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ATTORNEYS FOR PLAINTIFF, LISSETTE NUNEZ PAREDES  
AND THOSE SIMILARLY SITUATED

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN MATEO**  
**UNLIMITED JURISDICTION**

LISSETTE NUNEZ PAREDES,  
INDIVIDUALLY AND ON BEHALF OF THOSE  
SIMILARLY SITUATED,

PLAINTIFF,

v.

JSN BAY CONTRACT, INC., A  
CALIFORNIA CORPORATION, AND DOES 1  
THROUGH 10, INCLUSIVE,

DEFENDANTS.

) CASE No. 20-CIV-02362

) **PLAINTIFF'S MEMORANDUM OF**  
) **POINTS AND AUTHORITIES IN**  
) **SUPPORT OF UNOPPOSED MOTION**  
) **FOR APPROVAL OF PAGA**  
) **SETTLEMENT**

) **DATE: JUNE 29, 2021**

) **TIME: 8:30 A.M.**

) **DEPT: 4**

) **JUDGE: HON. NANCY L. FINEMAN**

## I. INTRODUCTION

The Court should approve the Private Attorneys General Act (“PAGA”) settlement in this case because it is fair, adequate and reasonable.

In this case, Plaintiff Lissette Nunez Paredes (“Paredes”) alleges that Defendant JSN Bay Contract, Inc. (“JSN”) violated the PAGA by failing to provide proper meal and rest periods and failing to include an employee identification number or last four digits of a social security number on wage statements. After informal discovery, Paredes determined there were risks to the PAGA claim, including JSN’s claim that employees were authorized and permitted to take meal and rest periods, and JSN immediately corrected its failure to include an employee identification number or the last four digits of social security numbers on wage statements when brought to its attention. JSN also submitted tax returns during mediation, which show it operated at a six figure loss in 2020 due the pandemic. Given the risks involved, the PAGA settlement is a good result.

Accordingly, Paredes respectfully requests that the Court approve this PAGA settlement in its entirety.

## II. STATEMENT OF FACTS

### A. PAGA Notice

In late March, 2020, Paredes exhausted her PAGA administrative notice requirements by filing a letter with the Labor Workforce Development Agency (“LWDA”). (Woodall Decl. in Supp. of Mtn. for Approval of PAGA Sett. (“Woodall Decl.”), ¶ 2.) In the PAGA notice, Paredes alleges that JSN issued noncompliant wage statements required by Labor Code § 226, including failing to include partial social security numbers or employee identification numbers of employees. Paredes also alleged that non-exempt employees were not provided compliant meal and rest periods. (*Id.*)

### B. Allegations in this Case

In June, 2020, Paredes filed a complaint in this Court, in which she alleges that JSN violated the PAGA by issuing noncompliant wage statements and not providing proper meal and rest periods or premium pay for missed meal and rest periods. (Woodall

Decl., ¶ 3.)

### **C. Discovery**

Paredes propounded formal and informal discovery requests prior to mediation including, but not limited to, the number of employees who received wage statements that did not contain a partial social security number or an employee identification number, the number of noncompliant wage statements and a sample of wage statements and time entry records, among other things. (Woodall Decl., ¶ 4.)

### **D. Litigation Risks**

During informal discovery, JSN revealed that approximately 46 employees received wage statements that did not contain partial social security numbers or employee identification numbers, which amounts to approximately 1,380 improper wage statements from late March, 2019 until in or about June, 2020. (Woodall Decl., ¶ 5.) JSN represented this was an inadvertent error, which was corrected in or about June, 2020 when it discovered the error. (Declaration of Aracely Rivera in Support of Approval of PAGA Settlement (“Rivera Decl.”), ¶¶ 2-3.) Although a sample of wage statements and time entry records showed there were approximately 180 pay periods where employees started a meal period late or did not take the full 30 minutes, JSN argued that its policies and practices authorized and permitted employees to take compliant meal and rest periods. (*Id.*) JSN also disclosed that it lost six figures in 2020 due to the pandemic, that its business is still anemic in 2021 and thus, its ability to pay significant PAGA penalties is not possible. (Rivera Decl., ¶ 4.) In addition, JSN argued the court has discretion not to award any PAGA penalties or greatly reduced PAGA penalties under the circumstances. Thus, although the potential PAGA penalties were in excess of \$150,000, there were substantial risks the PAGA penalties awarded after lengthy and costly litigation would have been substantially less or none at all. (*Id.*)

### **E. Settlement Reached**

In May, 2021, the parties reached a settlement during a half day mediation with David Lowe. (Woodall Decl., ¶ 6, Exh. A.) In the settlement, JSN agreed to pay PAGA

1 penalties to the State of California and aggrieved employees of \$19,000 (75 percent to the  
2 State of California and 25 percent to the PAGA aggrieved employees), an incentive  
3 payment to Paredes of \$2,000, a settlement administrator payment of \$1,000,  
4 reimbursement of Paredes' \$7,000 in litigation costs and \$36,000 in attorney's fees to  
5 Paredes' counsel. (*Id.*)

6 The parties further agreed that if any PAGA aggrieved employees failed to cash  
7 their checks after 180 days, the checks would be voided and the unclaimed amount would  
8 revert to a cy pres recipient (the Bar Association of San Francisco) in accordance with  
9 Civil Code § 384. (*Id.*)

### 10 III. DISCUSSION

#### 11 A. The PAGA Settlement Should Be Approved By The Court Because It Is Fair, 12 Adequate And Reasonable

13 The parties reached a settlement that is fair, adequate and reasonable given the  
14 potential penalties and the risks involved with the litigation.

15 California Labor Code § 2699(l)(2) provides that the court shall review and  
16 approve any PAGA settlement.<sup>1</sup> The California Supreme Court has determined class  
17 certification is not necessary for PAGA cases. *Arias v. Superior Court* (2009) 46 Cal.4<sup>th</sup>  
18 969, 981. The PAGA statute authorizes courts to award a lesser amount than the  
19 maximum civil penalties if, based on the facts and circumstances of the case, to do  
20 otherwise would be unjust, arbitrary and oppressive, or confiscatory. Labor Code §  
21 2699(e)(2); *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4<sup>th</sup> 1112,  
22 1136 (the standard for reviewing a trial court's reduction of PAGA civil penalties is  
23 abuse of discretion).

24 Courts have repeatedly approved PAGA settlements that represent a small fraction  
25 of the maximum potential civil penalties and overall settlement. *Kuang Xuan Liu v. Win*  
26 *Woo Trading, LLC*, 2017 U.S. Dist. LEXIS 159384, \*9 (N.D. Cal. Sept. 27, 2017)

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27 <sup>1</sup> The PAGA also requires that a plaintiff notify the LWDA agency of the  
28 settlements, which Paredes has done. (Woodall Decl., ¶ 17.)

(PAGA settlement approved, which represented 5% of maximum civil penalties); *Turner v. Motel 6 Operating L.P.*, 2018 U.S. Dist. LEXIS 224004, \*9, 19 (C.D. Cal. Nov. 6, 2018) (PAGA settlement represented less than 1% of maximum civil penalties); *Nordstrom Comm'n Cases*, 186 Cal.App.4<sup>th</sup> 576, 589 (2010) (no money was allocated to PAGA claims under the settlement); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. Lexis 67192, \*8 (E.D. Cal. Apr. 20, 2018) (approving \$100 PAGA settlement); *Davis v. Cox Commc'ns California, LLC*, 2017 WL 1496407, \*1 (S.D. Cal. Apr. 26, 2017) (approving \$4,000 PAGA settlement, which represented a small fraction of total settlement); *Moore v. Fitness Int'l, LLC*, 2014 WL 12571448, \*5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500 PAGA settlement, a small percentage of the total settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 WL 4899942, \*6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA settlement or less than 2.5% of total settlement); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, \*2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA settlement, which was approximately 3% of the total settlement and a small fraction of maximum civil penalties); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, \*9 (N.D. Cal. Apr. 3, 2009) (approving \$1,500 PAGA settlement); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873, \*2 (N.D. Cal. July 25, 2017) (approving \$7,500 PAGA payment, which represented a small fraction of total settlement and maximum PAGA penalties in individual action); *Sarinana v. DS Waters of America, Inc.*, 2014 WL 12709948, \*2 (N.D. Cal. July 9, 2014) (approving \$5,000 PAGA payment, a small percentage of total settlement and maximum PAGA penalties).

Here, while the maximum penalties relating to the PAGA claims for noncompliant wage statements and meal and rest period violations are in excess of \$150,000, JSN has raised defenses to the claims. (Woodall Decl., ¶¶ 4-5.) As noted earlier, JSN planned to defend against the wage statement violations by arguing it should not be assessed any PAGA penalties or greatly reduced PAGA penalties because its conduct was not intentional and awarding the maximum penalties would be unjust, arbitrary and oppressive, or confiscatory under Labor Code § 2699(e)(2). (*Id.*) JSN also argued that it

1 authorized and permitted compliant meal and rest periods, as demonstrated through its  
2 policies and practices.

3 If JSN were to prevail on the foregoing arguments, the PAGA penalties would be  
4 substantially reduced or nonexistent. Although Paredes was prepared to counter the  
5 arguments made by JSN, she was aware of the risks involved with prevailing on the  
6 merits. Indeed, given risks involved, Paredes' counsel believes it was very possible that  
7 after extensive and costly litigation, the PAGA penalties awarded would not exceed the  
8 settlement. (Woodall Decl., ¶¶ 4-5.) Thus, the settlement represents a substantial amount  
9 of the realistic potential recovery, which is a good result for the State of California and  
10 the PAGA aggrieved employees. (*Id.*)

11 Lastly, the settlement administrator's costs, incentive award and attorney's fees  
12 and costs are reasonable. Paredes' counsel negotiated with Phoenix Settlement  
13 Administrators to reduce its costs to \$1,000. (Woodall Decl., ¶¶ 14-17.) The incentive  
14 payment of \$2,000 to Paredes is small considering the time she spent assisting with this  
15 case. (*Id.*) Finally, the attorney's fees and costs are a fraction of the amount due. Labor  
16 Code § 2699(g)(1) (reasonable attorney's fees and costs are available to a plaintiff who  
17 prevails in a PAGA action). Paredes' counsel spent and will spend at least \$7,000 in  
18 court fees, mediation fees and other costs. (*Id.*) Paredes' attorney's fees will exceed  
19 \$55,000 during the litigation, but she agreed to accept \$36,000 to resolve this matter. (*Id.*  
20 at Exh. B.)

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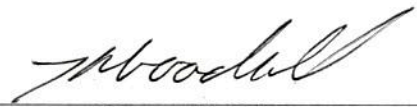
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**IV. CONCLUSION**

For the reasons above, the PAGA settlement is fair, adequate and reasonable and this motion should be granted in its entirety.

DATE: MAY 14, 2021

WOODALL LAW OFFICES

BY:   
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ATTORNEYS FOR PLAINTIFF, LISSETTE  
NUNEZ PAREDES