarial and non-collusive. The terms of the PAGA Settlement are now set forth in
21 complete and final form in the PAGA Settlement Agreement. The Settlement therefore constitutes
22 a fair, adequate, and responsible compromise of the claims at issue.

23 **III. PLAINTIFF'S CLAIMS**

24 Plaintiff alleges fourteen separate causes of action in his Complaint, including individual
25 causes of action and a cause of action for civil penalties pursuant to the PAGA. These include, but
26 are not limited to, individual causes of action for unpaid overtime, failure to provide meal periods,
27 failure to authorize and permit rest breaks, unpaid premium pay for non-compliant meal and rest
28 break, and for waiting time penalties under Labor Code section 203. Moreover, Plaintiff's

1 complaint individually seeks consequential damages in the form of emotional distress and lost
2 wages for Defendant's alleged unlawful discrimination and retaliation under Labor Code section
3 12940, alleged wrongful termination in violation of public policy, and alleged damages for failure
4 to accommodate and engage in the interactive process. Finally, Plaintiff's complaint seeks
5 recovery under the Private Attorney General Act of 2004 ("PAGA") on behalf of himself, the
6 State of California, and Defendant's non-exempt, hourly employees. Below are Plaintiff's alleged
7 bases for civil penalties under PAGA:

- 8 1. **Failure to Pay Overtime:** Plaintiff alleges that Plaintiff and other aggrieved
9 employees were denied overtime wages for all hours that qualified as overtime.
- 10 2. **Failure to Pay Minimum Wage:** Plaintiff alleges that Defendant has a policy and
11 practice of not paying Plaintiff and other aggrieved employees for all hours worked.
- 12 3. **Failure to Provide Meal Periods:** Plaintiff alleges that Defendant failed to provide
13 30-minute, uninterrupted meal periods to Plaintiff and other aggrieved employees.
- 14 4. **Failure to Provide Rest Periods:** Plaintiff alleges that Defendant had a consistent
15 practice of not providing rest periods to Plaintiff and other aggrieved employees.
- 16 5. **Failure to Pay Wages Promptly after Termination/Waiting Time Penalties:**
17 Plaintiff alleges that Plaintiff and other non-party aggrieved employees were not paid
18 all earned wages upon discharge.
- 19 6. **Failure to Maintain Accurate Payroll Records and Failure to Issue Proper Wage**
20 **Statements:** Plaintiff alleges that Defendant failed to keep required payroll records
21 showing the actual hours worked each day by Plaintiff and other non-party aggrieved
22 employees, and failed to issue proper wage statements showing the same.
- 23 7. **Failure to Pay for Paid Sick Days:** Plaintiff alleges that Defendant failed to pay
24 Plaintiff and other non-party aggrieved employees for their paid sick days.

25 Defendant, for its part, vigorously contests and denies these allegations.
26
27
28

1 **IV. SUMMARY OF SETTLEMENT**

2 The material terms of the PAGA Settlement are described below and are set forth in detail
3 in the PAGA Settlement Agreement. The PAGA Settlement Agreement is attached as Exhibit A
4 to the Declaration of Farrah Mirabel, which is being filed concurrently with this motion.

5 **A. Settlement Sum and Allocation**

6 Subject to Court approval, the PAGA settlement of \$1,000.00, shall be allocated pursuant
7 to the PAGA, Labor Code §2699(i), as follows:

- 8 a. 75% - or approximately \$750.00 will be paid to the LWDA.
9 b. 25% - or approximately \$250.00 will be distributed on a pro-rata basis to all
10 current and former non-exempt, hourly employees of Defendant, who worked at
11 any time on or between January 31, 2019 through the date of the Order of Final
12 Approval and the date of the Final Judgment (“Aggrieved Employees”). There are
13 approximately 125 Aggrieved Employees.

14 Plaintiff is not receiving any separate or additional enhancement or consideration in
15 connection with the PAGA Settlement. Plaintiff’s counsel is not receiving any separate or
16 additional consideration for attorney’s fees or costs in connection with the PAGA Settlement.

17 **B. Scope of the Release**

18 The Settlement would release all PAGA claims for all Aggrieved Employees. In exchange
19 for the payments described above, Plaintiff, the State of California, and the Aggrieved Employees
20 will release Defendant from liability for civil penalties that arise under PAGA that were alleged in
21 Plaintiff’s January 31, 2020 LWDA Notice and Operative Complaint. The proposed release
22 would release the following PAGA penalty claims:

- 23 1. **Failure to Pay Overtime:** Any and all claims involving any alleged failure to pay
24 overtime wages.
25 2. **Failure to Pay Minimum Wage:** Any and all claims involving any alleged failure to
26 pay minimum wage for all hours worked.
27 3. **Failure to Provide Meal Periods:** Any and all claims involving any alleged failure to
28 provide meal periods.

- 1 4. **Failure to Provide Rest Periods:** Any and all claims involving any alleged failure to
2 provide rest periods.
- 3 5. **Failure to Pay Wages Promptly after Termination/Waiting Time Penalties:** Any
4 and all claims involving any alleged failure to pay wages due upon termination.
- 5 6. **Failure to Maintain Accurate Payroll Records and Failure to Issue Proper Wage**
6 **Statements:** Any and all claims involving any alleged failure to maintain accurate
7 payroll records, and any and all claims involving any alleged failure to issue proper
8 wage statements reflecting the same.
- 9 7. **Failure to Pay for Paid Sick Days:** Any and all claims involving any alleged failure
10 to pay for paid sick days.

11 Defendant, for its part, vigorously contests and denies these allegations.

12 The Settlement is not a waiver of claims by Aggrieved Employees against Defendant for
13 any individual wages and hour claims. The release is expressly limited to claims for civil
14 penalties under PAGA.

15 **V. THE PARTIES REQUEST APPROVAL OF THE PAGA SETTLEMENT**

16 **A. PAGA Provides for Recovery of Penalties Through Private Action**

17 In 2003, the California Legislature enacted PAGA in an attempt to rectify the lack of
18 enforcement of California Labor Code. Hearings held by the Assembly Labor and Employment
19 Committee in 2001 demonstrate that the State Department of Industrial Relations was failing to
20 effectively and efficiently enforce California's wage and hour laws. *Senate Rules Committee*
21 *Report on SB 796* (September 11, 2003). The lack of enforcement was due to two issues: (1)
22 shortage of governmental resources to pursue enforcement; and (2) many labor code sections
23 were punishable only as criminal misdemeanors with no civil penalty provision or other sanction
24 attached. *Iskanian*, supra, 50 Cal.4th at 379. Consequently, the California Legislature enacted
25 PAGA with the intent to "augment the enforcement abilities of the Labor Commissioner by
26 creating an alternative 'private attorney general' system for labor law enforcement" *Senate Rules*
27 *Committee Report on SB 796* (September 11, 2003). PAGA now allows for private litigants to
28 bring lawsuits against California employers to enforce the Labor Code.

1 Under PAGA, an aggrieved employee brings the action on behalf of themselves, other
2 aggrieved employees, and the State of California. An “aggrieved employee” is “any person who
3 was employed by the alleged violator and against whom one or more of the alleged violations was
4 committed”. Cal. Lab. Code §2699(c). Prior to commencing a civil action, the aggrieved
5 employee must provide written notice to the LWDA and the employer setting forth the “specific
6 provisions of [the Labor Code] alleged to have been violated.” Cal. Lab. Code §2699.3(a)(1). If
7 the LWDA decided not to investigate the allegations within 65 days, the aggrieved employee is
8 allowed to file and commence a PAGA action. Cal. Lab. Code §2699.3(a)(2). The representative
9 aggrieved employee is then considered to be a “proxy or agent of the state’s labor law
10 enforcement agencies.” *Kim v. Reins International California, Inc.*, (2020) 5 Cal.5th 73, 81
11 (“*Kim*”). Therefore, “[e]very PAGA claim is a dispute between an employer and the state.” *Id.*

12 Civil penalties recovered through PAGA actions are distributed to both the State and non-
13 party Aggrieved Employees. Of the civil penalties recovered, 75 percent goes to the LWDA and
14 the remaining 25 percent goes to the aggrieved employees. Cal. Lab. Code §2699(i). Although
15 aggrieved employees are provided with payment of civil penalties, these payments “are distinct
16 from the statutory damages or penalties that may be available to employees suing for individual
17 violations.” *Kim*, supra, 5 Cal.5th at 81. Accordingly, “[r]elief under PAGA is designed primarily
18 to benefit the general public” and its purpose is “not to redress employees’ injuries”. *Id.*

19 **B. Class Action Settlement Standards Do Not Govern Settlement Approval Process**
20 **for PAGA Claims.**

21 PAGA representative actions or claims differ from individual or class actions. Although a
22 PAGA action is a representative action, “a PAGA claim is not simply a collection of individual
23 claims for relief, and so is different from a class action.” The Parties are not obligated to “satisfy
24 class requirements,” including the standards for class action settlement approval. *Arias*, supra, 46
25 Cal.4th at 980- 988, see also *O’Connor*, supra, 201 F.Supp.3d at 1134.

26 Instead, court approval of PAGA settlements is governed by §2699(l) of the California
27 Labor Code. Under §2699(l), the relevant section reads: “The court shall review and approve any
28 penalties sought as part of a proposed settlement agreement pursuant to this part.” Notably, unlike

1 the class action settlement approval process, there is also no statutory mechanism for a two-step
2 settlement approval process.

3 When evaluating a PAGA settlement, the Court's focus is not the amount that the
4 "aggrieved employees" will receive, but, instead, on whether the total settlement amount achieves
5 PAGA's objections. In a letter to the Court in *O'Connor*, the LWDA stressed that "the relief
6 provided for under the PAGA [settlement] be genuine and meaningful, consistent with the
7 underlying purpose of the statute to benefit the public and, in the context of a class action, the
8 court evaluate whether the settlement meets the standards of being 'fundamentally fair, reasonable
9 and adequate' with reference to the public policies underlying the PAGA." Under PAGA, the
10 penalties recovered are meant to supplement agency funding for education and enforcement
11 purposes. Cal. Lab. Code §2699(i). PAGA's "civil penalties recovered on the state's behalf are
12 intended to remediate present violations and deter future ones." *Kim*, supra, 9 Cal.5th at 86.
13 Overall, PAGA is not a method by which to recover restitution or damages on behalf of the
14 employees. (*Brown v. Ralph's Grocery Co.*, 197 Cal.App.4th at 501.) PAGA was meant to
15 augment the limited enforcement capability of the LWDA by empowering employees to enforce
16 the Labor Code as representatives of the Agency. *Iskanian*, supra, 59 Cal.4th at 383.

17 **C. The Settlement is Reasonable Given the Risks of Further Litigation and The**
18 **Strength of Defendant's Defenses on the Merits**

19 In assessing whether the amount of civil penalties is genuine and meaningful, the Court
20 may balance the amount in penalties against the risks of further litigation. Plaintiff believed that
21 Defendant may persuasively argue that the Court should exercise its discretion under PAGA to
22 significantly reduce or altogether waive any penalties under PAGA. Pursuant to Labor Code
23 section 226.3, the Labor Commissioner has the discretion to "decide not to penalize an employer
24 for a first violation when that violation was due to a clerical error or inadvertent mistake."
25 (*O'Connor*, supra, 201 F.Supp.3d at 1133.) And in accordance with PAGA, the court in a PAGA
26 action has the same discretion "to assess a civil penalty" that the Labor Commissioner would
27 have, as well as complete discretion to "award a lesser amount than the maximum civil penalty
28 amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do

otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code, § 2699(e)(1) and (e)(2).)

However, a number of courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced “subsequent violation penalty” only after a court or the Labor Commissioner has found that an employer’s conduct violates the Labor Code. *Steenhyuse v. UBS Fin. Sers., Inc.* 317 F.Supp.3d 1062, 1067 (N.D. Cal. 2018) (“California law is clear that a ‘subsequent violation’ level applies only to violations after the employer is on notice that its continued conduct is unlawful. Until notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12-07658 DDP (Rzx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notified the employer that it is in violation of the Labor Code”). Finally, the Ninth Circuit confirms in *Bernstein v. Virgin Am., Inc.*, (2021) 990 F.3d 1157, 1172-1173, that “Until the employer has been notified that it is violating a Labor Code provision (whether or not the [Labor] Commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”

Furthermore, courts have entertained arguments against “stacking” civil penalties². In *Ali v. Auto Nation, Inc.*, the plaintiff and defendant did not stack PAGA penalties. 2021 WL 2947540 at 12 (July 14, 2021). Counsel argued that PAGA itself references civil penalties in two opposing manners that does not guarantee a right to stacking penalties. *Id.* at fn. 9. Even though Labor Code §2699 subdivision (f) references “a” penalty for “a” violation, subdivision (g) references “the” civil penalty on behalf of employees whom “one or more of the alleged violations” occurred. *Id.*

PAGA Counsel anticipated that, at trial, Defendant could make a potentially persuasive argument that Defendant adopted and enforced legally-compliant meal and rest break policies and

² “Stacking” civil penalties occurs when a civil penalty is assessed for each violation of the Labor Code within a single pay period.

1 procedures, such as by (1) supplying Employee Handbooks with compliant and detailed policies
2 that were issued in both English and Spanish to ensure all employees understood break policies;
3 and (2) by providing verbal and written reminders to take all legally-required breaks.

4 Additionally, the time records of the employees sampled showed late or short meal periods in an
5 amount that was de minimus. Further, the time records of the employees sampled showed meal
6 periods that were consistently closer to one-hour in length, as opposed to 30-minutes.

7 Furthermore, Defendant will argue it had compliant policies and practices related to pay
8 and timekeeping, including that (1) employees were required to record all time worked and a
9 prohibition of off-the-clock work, which Aggrieved Employees acknowledged; (2) Defendant
10 paid all minimum wages and overtime as required by law; and (3) all time worked was to be
11 recorded by employees in timesheets, which was timely paid by Defendant throughout
12 employment and at termination. Further, the payroll records of the employees sampled showed
13 that Defendant paid overtime whenever an employee recorded it on his or her timesheet.
14 Additionally, Defendant provided information in its verified discovery responses that it had paid
15 approximately \$126,000.00 in overtime compensation to its non-exempt, hourly employees from
16 January 30, 2019 to July 2021. PAGA Counsel expects that Defendant could thus make a
17 potentially persuasive argument that this indicates that Defendant does not shy away from its
18 obligation to pay employees overtime, and Defendant does so when it is recorded.

19 Additionally, Defendant believed that it had compliant policies and practices related to
20 maintenance of payroll records and issuance of compliant wage statements. With regards to
21 maintenance of payroll records, Defendant maintained that it had either a duplicate of the
22 itemized statement provided to an employee or a computer-generated record that showed all of the
23 information required by California Labor Code Section 226(a), which is permitted under the
24 Labor Code.

25 In sum, Defendant would argue that the above should mitigate in factor of heavily
26 reducing or waiving PAGA penalties. A subject of the Parties' telephonic meet and confer
27 discussions was also Defendant's intention to bring a Motion to Strike Plaintiff's PAGA Claims
28 on Manageability Grounds prior to trial. Defendant contended that Plaintiff's PAGA claims were

1 not manageable due to the fact that Defendant did uphold any unlawful policy or practice on a
2 uniform basis and, thus, proving any violations would be entirely reliant on individualized
3 assessments. While Plaintiff disagrees that this analysis is legally correct or persuasive, PAGA
4 Counsel had to consider the foregoing facts and arguments and how they might impact any
5 judgment ultimately awarded to Aggrieved Employees if the Court were persuaded by them. In
6 light of all these significant risks, the strength of Defendant's defenses, and given that PAGA
7 gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA Counsel
8 determined that the Settlement Payment of \$1,000.00 was fair, reasonable, and warranted by the
9 circumstances of this case.³

10 PAGA Counsel acknowledges that \$1,000 is a relatively small PAGA settlement amount
11 for approximately 120 non-exempt, hourly employees. However, PAGA Counsel also
12 acknowledges that, during discovery, Defendant produced compliant and detailed policies as to
13 overtime, meal periods, and rest periods, as well as approximately 770 pages of time and payroll
14 records, which support Defendant's position that it complied with the California Labor Code
15 during the relevant time period. While Defendant contends that the Court would be unlikely to
16 impose *any* PAGA penalties here, the parties negotiated a fair and reasonable PAGA settlement in
17 light of the facts of Plaintiff's claims and Defendant's defenses, as Defendant desired a release
18 from liability for civil penalties arising under PAGA for the claims alleged in Plaintiff's January
19 31, 2020 LWDA Notice and Operative Complaint.

20 **D. The Distribution Formula is Reasonable**

21 Under the settlement, the penalties to the Aggrieved Employees and the LWDA will be
22 distributed according to the formula in Labor Code §2699(i). The LWDA will be awarded 75% of
23 the PAGA Settlement Amount, individual Aggrieved Employees will be apportioned their shares
24 on a prorated basis, which accounts for the number of pay periods each worked as an employee of
25 Defendant. The allocation formula is fair and reasonable and accounts for the length of each

26 ³ Indeed, courts regularly approve PAGA settlements for only a fraction of the potential PAGA civil penalties,
27 particularly where, as here, counsel have presented compelling reasons why recovery of penalties was unlikely. (See,
28 e.g., *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at *9 (preliminarily approving class
action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claim's full potential value, where
"Plaintiffs face[d] a substantial risk of recovering nothing on either the class or PAGA claims")

1 employee's tenure with Defendant. Further, neither PAGA Counsel nor Plaintiff is receiving any
2 separate consideration or enhancement for this Settlement. Additionally, the Settlement requires
3 Defendant to make all penalty payments to the Aggrieved Employees and the LWDA within
4 forty-five (45) days of court approval.

5 **E. The Scope of the Release is Appropriately Limited**

6 If approved, the Settlement would only release Defendant and other releasees from all
7 PAGA claims related to Plaintiff's claims. Apart from the named Plaintiff, who is executing a
8 general release, the Settlement would not impact any other Aggrieved Employee's ability to
9 pursue individual Labor Code claims. Therefore, the limited scope of the release also support
10 approval.

11 Since an Aggrieved Employee's PAGA action is a substitute for government action,
12 "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on
13 government agencies and any aggrieved employee not a party to the proceeding." *Arias*, supra, 26
14 Cal.4th at 986. However, "the nonparty employees, because they were not given notice of the
15 action or afforded any opportunity to be heard, would not be bound by the judgment as to
16 remedies other than civil penalties." *Id.* at 987. See also Lab. Code §2699(g)(1) (non-party
17 Aggrieved Employees retain all rights "to pursue or recover other remedies available under state
18 or federal law, either separately or concurrently with an action taken under this part.").

19 Accordingly, the Aggrieved Employees will be subject to only a limited release strictly
20 confined to the statutory penalties available under PAGA. The release appropriately covers the
21 PAGA claims initially brought by Plaintiff. The release is therefore appropriately tailored.

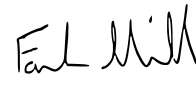
22 **VI. CONCLUSION**

23 For all of the reasons described herein, Plaintiff respectfully requests that the Court
24 approve the Parties' proposed PAGA Settlement and order that the Settlement is carried out
25 according to the terms of the Settlement Agreement.

1 Dated: February 25, 2022

Respectfully submitted,

2 LAW OFFICES OF FARRAH MIRABEL

3
4 By: 
5 Farrah Mirabel
6 **Attorney for PLAINTIFF,**
7 **ISRAEL RIOS SANTOS**