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**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)

**DECLARATION OF FARRAH MIRABEL
IN SUPPORT OF MOTION FOR COURT
APPROVAL OF THE PARTIES' PAGA
SETTLEMENT**

*[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

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1. I am an attorney licensed to practice law in the State of California. I am a member of Law Offices of Farrah Mirabel, attorneys of record for Plaintiff Israel Rios Santos. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would testify competently thereto.

2. My 1989 Bachelor of Science degree is in Electrical and Computer Engineering. While working full time for Ford Motor Company in Michigan, I attended the University of Detroit law school and graduated in 1992. I was admitted to the California Bar in December 1992, and I have been practicing law for approximately 28 years. I am also admitted to practice before the United States Court of Appeal, Ninth Circuit, United States District Court for the Northern and Central Districts of California. I am also a member of the United States Patent and Trademark Bar, and I was admitted in 1999.

3. I am an experienced trial attorney. I was admitted to the bar in December 1992 and have been practicing since 1993, about 29 years, I have conducted many jury and bench trials on top of hundreds of deposition, mediation, and arbitration hearings. I have appealed several court decisions, judgments, and rulings. I am experienced and qualified to evaluate Plaintiff's PAGA claims, the viability of Defendant's defenses, and the risks and benefits of settlement versus trial on a fully informed basis.

4. I am qualified to handle this litigation because I have been litigating Labor Code Violations in single, class action, and PAGA actions since 2010. By way of example, I have and continue to litigate several cases against the largest firms in the country, including Littler, Latham & Watkins, O'Melveny & Myers, Morrison & Foerster, Jackson Lewis, Sheppard Mullin,

1 Seyfarth Shaw and Reed Smith LLP. Currently, our active caseload included plaintiff's wrongful
2 termination, wage and hour class action cases, and PAGA cases against employers.

4 **EXAMPLES OF CLASS AND PAGA ACTION RESULTS**

5 5. I have been certified as class counsel for the following class action matters: Jaime Sanchez
6 v. Matchmaster Dyeing and Finishing Inc., case number BC572723, Los Angeles County; Fausto
7 Cortez et al. v. Pacific Hotel Management, Inc., Case number 30-2014-00701706-CU-OE-CXC,
8 (Orange County Superior court); Darren Rankins, Jr and Miguel Paralta v. ATV, Case numbers
9 19STCV24428 and 19STCV32329, Los Angeles County; and Hector Vieyra and Rafael Ramirez
10 v. Spearman Clubs Inc. Db a Laguna Niguel Racquet Club, Case numbers 30-2020-01156371 and
11 30-2020-01141764 (Orange County).

12 6. At the present time I am in the process of seeking approval for two recently settled class
13 and PAGA actions, and additionally, I am actively litigating about 10 PAGA and/or employment
14 class actions.

16 **SETTLEMENT AGREEMENT**

17 7. Marked and attached hereto as "**EXHIBIT A**" is the PAGA Settlement and Release
18 Agreement ("PAGA Settlement" or "PAGA Settlement Agreement") entered into by and between
19 Plaintiff Israel Rios Santos ("Plaintiff"), individually and on behalf of all other aggrieved
20 employees, on the one hand, and Defendant Newport Beach Carwash, LLC ("Defendant"), on the
21 other hand (collectively, the "Parties"). The Parties and their counsel have approved the proposed
22 Notice of Settlement ("PAGA Notice"), which is attached to the PAGA Settlement Agreement as
23 "Exhibit 1", and the Parties respectfully request that the Court approve it as well.

25 **INITIATION OF PLAINTIFF'S LAWSUIT**

26 8. Defendant employed Plaintiff from January 2014 to May 2019. Plaintiff retained my
27 office as counsel after raising his concerns about his compensation and time worked with
28 Defendant, in addition to his concerns about whether Defendant accommodated his disability and

1 wrongfully terminated him. Plaintiff and I diligently investigated each of Plaintiff's claims by
2 reviewing documents.

3 9. On January 31, 2020, Plaintiff provided the LWDA with written notice of his intent to file
4 a representative action for civil penalties under PAGA concerning claims against Defendant on
5 behalf of him, the State of California, and other non-party Aggrieved Employees. Plaintiff defines
6 "Aggrieved Employees" as "other current and former non-exempt, hourly employees against
7 whom one or more of the alleged violations was committed." Plaintiff's LWDA Notice is
8 attached to the Motion for Court Approval of Parties' PAGA Settlement as Exhibit A.

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

12 11. Plaintiff alleges fourteen separate causes of action in his Complaint, including individual
13 causes of action and a cause of action for civil penalties pursuant to the PAGA. These include, but
14 are not limited to, individual causes of action for unpaid overtime, failure to provide meal periods,
15 failure to authorize and permit rest breaks, unpaid premium pay for non-compliant meal and rest
16 break, and for waiting time penalties under Labor Code section 203. Moreover, Plaintiff's
17 complaint individually seeks consequential damages in the form of emotional distress and lost
18 wages for Defendant's alleged unlawful discrimination and retaliation under Labor Code section
19 12940, alleged wrongful termination in violation of public policy, and alleged damages for failure
20 to accommodate and engage in the interactive process. Finally, Plaintiff's complaint seeks
21 recovery under the Private Attorney General Act of 2004 ("PAGA") on behalf of himself, the
22 State of California, and Defendant's non-exempt, hourly employees.

23 24 THE DISCOVERY PROCESS

25 12. On or about November 5, 2020, Plaintiff served discovery requests to Defendant, and the
26 discovery requests served included Form Interrogatories, Set One, Request for Admissions, Set
27 One, Requests for Production of Documents, Set One, and Special Interrogatories, Set One
28

1 (collectively “Plaintiff’s First Requests”). After certain extensions, Defendant provided responses
2 to Plaintiff’s Requests on or about January 15, 2021.

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

7 14. After exchanging and reviewing discovery requests/responses, as well as engaging in
8 numerous telephonic meet and confer discussions regarding Plaintiff’s PAGA claims and
9 Defendant’s defenses to the same, both Parties agreed to mediate. In preparation for the
10 mediation, Defendant agreed to provide Plaintiff with a reasonable and random sampling of the
11 time and payroll records of the “Aggrieved Employees.” In total, the sampling provided consisted
12 of approximately 770 pages of time and payroll records.

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

17 16. Shortly after mediation, Plaintiff served additional PAGA discovery requests on
18 Defendant on June 9, 2021. The discovery requests served included Form Interrogatories, Set
19 Two, Request for Admissions, Set Two, Requests for Production of Documents, Set Two, and
20 Special Interrogatories, Set Two (collectively “Plaintiff’s Second Requests”). Defendant provided
21 responses to Plaintiff’s Requests on or about August 4, 2021.

22 17. During the course of discovery, I came to believe that Defendant may persuasively argue
23 that the Court should exercise its discretion under PAGA to significantly reduce or altogether
24 waive any penalties under PAGA.

25 18. I anticipate that, at trial, Defendant could make a potentially persuasive argument that
26 Defendant adopted and enforced legally-compliant meal and rest break policies and procedures,
27 such as by (1) supplying Employee Handbooks with compliant and detailed policies that were
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1 issued in both English and Spanish to ensure all employees understood break policies; and (2) by
2 providing verbal and written reminders to take all legally-required breaks.

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

7 20. Defendant will argue it had compliant policies and practices related to pay and
8 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.

13 21. Further, the payroll records of the employees sampled showed that Defendant paid
14 overtime whenever an employee recorded it on his or her timesheet. Additionally, Defendant
15 provided information in its verified discovery responses that it had paid approximately
16 \$126,000.00 in overtime compensation to its non-exempt, hourly employees from January 30,
17 2019 to July 2021. I expect that Defendant could thus make a potentially persuasive argument that
18 this indicates that Defendant does not shy away from its obligation to pay employees overtime,
19 and Defendant does so when it is recorded.

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

26 23. A subject of the Parties' telephonic meet and confer discussions was also Defendant's
27 intention to bring a Motion to Strike Plaintiff's PAGA Claims on Manageability Grounds prior to
28 trial. Defendant contended that Plaintiff's PAGA claims were not manageable due to the fact that

1 Defendant did uphold any unlawful policy or practice on a uniform basis and, thus, proving any
2 violations would be entirely reliant on individualized assessments. While Plaintiff disagrees that
3 this analysis is legally correct or persuasive, I had to consider the foregoing facts and arguments
4 and how they might impact any judgment ultimately awarded to Aggrieved Employees if the
5 Court were persuaded by them.

6 24. In light of the aforementioned significant risks, the strength of Defendant's defenses, and
7 given that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, I
8 determined that the Settlement Payment of \$1,000.00 was fair, reasonable, and warranted by the
9 circumstances of this case.

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

20 21 **SETTLEMENT TERMS**

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

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

3 a. 75% - or approximately \$750.00 will be paid to the LWDA.

4 b. 25% - or approximately \$250.00 will be distributed on a pro-rata basis to all current
5 and former non-exempt, hourly employees of Defendant, who worked at any time on
6 or between January 31, 2019 through the date of the Order of Final Approval and the
7 date of the Final Judgment (“Aggrieved Employees”). There are approximately 120
8 Aggrieved Employees.

9 The Settlement Payment will be fully distributed in accordance with the terms of the
10 PAGA Settlement Agreement, and there is no reversion to Defendant. The PAGA Settlement
11 Agreement requires Defendant to make all penalty payments to the Aggrieved Employees and the
12 LWDA within forty-five (45) days of court approval.

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

16 29. If approved, the Settlement would only release Defendant and other releasees from all
17 PAGA claims related to Plaintiff’s claims. The Aggrieved Employees will be subject to only a
18 limited release strictly confined to the statutory penalties available under PAGA, and the release
19 appropriately covers the PAGA claims initially brought by Plaintiff. Apart from the named
20 Plaintiff, who is executing a general release, the Settlement would not impact any other
21 Aggrieved Employee’s ability to pursue individual Labor Code claims. I believe that this limited
22 scope of the release also supports approval.

23 30. I am not aware of any other cases that may be impacted by this PAGA Settlement.
24 Furthermore, the LWDA’s searchable online database indicates that Plaintiff’s PAGA case is the
25 only PAGA case currently pending against Defendant.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Fant Milk

Farrah Mirabel