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13 *Attorneys for Plaintiffs and All Aggrieved Employees.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES – UNLIMITED JURISDICTION**

16 MARCO CALVILLO, an individual;
17 OCTAVIO RIO CARRANZA, an individual;
18 and
19 All Aggrieved Employees,

20 Plaintiffs,

21 v.

22 UNIX CONSTRUCTION, INC., a California
23 corporation;
24 ARCHIPRO CONSTRUCTION, INC., a
25 California corporation;
26 YOUNG SOOK JUNG, an individual;
27 EUI KYOUNG HWANG, an individual;
28 HO TAE SEOK, an individual; and
DOES 1-20, inclusive,

Defendants

Case No. 20STCV48935

[Assigned for all purposes to Hon. Michael P. Linfield, Dept. 34]

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF REPRESENTATIVE
SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA") CAUSE OF ACTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

- **DECLARATION OF NINA BAUMLER**
- **DECLARATION OF ADRIAN BYRNE**
- **[PROPOSED] ORDER**

Date: September 17, 2021
Time: 8:30 a.m.
Dept.: 34

Complaint Filed: December 23, 2020
Trial Date: January 18, 2021

Reservation ID: 407406797792

1 **NOTICE OF MOTION**

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

3 **PLEASE TAKE NOTICE** that on September 17, 2021 at 8:30 a.m. or as soon as the
4 matter may be heard before the Honorable Judge Michael P. Linfield in Department 34 of the
5 above-entitled Court, located at 111 North Hill Street, Los Angeles, California 90012, Plaintiffs
6 MARCO CALVILLO and OCTAVIO RIO CARRANZA, on behalf of themselves and all other
7 Aggrieved Employees (collectively "Plaintiffs") will move and hereby do move for an Order
8 granting approval of the settlement reached by the parties regarding Plaintiffs' ninth cause of
9 action for civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"),
10 Labor Code §§ 2698, *et seq.*

11 This Motion is based on this Notice of Motion and Motion; the accompanying
12 Memorandum of Points and Authorities, the Declarations of Nina Baumler and Adrian Byrne,
13 and exhibits thereto (including a copy of the signed settlement agreement); and on such further
14 oral and documentary evidence which may be submitted or the Court may receive, and on the
15 complete files and records in this Action.
16

17
18 Date: August 23, 2021

**THE LAW OFFICE OF NINA BAUMLER
THE BYRNE LAW GROUP**

19 

20 Nina Baumler

21 Adrian Byrne

22 *Attorneys for Plaintiffs MARCO CALVILLO and OCTAVIO
23 RIO CARRANZA and all other Aggrieved Employees*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marco Calvillo (“Plaintiff CALVILLO”) and Plaintiff Octavio Rio Carranza
4 (PLAINTFF Carranza”) worked as welders/metal workers for Defendants Unix Construction,
5 Inc. (“UNIX”) and Archipro Construction, Inc. (“ARCHIPRO”).

6 In this action, Plaintiffs sought individualized damages for unpaid overtime wages due
7 under California law, meal and rest period premium pay, waiting time penalties and wage stub
8 penalties that they contend they were not paid. Plaintiffs also asserted a cause of action seeking
9 civil penalties on behalf of themselves and other “Aggrieved Employees” pursuant to the Private
10 Attorneys General Act of 2004 (“PAGA”), Labor Code §2698 *et seq.*

11 On July 29, 2021, Plaintiffs and Defendants (hereinafter, the “Parties”) participated in a
12 full-day private mediation through third party professional neutral Phillip Cha, a highly respected
13 mediator. The parties reached agreement on terms of settlement, contingent upon the Court’s
14 approval, pursuant to a mediator’s proposal which was accepted by all Parties.

15 On August 20, 2021, the Parties executed: (1) a confidential conditional settlement
16 agreement (“Confidential Individual Settlement Agreement”) which resolved Plaintiff’s
17 individual claims (causes of action 1 through 8); and (2) a non-confidential stipulation for
18 settlement of the PAGA claim (the “PAGA Settlement Agreement”) which resolved Plaintiff’s
19 representative claims under PAGA (cause of action 9). Both agreements are conditional upon the
20 Court’s approval of the proposed settlement of the PAGA claim.

21 For the reasons discussed herein, the Parties respectfully request that this Honorable
22 Court grant approval of the Stipulation for Settlement of PAGA Claim.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 **1. The Parties**

25 During the relevant time period, Defendants UNIX and ARCHIPRO operated
26 construction businesses.

27 Defendant YOUNG SOOK JUNG is a director and officer of UNIX.
28

1 Defendants HO TAE SEOK and EUI KYOUNG HWANG are owners and/or directors
2 and officers of ARCHIPRO.

3 Plaintiff CALVILLO worked for Defendants as a welder/metal worker between
4 approximately May 2019 and December 2019.

5 Plaintiff CARRANZA worked for Defendants as a welder/metal worker between
6 approximately January 2017 and February 2020.

7 **2. Plaintiff's PAGA Notice and Complaint**

8 On May 21, 2020, Plaintiff CALVILLO filed a notice letter ("PAGA Notice Letter") with
9 the California Labor and Workforce Development Agency ("LWDA") pursuant to California
10 Labor Code § 2699.3, alleging violations of specific provisions of the California Labor Code,
11 including the facts and theories to support such violations. (*See* Baumler Decl. ¶ 4.)

12 On December 23, 2020, Plaintiff CALVILLO filed his Complaint against Defendants
13 alleging the following claims: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to
14 Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods;
15 (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Provide Employment
16 Records (7) Continuing Wages Penalty; and (8) Civil Penalties Pursuant to PAGA. (*See*
17 *generally* Complaint.)

18 In the Complaint, Plaintiff CALVILLO contended that Defendants UNIX and
19 ARCHIPRO were jointly liable for all wages and penalties under joint employer theory, and that
20 Defendants YOUNG SOOK JUNG, EUI KYOUNG HWANG, and HO TAE SEOK were
21 individually liable pursuant to Labor Code §558.1.

22 **3. Plaintiff's First Amended Complaint to Add Claims of Plaintiff Carranza**

23 On February 18, 2021, Plaintiff filed his First Amended Complaint ("FAC") in order to:
24 add the individual claims of Plaintiff CARRANZA. (*See generally* FAC.)

25 **4. Discovery**

26 On May 14, 2021, Defendant ARCHIPRO provided substantive verified responses to
27 Plaintiffs' discovery requests and produced a substantial number of responsive documents.
28

1 Following extensive meet and confer efforts, Defendant ARCHIPRO provided supplemental
2 responses to address certain issues with the discovery responses. (*See* Baumler Decl. ¶ 5-6.)

3 On May 3, 2021, Defendant UNIX provided verified responses to Plaintiff’s discovery
4 requests and produced some responsive documents. Following extensive meet and confer
5 efforts, on June 21, 2021, Defendant UNIX provided supplemental responses to address
6 remaining issues with the discovery responses. Plaintiffs identified yet further issues with
7 UNIX’s supplemental responses and conducted further meet and confer efforts. UNIX provided
8 second supplemental responses on July 12, 2021. (*See* Baumler Decl. ¶ 7.)

9 On June 2, 2021, Defendant ARCHIPRO propounded form interrogatories – general,
10 form interrogatories - employment, 87 special interrogatories, 93 requests for admissions and
11 requests for production of documents to Plaintiffs CALVILLO and CARRANZA. On July 5,
12 2021, Plaintiffs provided substantive responses to the discovery requests propounded by
13 Defendant ARCHIPRO. (*See* Baumler Decl. ¶ 8-9.)

14 On July 23, 2021, Plaintiffs noticed the PMK depositions of Defendant ARCHIPRO and
15 Defendant UNIX. (*See* Baumler Decl. ¶ 10.)

16 **5. Mediation**

17 On July 29, 2021, the Parties participated in a full-day private mediation with neutral
18 Phillip Cha. The parties reached agreement on terms of settlement, contingent upon the
19 Court’s approval, pursuant to a mediator’s proposal which was accepted by all parties. (*See*
20 Baumler Decl. ¶ 11.)

21 On August 20, 2021, the Parties executed: (1) a confidential conditional settlement
22 agreement (“Confidential Individual Settlement Agreement”) which resolved Plaintiff’s
23 individual claims (causes of action 1 through 8); and (2) a non-confidential stipulation for
24 settlement of the PAGA claim (the “PAGA Settlement Agreement”) which resolved Plaintiff’s
25 representative claims under PAGA (cause of action 9). Both agreements are conditional upon the
26 Court’s approval of the proposed settlement of the PAGA claim. (Baumler Decl. ¶ 12, Ex. A
27 [Stipulation for Settlement of PAGA Claim]).
28

1 Plaintiffs will concurrently lodge the Confidential Individual Settlement Agreement for *in*
2 *camera* review by the Court. (See Baumler Decl. ¶ 13.)

3 **III. SUMMARY OF THE SETTLEMENT TERMS**

4 Subject to the Court's approval, Defendants shall pay civil penalties under PAGA in the
5 total gross sum of **\$150,000.00** ("Gross PAGA Settlement Sum"). Defendants have agreed to
6 fund the settlement within five (5) days after Court approval. (See Baumler Decl., Ex A, ¶ II
7 (4)(a).)

8 The PAGA settlement administration costs shall not exceed \$1,950.00 and shall be
9 deducted from the Gross PAGA Settlement Sum, subject to Court approval. (See Baumler Decl.
10 ¶ 14, Ex. A, ¶ II (4)(b).)

11 Subject to the Court's approval, Plaintiffs' Attorneys' Fees shall be equal to 35% of the
12 Gross Settlement Sum in the amount of Fifty Two Thousand Five hundred Dollars (\$52,500.00)
13 and Plaintiffs' Costs shall be in the sum of Three Thousand Three Hundred Eighty-Five Dollars
14 (\$3,385.00). The Attorneys' Fees and Costs shall be deducted from the Gross PAGA Settlement
15 Sum. (See Baumler Decl., Ex. A ¶ II (4)(c).)

16 As required by PAGA, the Net PAGA Settlement Sum (the PAGA Settlement Sum minus
17 the settlement administration costs and attorney fees and costs) will be distributed seventy-five
18 percent (75%) to the LWDA and twenty-five percent (25%) to all putative Aggrieved
19 Employees, pro-rata based upon the number of pay periods each worked during the PAGA claim
20 period. (See Baumler Decl., Ex. A ¶ II (4)(d).)

21 The putative Aggrieved Employees are defined as those 101 non-exempt employees of
22 UNIX and/or ARCHIPRO who were employed between October 19, 2019 and July 29, 2021 (the
23 "PAGA Claim Period"), plus Plaintiffs Calvillo and Carranza. (See Baumler Decl., Ex. A ¶ II
24 (4)(d).)

25 The data produced by Defendants identifies a total of the One Hundred and Three (103)
26 putative Aggrieved Employees (including Plaintiffs) who collectively worked a total of 1354 pay
27 periods during the PAGA Claim Period. (See Baumler Decl., Ex. A ¶ II (1)(b).)

1 If the requested deductions for settlement administration costs, attorney fees and costs are
2 approved by the Court, the Net PAGA Settlement Sum to be distributed will be \$92,165.00, with
3 \$69,123.75 (75%) to be distributed to the LWDA and \$23,041.25 (25%) to the 103 putative
4 Aggrieved Employees. (*See* Baumler Decl., Ex. A ¶ II (4)(d).)

5 The PAGA settlement is non-reversionary and provides that any check returned to the
6 settlement administrator as undeliverable or remaining uncashed for more than one hundred
7 twenty (120) calendar days after issuance will be sent to the California State Controller's
8 Office's Unclaimed Property Division. (*See* Baumler Decl., Ex. A ¶ II (4)(g).)

9 Within 5 days of the Court's approval, Defendants will provide the settlement
10 administrator with the names, contact information, and pay period data for all 103 putative
11 Aggrieved Employees for administration and disbursement of the PAGA penalties. (*See* Baumler
12 Decl., Ex. A ¶ II (4)(f).)

13 A notice shall accompany the PAGA payments to the putative Aggrieved Employees in a
14 form to be approved by the Court. (*See* Baumler Decl. ¶ 16, Ex. A ¶ II (4)(g); and Ex. B
15 [Proposed Notice].)

16 With the exception of Plaintiffs, who have entered into a separate Confidential Individual
17 Settlement Agreement of their individual claims, no individual claims are being released by any
18 other putative Aggrieved Employees by virtue of this PAGA Settlement Agreement. (*See*
19 Baumler Decl. ¶ 17, Ex. A ¶ II (4)(g); and Ex. B [Proposed Notice].)

20 Plaintiffs uploaded a copy of the Stipulation for Settlement of PAGA Claim to the
21 LWDA online portal on August 21, 2021. (*See* Baumler Decl. ¶ 25, Ex. C.)

22 **IV. FACTORS LEADING TO NEGOTIATED SETTLEMENT**

23 After extensive negotiation, the parties reached agreement, subject to Court approval, on
24 a PAGA Settlement of \$150,000.00, equivalent to \$110.78 per pay period (\$150,000 ÷ 1,354 pay
25 periods). In reaching agreement on this sum, Plaintiffs first calculated the maximum potential
26 penalty exposure and then took into account risk factors as set forth in detail below.

1 **1. Calculation of Maximum Potential Civil Penalty Exposure**

2 As a starting point, Plaintiffs calculated the *maximum* potential PAGA exposure for all
3 103 putative Aggrieved Employees as follows:

- 4 • During the PAGA Claim Period of October 19, 2019 through July 29, 2021, the 103
5 putative Aggrieved Employees worked a total of 1,354 pay periods. (*See* Baumler Decl. ¶
6 15, Ex. A ¶ II (1)(b).)
- 7 • Applying the penalty rate of \$100 per pay period to the 1,354 pay periods, the maximum
8 PAGA penalty for each distinct violation was calculated as **\$135,400.**

9 The following calculations assume a 100% violation rate, no reduction of penalties by the
10 Court, and “stacking” of penalties for the four primary predicate violations advanced by Plaintiff:
11 (1) Failure to Pay Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to Provide
12 Complete and Accurate Wage Statements; and (4) Failure to Keep Complete and Accurate
13 Records:

14 • Failure to Pay Overtime Wages (Lab. Code §§ 510; 1198):	\$ 135,400.00
15 • Failure to Provide Meal Periods (Lab. Code § 226.7)	\$ 135,400.00
16 • Failure to Provide Accurate Wage Statements (Lab. Code § 226(a))	\$ 135,400.00
17 • <u>Failure to Keep Records (Lab. Code §1174(d)):</u>	<u>\$ 135,400.00</u>
18 Maximum Penalty Total:	\$541,600.00 ¹

19 **2. Factors in Reaching Negotiated Resolution**

20 Plaintiffs took into account the following factors in negotiating the PAGA Penalty
21 Settlement:

- 22 • **Stacking of Penalties:** It is unclear whether the Court would have assessed a separate
23 penalty for each pay period *for each violation* of the Labor Code. While Plaintiffs
24 believe penalties can be stacked, and some trial courts have agreed², Defendants,

25 _____
26 ¹ Plaintiffs contend that they could theoretically pursue PAGA penalties for *each and every*
27 Labor Code provision that was violated but concede that many of these violations may be
deemed derivative of each other and provide arguably redundant penalties.

28 ² See *Schiller v. David's Bridal, Inc.* (E.D. Cal. July 14, 2010) 2010 WL 2793650 at *6 (finding
that PAGA penalties may be stacked in determining the amount in controversy); *Smith v. Brinker
Int'l, Inc.* (N.D. Cal. May 5, 2010) No. 10-CV-213-VRW, 2010 WL 1838726, at *2-6 (stacking

1 however, read the statute very differently and contend that only a single penalty may be
2 assessed per pay period, regardless of the number of different Labor Code provisions
3 violated during that pay period. Defendants argued that this reading is supported by,
4 among other things, the language of Section 2699(f)(2): “the civil penalty is one hundred
5 dollars (\$100) for each aggrieved employee for pay period for the initial violation and
6 two hundred dollars (\$200) for each aggrieved employee per pay period for each
7 subsequent violation.” In Plaintiffs’ maximum exposure analysis set forth above,
8 Plaintiff “stacked” four separate penalties representing the primary predicate Labor Code
9 violations advanced by Plaintiffs. However, based on Defendants’ interpretation of the
10 statute, the maximum PAGA penalty that Plaintiffs could recover – no matter the
11 number of violations they could prove at trial – would be **\$135,400**.

- 12 • **Court Discretion to Reduce PAGA Penalties:** Even if Plaintiffs were to prevail, PAGA
13 gives trial courts the discretion to reduce the penalties actually awarded. *See* Lab. Code §
14 2699(e)(2) (allowing reductions of penalties where the full amount would be “unjust,
15 arbitrary and oppressive, or confiscatory”). Defendants argued that the Court could (and
16 should) greatly reduce any penalty award against them. While Plaintiffs dispute that
17 significant penalty reductions would be appropriate, the Court’s discretion to reduce
18 penalties is a substantial uncertainty that Plaintiffs and their counsel properly considered
19 in reaching this settlement.

20 **V. THE PAGA SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

21 **1. Legal Standard**

22 Under PAGA, an Aggrieved Employee may bring a civil action personally and on behalf
23 of other current or former employees to recover civil penalties for Labor Code violations.
24 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of
25 any penalties recovered go to the LWDA, leaving the remaining 25% for the employees. *Id.*

26
27 PAGA penalties in determining the amount in controversy in an individual action and granting
28 motion to remand); *Pulera v. F & B, Inc.* (E.D. Cal. Aug. 19, 2008) No. 2:08-CV-275-MCE,
2008 WL 3863489, at *2-3 (concluding that the amount in controversy was not met despite
stacking all PAGA penalties).

1 Labor Code § 2699 (l) provides that “[t]he superior court shall review and approve any penalties
2 sought as part of a proposed settlement agreement pursuant to” PAGA. “[T]here is no
3 requirement that the Court certify a PAGA claim for representative treatment” as in a class
4 action. *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No.
5 CV122615PSGJEMX) 2015 WL 12732709 at *5.

6 Settlement of a PAGA claim requires that the “Court shall review and approve any
7 penalties sought as part of a proposed settlement agreement pursuant to this part.” Cal. Lab.
8 Code § 2699(1)(2).

9 In contrast to class settlements, there is little case law addressing the standard for
10 approving a PAGA settlement. Courts have found that the PAGA settlement must be reasonable
11 in light of the potential verdict value. *See O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
12 201 F.Supp.3d 1110, 1135 (rejecting settlement of less than one percent of the potential verdict).

13 However, courts often exercise their discretion to award PAGA penalties below the
14 statutory maximum, even where a claim succeeds at trial. *See Visceral v. Mistras Group, Inc.*
15 (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869 at **8-9. *See also*
16 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (affirming a judgment which only
17 provided for a PAGA penalty of \$5 per violation).

18 Likewise, courts have approved relatively low PAGA settlements involving hundreds of
19 putative aggrieved employees and thousands of pay periods. *See, e.g., Franco v. Ruiz Food*
20 *Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving PAGA penalties
21 in amount of \$10,000 for 2,055 employees asserting wage and hour violations]; *Garcia v.*
22 *Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving \$10,000 in
23 PAGA penalties for 1,868 employees in wage and hour case]; *Chu v. Wells Fargo Investments,*
24 *LLC*, 2011 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA penalties of \$7,500
25 for 2,752 employees in wage and hour action].

26 **2. The Settlement Is the Product of Extensive, Arm’s-Length Negotiations**

27 While PAGA settlements do not need to satisfy the same requirements for class action
28 settlements, in the context of class action settlements, a “presumption of fairness exists where:

(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53 and *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390.

Notwithstanding that PAGA settlements are not treated as class action settlements, the Parties use the class action settlement standard here because of the dearth of guidance for approval of PAGA settlements.

Here, with the exception of the percentage of objectors (which is not a factor in the PAGA settlement context) all of these factors are present. The PAGA Settlement Agreement here was the result of extensive arm's-length negotiations between experienced employment law attorneys who are familiar with the substantive legal issues and with complex representative PAGA litigation. (*See* Baumler Decl., ¶ 3; Byrne Decl. ¶¶ 4-5) The Parties participated in a private mediation with highly experienced employment law mediator Phillip S. Cha. (*See* Baumler Decl., ¶ 11.) In addition, investigation and production of documents have been thorough. (*See* Baumler Decl., ¶¶ 5-9.)

3. The Requested Allocation of Attorneys' Fees and Costs is Reasonable

In light of the efforts asserted by Plaintiffs' counsel in filing, litigating, preparing this matter for mediation, and negotiating settlement of the matter, in addition to Plaintiffs' counsel's experience litigating similar wage-and-hour representative matters, the requested fees and costs are reasonable. Baumler Decl., ¶ 2-3, 5-10; Byrne Decl. ¶ 3-8.

PAGA Settlements have been approved where a substantial percentage has been deducted from the PAGA Settlement in the amount of attorneys' fees and costs. *Jordan v. NCI Grp., Inc., No. EDCV 16-1701 JVS (SPx), 2018 WL 1409590 (C.D. Cal. Jan. 5, 2018)* at *8-9 (“Finally, the Court finds the proposed settlement of Jordan's attorneys' fees and costs reasonable. ...the parties agree that the lodestar method is an appropriate method for determining the reasonability of attorneys' fees in this case...[T]he Court finds that the proposed settlement of Jordan's attorneys' fees and costs in the amount of \$100,000 is reasonable.

1 To date, Plaintiffs' counsel has performed substantial work on this matter, prior to and
2 since the commencement of this action. Plaintiffs' counsel spent approximately 214.4 hours
3 litigating this case. Baumler Decl., ¶ 18-19; Byrne Decl. ¶ 7, 8. It is further estimated that
4 Plaintiffs' counsel will need to expend at least another 10 hours to prepare for and appear at the
5 approval motion hearing, monitor the process leading up to the distribution of payments, prepare
6 and file a status report ahead of the final accounting hearing, and appear at the final accounting
7 hearing. Plaintiffs' counsel also bears the risk of taking whatever actions are necessary if
8 Defendants fail to pay.

9 The requested hourly rates for Plaintiffs' Counsel are well within the range of a
10 reasonable rates for attorneys of their skill, knowledge, experience, and ability. The lodestar to
11 date is approximately \$117,172.50. However, Plaintiffs' counsel is only seeking \$52,500.00.
12 Therefore, the requested fees are reasonable in light of the litigation. Baumler Decl., ¶ 18-23.

13 Based on the data produced in discovery and in light of all known facts and
14 circumstances, including the risks inherent in litigation, Counsel for Plaintiffs believe that the
15 PAGA Settlement Sum is fair, reasonable, and adequate. (Baumler Decl. ¶ 24; Byrne Decl. ¶ 9.)

16 **VI. CONCLUSION**

17 The Court's approval of this PAGA settlement is in the interests of justice and will result
18 in the payment of penalties to the State of California, and the dismissal of all claims asserted in
19 the litigation.

20 Accordingly, Plaintiffs respectfully requests that this Honorable Court grant approval of
21 the proposed settlement of Plaintiffs' ninth cause of action under PAGA.

22
23 Date: August 23, 2021

**THE LAW OFFICE OF NINA BAUMLER
THE BYRNE LAW GROUP**



24
25 _____
Nina Baumler

26 Adrian Byrne

27 *Attorneys for Plaintiffs MARCO CALVILLO and OCTAVIO*
28 *RIO CARRANZA and all other Aggrieved Employees*

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13 *Attorneys for Plaintiffs and All Aggrieved Employees.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES – UNLIMITED JURISDICTION**

16 MARCO CALVILLO, an individual;
17 OCTAVIO RIO CARRANZA, an individual;
18 and
19 All Aggrieved Employees,

20 Plaintiffs,

21 v.

22 UNIX CONSTRUCTION, INC., a California
23 corporation;
24 ARCHIPRO CONSTRUCTION, INC., a
25 California corporation;
26 YOUNG SOOK JUNG, an individual;
27 EUI KYOUNG HWANG, an individual;
28 HO TAE SEOK, an individual; and
DOES 1-20, inclusive,

Defendants

Case No. 20STCV48935

[Assigned for all purposes to Hon. Michael P. Linfield, Dept. 34]

**DECLARATION OF NINA BAUMLER IN
SUPPORT OF MOTION FOR APPROVAL
OF REPRESENTATIVE SETTLEMENT
OF PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (“PAGA”) CAUSE OF
ACTION**

Date: September 17, 2021
Time: 8:30 a.m.
Dept.: 34

Complaint Filed: December 23, 2020
Trial Date: January 18, 2021

Reservation ID: 407406797792

Declaration of Nina Baumler

I, Nina Baumler, declare under penalty of perjury:

1. I am an attorney at law licensed to practice in all of the Courts of the State of California and counsel for Plaintiffs Marco Calvillo and Octavio Rio Carranza. I have personal knowledge of the matters stated in this declaration. If called and sworn as a witness, I could and would competently testify to everything in this declaration.

2. I handled this case with my co-counsel, Adrian Byrne. To the extent possible, we split up the work on this case to avoid duplication of efforts. For example, I took the lead on propounding and responding to discovery requests and engaging in extensive meet and confer efforts, while Mr. Byrne handled most of the drafting of pleadings and communications with our clients. Mr. Byrne and I both attended important events in the litigation such as the mediation of this matter.

3. I have extensive experience litigating wage and hour matters in state and federal court. I have practiced as an attorney in California since 2008. I opened my solo practice in 2011, exclusively representing plaintiffs in employment cases. Approximately 90% of my practice is devoted to wage and hour cases. I have represented workers in more than ten representative actions pursuant to the Labor Code Private Attorneys General Act and have developed expertise in litigating such cases. Prior to 2008, I practiced as an employment attorney for three years in London, England at a national law practice. In 2018, I was selected to Southern California Super Lawyers – Rising Star. I was selected to the 2020, 2021 and 2022 Southern California Super Lawyers in the field of Employment Litigation. I am the Chair of the California Employment Lawyers Association Worker Outreach Committee.

4. On May 21, 2020, Plaintiff Calvillo filed a notice letter (“PAGA Notice Letter”) with the California Labor and Workforce Development Agency (“LWDA”) pursuant to California Labor Code § 2699.3, alleging violations of specific provisions of the California Labor Code, including the facts and theories to support such violations.

1 5. On April 1, 2021, Plaintiffs propounded special interrogatories, form
2 interrogatories, requests for admissions and requests for production of document to Defendants
3 Unix Construction, Inc. (“UNIX”) and Archipro Construction, Inc. (“ARCHIPRO”).

4 6. On May 14, 2021, Defendant ARCHIPRO provided substantive verified
5 responses to Plaintiff’s discovery and produced a substantial number of responsive documents.
6 Following extensive meet and confer efforts, Defendant ARCHIPRO provided supplemental
7 responses to address certain issues with the discovery responses identified by Plaintiffs.

8 7. On May 3, 2021, Defendant ARCHIPRO provided verified responses to
9 Plaintiff’s discovery and produced some responsive documents. Following extensive meet and
10 confer efforts, Defendant ARCHIPRO provided supplemental responses on June 21, 2021 to
11 address certain issues with the discovery responses identified by Plaintiffs. Plaintiffs identified
12 remaining issues with UNIX’s supplemental responses and conducted further meet and confer
13 efforts. UNIX provided second supplemental responses on July 12, 2021.

14 8. On June 2, 2021, Defendant ARCHIPRO propounded form interrogatories –
15 general, form interrogatories - employment, 87 special interrogatories, 93 requests for
16 admissions and requests for production of documents to each plaintiff.

17 9. On July 5, 2021, Plaintiffs provided substantive responses to the discovery
18 requests propounded by Defendant ARCHIPRO.

19 10. On July 23, 2021, Plaintiffs sent out notices of deposition for Defendants UNIX
20 and ARCHIPRO.

21 11. On July 29, 2021, Plaintiffs and Defendants participated in a full-day private
22 mediation through professional neutral Phillip Cha. The parties reached agreement on terms of
23 settlement, contingent upon the Court’s approval, pursuant to a mediator’s proposal which was
24 accepted by all parties.

25 12. On August 20, 2021, the Parties executed: (1) a confidential conditional
26 settlement agreement (“Confidential Individual Settlement Agreement”) which resolved
27
28

1 Plaintiff's individual claims (causes of action 1 through 8); and (2) a non-confidential stipulation
2 for settlement of the PAGA claim (the "PAGA Settlement Agreement") which resolved
3 Plaintiffs' representative claims under PAGA (cause of action 9). Both agreements are
4 conditional upon the Court's approval of the proposed settlement of the PAGA claim. A true and
5 correct copy of the PAGA Settlement Agreement is attached hereto as Exhibit A ["Ex. A"].

6 13. Plaintiffs will concurrently lodge the Confidential Individual Settlement
7 Agreement for *in camera* review by the Court.

8 14. I obtained a quote for administration services from Phoenix Settlement
9 Administrators ("PSA") in the amount of \$1,950.00. I believe that PSA's quote of \$1,950.00 for
10 the administration services in this matter was reasonable based upon my experience litigating
11 similar matters. The PAGA settlement administration costs shall be deducted from the PAGA
12 Settlement Sum, subject to Court approval.

13 15. The data produced by Defendants identified a total of One Hundred and Three
14 (103) putative Aggrieved Employees (including Plaintiffs) who collectively worked a total of
15 1354 workweeks during the PAGA Claim Period.

16 16. A notice shall accompany the PAGA payments to the putative Aggrieved
17 Employees in a form to be approved by the Court. A true and correct copy of the proposed notice
18 to be sent to the putative Aggrieved Employees is attached hereto as Exhibit B.

19 17. With the exception of Plaintiffs, who have entered into a separate Confidential
20 Individual Settlement Agreement of their individual claims, no individual claims are being
21 released by any other putative Aggrieved Employees by virtue of this PAGA Settlement
22 Agreement.

23 18. In litigating this matter, I expended a total of 140.9 hours of attorney time. The
24 time I have necessarily expended on this case includes: pre-litigation defendant investigation;
25 meetings with plaintiffs; review and analysis of client documents; review and analysis of
26 employment records produced by Defendants pursuant to records requests; collaboration on
27

1 drafting the PAGA Notice; collaboration on drafting pleadings; communications with Defendants'
2 counsel; drafting discovery requests; meeting and conferring on responses to discovery requests;
3 responding to Defendants' discovery requests; calculation of damages and penalties; preparation
4 for mediation; attendance at mediation; drafting settlement agreements; and drafting motion for
5 approval of settlement.

6 19. I estimate that I will expend a further 10 hours to prepare for and appear at the
7 approval motion hearing; monitor the process leading up to the distribution of payments; prepare
8 and file a status report ahead of the final accounting hearing; and appear at the final accounting
9 hearing.

10 20. I recorded the time expended on this case using an electronic time keeping system
11 which records my time in increments of six minutes. I typically record my time immediately after
12 completing a task, or as soon as practicable thereafter.

13 21. My regular billing rate is \$550 per hour. My hourly rate of \$550 was approved
14 most recently in 2020 by a judge of the Los Angeles Superior Court on a post-trial motion for
15 attorney fees.

16 22. I have incurred costs in the sum of \$3,131.06 in litigating this matter.

17 23. Combined with the hours worked by my co-counsel, Adrian Byrne, the lodestar
18 for Plaintiffs' counsel is \$117,172.50. However, Plaintiffs' counsel are seeking attorney fees in
19 the sum of \$52,500. Therefore, the requested fees are reasonable in light of the litigation.
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21 24. I believe the \$150,000 PAGA Settlement Sum embodies all of the key features of
22 a settlement that is fair, reasonable and adequate and, as such, meets all the criteria necessary for
23 approval.

24 25. On August 21, 2021, I submitted the Stipulation for Settlement of the PAGA Claim
25 to the LWDA. A true and correct copy of an email confirming submission of the Stipulation for
26 Settlement of the PAGA Claim to the LWDA on August 21, 2021, is attached hereto as Exhibit C.
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1 Since that date, I have not received any objection from the LWDA regarding the terms of the
2 Settlement Agreement

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct and that this declaration was executed in El Segundo, California, on
5 August 23, 2021.

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8 NINA BAUMLER
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STIPULATION FOR SETTLEMENT OF PAGA CLAIM

I. RECITALS

WHEREAS, Defendant UNIX CONSTRUCTION, INC. at all times relevant operated a steel construction company located in Los Angeles, California;

WHEREAS, Defendant ARCHIPRO CONSTRUCTION, INC. at all times relevant operated a construction company located in Norwalk, California;

WHEREAS, Defendant YOUNG SOOK JUNG was at all times relevant a director and officer of UNIX CONSTRUCTION, INC.;

WHEREAS, Defendant HO TAE SEOK aka SCOTT SEOK was at all times relevant an owner, director and officer of Defendant ARCHIPRO CONSTRUCTION, INC.;

WHEREAS, Defendant EUI KYOUNG HWANG aka ELLEN EUIKYOUNG HWANG was at all times relevant a director and officer of Defendant ARCHIPRO CONSTRUCTION, INC.;

WHEREAS, Plaintiff MARCO CALVILLO (hereinafter “Plaintiff Calvillo”) was employed by Defendants UNIX CONSTRUCTION, INC. and/or ARCHIPRO CONSTRUCTION, INC., between approximately May 2019 and December 2019;

WHEREAS, Plaintiff OCTAVIO CARRANZA RIO (hereinafter “Plaintiff Carranza Rio”) was employed by Defendants UNIX CONSTRUCTION, INC. and/or ARCHIPRO CONSTRUCTION, INC., between approximately January 2017 and February 2020;

WHEREAS, on or about May 21, 2020, Plaintiff Calvillo filed a notice letter (“PAGA Notice Letter”) with California’s Labor and Workforce Development Agency (“LWDA”) alleging Defendants UNIX CONSTRUCTION, INC., ARCHIPRO CONSTRUCTION, INC., YOUNG SOOK JUNG, HO TAE SEOK and EUI KYOUNG HWANG (collectively, “Defendants”), committed multiple violations of the Labor Code and Wage Order 16 with respect to Plaintiff Calvillo and other aggrieved employees, including failure to pay minimum and prevailing wages, failure to pay overtime wages, and failure to provide meal and rest periods.

WHEREAS, on December 23, 2020, Plaintiff Calvillo filed his Complaint against Defendants in Los Angeles County Superior Court, Case No. 20STCV48935 (hereinafter, “the Action”);

WHEREAS, in the Complaint filed in the Action, Plaintiff Calvillo individually sought damages, penalties, prejudgment interest, costs, and attorney’s fees and also sought penalties as an “aggrieved employee” under the Private Attorneys General Act of 2004 (“PAGA”), for a total of eight causes of action as follows: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5)

Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Provide Employment Records (7) Continuing Wages Penalty; and (8) Civil Penalties Pursuant to PAGA;

WHEREAS, on February 18, 2021, Plaintiff Calvillo filed a First Amended Complaint in Los Angeles County Superior Court, Case No. 20STCV48935 which added Plaintiff Carranza Rio's individual claims to causes of action 1-7 and added a cause of action for Unfair Competition. Under the First Amended Complaint, nine causes of action were asserted as follows: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Provide Employment Records (7) Continuing Wages Penalty; (8) Unfair Competition; and (9) Civil Penalties Pursuant to PAGA.

WHEREAS, Defendants deny the allegations of Plaintiff Calvillo and Plaintiff Carranza Rio (together, "Plaintiffs"), deny that they caused any damage to Plaintiffs and deny all liability and/or wrongdoing asserted against them in the Action, PAGA Notice Letter, or otherwise, and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct whatsoever;

WHEREAS, on July 29, 2021, Plaintiffs and Defendants (hereinafter, the "Parties") participated in a full-day private mediation through professional neutral Phillip Cha. The parties reached agreement on terms of settlement, contingent upon the Court's approval, pursuant to a mediator's proposal which was accepted by all Parties.

WHEREAS, as part of the discovery that took place before the mediation, Defendants provided substantive responses to Plaintiffs' form and special interrogatories and requests for production, and supplemental responses thereto; produced hundreds of pages of documents; and provided data for the putative aggrieved employees to facilitate analysis of potential liability under PAGA;

WHEREAS, as part of the discovery that took place before the mediation, Plaintiffs provided substantive responses to Defendant ARCHPRO CONSTRUCTION, INC.'s form and special interrogatories, requests for admissions and requests for production, and supplemental responses thereto;

WHEREAS, to conserve attorney's fees and costs, the Parties now wish to resolve Plaintiffs' claims;

WHEREAS, the Parties are of the opinion that the PAGA Settlement Sum is fair, reasonable, and adequate and is in the best interests of the State of California, the putative Aggrieved Employees, Plaintiffs, and Defendants, in light of all known facts and circumstances and the risks inherent in litigation;

WHEREAS the Parties now hereby enter into this Stipulation for Settlement of PAGA Claim to settle and resolve the PAGA claim in the Action (First Amended Complaint, Cause of Action No. 9), subject to Court approval;

WHEREAS, the Parties agree that settlement of the PAGA claim in the Action is contingent upon the Court's approval of the terms of this Stipulation for Settlement of PAGA Claim;

WHEREAS, the Parties have also entered into a Confidential Conditional Settlement Agreement and Release of the Plaintiff's individual claims (First Amended Complaint, Causes of Action Nos. 1-8); and

NOW THEREFORE, in view of the foregoing, and based on the mutual promises set forth below, the Parties hereto agree as follows:

II. AGREEMENT

1. **Definitions.** As used herein, the following definitions shall apply:

- a. As used herein, the term **"the Action"** means the case of MARCO CALVILLO et al. v. UNIX CONSTRUCTION, INC. et al., Los Angeles Superior Court Case No. 20STCV48935.
- b. The term **"Aggrieved Employees"** means those 101 non-exempt employees of UNIX CONSTRUCTION, INC. and/or ARCHIPRO CONSTRUCTION, INC. who were employed between October 19, 2019 and July 29, 2021 (the "PAGA Claim Period"), plus Plaintiffs Calvillo and Carranza. Defendants represent that the **One Hundred and Three (103)** putative Aggrieved Employees (including Plaintiffs) collectively worked a total of **1354 pay periods** during the PAGA Claim Period. Defendants' representation that this data is accurate is a material term of this Stipulation for Settlement of PAGA Claim.
- c. The term **"Attorneys' Fees and Costs"** means Plaintiffs' attorneys' fees incurred by Plaintiffs' Counsel in the litigation and resolution of the Action, and all costs incurred and to be incurred by Plaintiffs' Counsel in the Action, including, but not limited to, fees and costs associated with court filings, discovery, documenting the settlement and securing the Court's approval of the Settlement. Plaintiffs' Counsel will request attorneys' fees from the Court in an amount not to exceed 35% of the Gross PAGA Settlement Sum i.e. Fifty-Two Thousand Five Hundred Dollars (\$52,500.00), subject to the Court's approval. Plaintiffs' Counsel will also request reimbursement of costs incurred by Plaintiffs' Counsel's litigation and resolution of the Action in the sum of Three Thousand Three Hundred Eighty Five Dollars (\$3,385.00) subject to the Court's approval. Defendants agree not to oppose or otherwise object to Plaintiffs' request or motion for attorneys' fees and costs.
- d. The term **"Confidential Conditional Settlement Agreement and Release"** means the Confidential Conditional Settlement Agreement and Release entered into concurrently herewith.

- e. As used herein, the word “**Defendants**” means UNIX CONSTRUCTION, INC.; ARCHIPRO CONSTRUCTION, INC.; YOUNG SOOK JUNG; HO TAE SEOK; and EUI KYOUNG HWANG.
- f. The term “**Gross PAGA Settlement Sum**” means the gross amount Defendants shall pay in connection with the settlement of the PAGA claim in the Action. Subject to Court approval of this Agreement, the Gross PAGA Settlement Sum Defendants shall be required to pay to settle and resolve the Cause of Action alleged in the Action based on PAGA (First Amended Complaint, Cause of Action No. 9) is **One Hundred Fifty Thousand Dollars (\$150,000.00)**.
- g. The term “**Net PAGA Settlement Sum**” means the total amount that will be paid to the LWDA and the Aggrieved Employees pursuant to Paragraph 4. The Net Settlement Amount is equivalent to the Gross PAGA Settlement Sum less Court-approved deductions for (a) the Settlement Administration Costs and (b) Plaintiffs’ Counsel’s Attorneys’ Fees and Costs.
- h. The term “**PAGA**” means the California Labor Code Private Attorneys General Act of 2004, as amended (Labor Code §§ 2698 *et seq.*);
- i. The term “**PAGA Notice Letter**” means the letter dated May 21, 2020, filed by Plaintiff Calvillo with the LWDA with respect to claims and Labor Code violations alleged in the Action;
- j. As used herein, the term “**the Parties**” means MARCO CALVILLO; OCTAVIO CARRANZA RIO; UNIX CONSTRUCTION, INC.; ARCHIPRO CONSTRUCTION, INC.; YOUNG SOOK JUNG; HO TAE SEOK; and EUI KYOUNG HWANG.
- k. As used herein, the word “**Plaintiffs**” means MARCO CALVILLO and OCTAVIO CARRANZA RIO.
- l. The term “**Settlement Administration Costs**” means the costs payable from the Gross PAGA Settlement Amount to the Settlement Administrator for administering this PAGA Settlement. The Settlement Administration Costs are currently estimated to be no more than One Thousand Nine Hundred Fifty Dollars (\$1,950.00).
- m. The term “**Settlement Administrator**” means Phoenix Settlement Administrators or any other settlement administrator agreed to by the Parties and approved by the Court.
- n. As used herein, the term “**Stipulation for PAGA Settlement**” means this Stipulation for Settlement of PAGA Claim.

2. **Agreement Contingent Upon Court Approval of Settlement of the Action.** This Agreement, and the obligations of the Parties therein, are wholly contingent upon final approval by the Court of the settlement and compromise of the PAGA claim in the Action on the terms set forth in this Stipulation for Settlement of PAGA Claim. The Parties agree to cooperate and use their best efforts to submit a request for Court approval of this Agreement and timely provide requisite notice to the LWDA. Each Party unilaterally reserves the right to withdraw from this Agreement if the Court, the LWDA, or any administrative agency acting within its authority, in any way modifies or fails to approve the Gross PAGA Settlement Sum, Plaintiffs' request for Attorneys' Fees and Costs as outlined in Paragraph 1(c), or any material term(s) of this Stipulation for Settlement of PAGA Claim, unless such modification or rejection is solely due to inadequacy of the Gross PAGA Settlement Sum. In such an event, Defendants shall have the first right to agree to the immediate payment of any necessary increased amount of the PAGA Settlement Sum required to obtain Court approval before any Party may invoke the right to withdraw from this Agreement. An Order or ruling by the Court disapproving or denying this Agreement on the basis of requiring submission of supplemental briefs to clarify a point of law, provide additional facts, or cure evidentiary defects shall not be grounds for any Party to unilaterally withdraw from this Agreement, provided the material terms of this Agreement remain unaffected.
3. **Individual Claims.** The Parties have entered into a separate Confidential Conditional Settlement Agreement and Release of the Plaintiffs' individual claims.
4. **Settlement of Private Attorneys General Act of 2004 ("PAGA") Cause of Action.** Defendants shall, not later than Five (5) days after the Court's approval of this Stipulation for PAGA Settlement, pay the Gross PAGA Settlement Sum of **One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00)** to settle and resolve the ninth cause of action alleged in the Action under PAGA.
 - a. Payment of the Gross PAGA Settlement Sum shall be made by remitting One (1) payment of **\$150,000.00 (One Hundred Fifty Thousand Dollars and Zero Cents)** to the Settlement Administrator, who shall administer the PAGA Settlement in accordance with the terms of this Agreement. The Settlement Administrator will provide payment instructions to Defendants.
 - b. The Settlement Administration Costs shall not exceed **\$1,950.00**, based upon the stipulated aggregate number of **One Hundred Three (103)** putative Aggrieved Employees (including Plaintiffs) who collectively worked a total of **1354 pay periods** during the PAGA Claim Period. The Settlement Administration Costs shall be deducted from the Gross PAGA Settlement Sum. Any additional fees or administration costs arising from inaccurate or inconsistent data provided by Defendants to the Settlement Administrator, shall be the sole responsibility of Defendants and shall not impact or otherwise reduce the Gross PAGA Settlement Sum.

- c. Subject to the Court's approval, Plaintiffs Attorneys' Fees shall be equal to 35% of the Gross Settlement Sum in the amount of **Fifty Two Thousand Five hundred Dollars (\$52,500.00)** and Plaintiffs' Costs shall be in the sum of **Three Thousand Three Hundred Eighty-Five Dollars (\$3,385.00)**. The Attorneys' Fees and Costs shall be deducted from the Gross PAGA Settlement Sum.
- d. After payment of the Settlement Administration Costs and the Attorneys' Fees and Costs, the Net PAGA Settlement Sum shall be administered as follows: the LWDA shall retain **Sixty Nine Thousand One Hundred Twenty Three Dollars and Seventy-Five Cents (\$69,123.75)** (*i.e.*, 75% of \$92,165.00), and **Twenty Three Thousand Forty-One Dollars and Twenty-Five Cents (\$23,041.25)** (*i.e.*, 25% of \$92,165.00) shall be distributed between and among the **103 (One Hundred Three)** putative Aggrieved Employees, as defined above, pro rata based upon the number of pay periods worked during the PAGA Claim Period.
- e. PAGA Payments to all putative Aggrieved Employees shall be characterized as penalties and paid pursuant to an IRS Form 1099.
- f. For purposes of administration and disbursement of the PAGA penalties, Defendants shall, within Five (5) days of the Court's approval of this Stipulation for PAGA Settlement, provide the Settlement Administrator with one consolidated excel file containing the following data for each and every of the Aggrieved Employees, including Plaintiffs, as defined hereinabove: (1) full names; (2) contact information (including last known address, telephone number, and email); (3) start dates and end dates of employment; (4) number of pay periods worked during the PAGA Claim Period; and (5) the total PAGA penalty amount due to each aggrieved employee, pursuant to the formula outlined hereinabove.
- g. The PAGA payment shall be non-reversionary. Any PAGA checks returned to the claims administrator as undeliverable or remaining un-cashed for more than one hundred twenty (120) calendar days after issuance will be distributed to the California State Controller's Office's Unclaimed Property Division. A notice shall accompany the PAGA payments to the putative Aggrieved Employees, in a form to be approved by the Court.
- h. Plaintiffs may choose a Stipulation, Joint Motion, and/or Joinder, to secure Court approval of the settlement of the PAGA cause of action. The Parties shall cooperate in promptly and expeditiously drafting and filing any such Stipulation, Joint Motion and/or Joinder. Alternatively, Plaintiffs may choose at any time to unilaterally draft and file an Unopposed Motion to secure Court approval of the settlement of the PAGA cause of action. Defendants shall not oppose any such Motion(s) by Plaintiffs.
- i. The Parties shall cooperate in good faith to resolve any issues identified by the Court preventing the Court's approval of this Stipulation for Settlement of PAGA Claim. At the time of filing the Stipulation, Joint/Unopposed Motion(s), and/or

Joinder the Parties shall lodge with the Court with a copy of the Confidential Settlement Agreement and Release of the Plaintiffs' individual claims for *in camera* review.

5. **Dismissal.** Within Fifteen (15) days of Court approval of this Stipulation for PAGA Settlement, completion of any final accounting hearings, or similar, as may be set by the Court, and payment of all sums required by this Stipulation for Settlement of PAGA Claim and the Confidential Settlement Agreement and Release, Plaintiffs shall file a request for dismissal of the Action in its entirety as to all Defendants with prejudice Pursuant to California Civil Procedure Code 664.6, the Court shall retain jurisdiction to enforce the terms of this Agreement.
6. **Taxes.** The Parties understand and agree that no Party makes any representations, warranties or agreements or otherwise concerning any tax treatment of the settlement amount or any portion of the settlement amount. The Parties, and all of them, understand and agree that they will be responsible for the payment of any and all taxes, assessments, or other financial obligations, whether federal, state or local, which they owe in connection with the settlement sum.
7. **Reservation of Jurisdiction.** The terms of this Stipulation for Settlement of PAGA Claim may be enforced pursuant to Code of Civil Procedure section 664.6. The prevailing party in any proceeding to enforce this settlement agreement shall be entitled to recover reasonable attorneys' fees and costs.
8. **No Admissions.** Nothing herein shall be deemed or construed to be an admission of any liability or fault in respect of any of the allegations or claims which could have been made by or against any of the Parties to this dispute, for any purpose.
9. **Ambiguities or Uncertainties.** This Stipulation for Settlement of PAGA Claim shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties who prepared this document, on the express understanding and agreement that the Parties participated equally in the negotiation and preparation of this Stipulation for Settlement of PAGA Claim or have had equal opportunity to do so. Accordingly, this Stipulation for Settlement of PAGA Claim shall be interpreted in accordance with California contract law.
10. **Survival of Executory Provisions.** Except as otherwise stated in this Stipulation for Settlement of PAGA Claim, any and all executory provisions under this Stipulation for Settlement of PAGA Claim shall survive the consummation of this Stipulation for Settlement of PAGA Claim and shall continue in full force and effect until fully performed and satisfied.
11. **Counterparts.** This Stipulation for Settlement of PAGA Claim may be executed in duplicate originals or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one stipulation and agreement. An electronic signature transmitted by email or facsimile shall be deemed valid and binding for all purposes.

12. **Invalidity of Provision.** Wherever possible, each provision in this Stipulation for Settlement of PAGA Claim shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Stipulation for Settlement of PAGA Claim shall be prohibited by or invalid by any such law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision, or the remaining provisions of this agreement.
13. **Successors.** This Stipulation for Settlement of PAGA Claim shall be binding upon the administrators, executors, receivers, trustees, successors, assigns and heirs of the respective Parties.
14. **Further Papers.** Each Party hereto agrees to execute such further papers or documents as shall be necessary or proper in order to fulfill the terms, conditions and intent of this Stipulation for Settlement of PAGA Claim.
15. **Time of Essence.** The parties understand and agree that time is of the essence and that this is a material term of this Stipulation for Settlement of PAGA Claim.

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Settlement of PAGA Claim.

PLAINTIFFS

Dated: 08/18/21

Marco Calvillo
Marco Calvillo (Aug 18, 2021 18:48 PDT)

MARCO CALVILLO

Dated: _____

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____

YOUNG SOOK JUNG

Dated: _____

HO TAE SEOK aka SCOTT SEOK

12. **Invalidity of Provision.** Wherever possible, each provision in this Stipulation for Settlement of PAGA Claim shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Stipulation for Settlement of PAGA Claim shall be prohibited by or invalid by any such law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision, or the remaining provisions of this agreement.
13. **Successors.** This Stipulation for Settlement of PAGA Claim shall be binding upon the administrators, executors, receivers, trustees, successors, assigns and heirs of the respective Parties.
14. **Further Papers.** Each Party hereto agrees to execute such further papers or documents as shall be necessary or proper in order to fulfill the terms, conditions and intent of this Stipulation for Settlement of PAGA Claim.
15. **Time of Essence.** The parties understand and agree that time is of the essence and that this is a material term of this Stipulation for Settlement of PAGA Claim.

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Settlement of PAGA Claim.

PLAINTIFFS

Dated: _____

MARCO CALVILLO

Dated: 08/17/21

Octavio Carranza

Octavio Carranza (Aug 17, 2021 21:27 PDT)

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____

YOUNG SOOK JUNG

Dated: _____

HO TAE SEOK aka SCOTT SEOK

12. **Invalidity of Provision.** Wherever possible, each provision in this Stipulation for Settlement of PAGA Claim shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Stipulation for Settlement of PAGA Claim shall be prohibited by or invalid by any such law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision, or the remaining provisions of this agreement.
13. **Successors.** This Stipulation for Settlement of PAGA Claim shall be binding upon the administrators, executors, receivers, trustees, successors, assigns and heirs of the respective Parties.
14. **Further Papers.** Each Party hereto agrees to execute such further papers or documents as shall be necessary or proper in order to fulfill the terms, conditions and intent of this Stipulation for Settlement of PAGA Claim.
15. **Time of Essence.** The parties understand and agree that time is of the essence and that this is a material term of this Stipulation for Settlement of PAGA Claim.

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Settlement of PAGA Claim.

PLAINTIFFS

Dated: _____

MARCO CALVILLO

Dated: _____

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____



YOUNG SOOK JUNG

Dated: _____

HO TAE SEOK aka SCOTT SEOK

Dated: _____

EUI KYOUNG HWANG aka
ELLEN EUIKYOUNG HWANG

Dated: _____



YOUNG SOOK JUNG
For UNIX CONSTRUCTION, INC.,

Dated: _____

HO TAE SEOK aka SCOTT SEOK
For ARCHIPRO CONSTRUCTION, INC.

12. **Invalidity of Provision.** Wherever possible, each provision in this Stipulation for Settlement of PAGA Claim shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Stipulation for Settlement of PAGA Claim shall be prohibited by or invalid by any such law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision, or the remaining provisions of this agreement.
13. **Successors.** This Stipulation for Settlement of PAGA Claim shall be binding upon the administrators, executors, receivers, trustees, successors, assigns and heirs of the respective Parties.
14. **Further Papers.** Each Party hereto agrees to execute such further papers or documents as shall be necessary or proper in order to fulfill the terms, conditions and intent of this Stipulation for Settlement of PAGA Claim.
15. **Time of Essence.** The parties understand and agree that time is of the essence and that this is a material term of this Stipulation for Settlement of PAGA Claim.

IN WITNESS WHEREOF, the Parties have executed this Stipulation for Settlement of PAGA Claim.

PLAINTIFFS

Dated: _____

MARCO CALVILLO

Dated: _____

OCTAVIO CARRANZA RIO

DEFENDANTS

Dated: _____

YOUNG SOOK JUNG

Dated: 8/16/21

Ho Tae Seok
HO TAE SEOK aka SCOTT SEOK

Dated: 8/16/21


EUI KYOUNG HWANG aka
ELLEN EUIKYOUNG HWANG

Dated: _____

YOUNG SOOK JUNG
For UNIX CONSTRUCTION, INC..

Dated: 8/16/21


HO TAE SEOK aka SCOTT SEOK
For ARCHIPRO CONSTRUCTION, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – UNLIMITED JURISDICTION**

MARCO CALVILLO, an individual;
OCTAVIO RIO CARRANZA, an individual;
and
All Aggrieved Employees,

Plaintiffs,

v.

UNIX CONSTRUCTION, INC., a California
corporation;
ARCHIPRO CONSTRUCTION, INC., a
California corporation;
YOUNG SOOK JUNG, an individual;
EUI KYOUNG HWANG, an individual;
HO TAE SEOK, an individual; and
DOES 1-20, inclusive,
Defendants

Case No. 20STCV48935

*[Assigned for all purposes to Hon. Michael P.
Linfield, Dept. 34]*

**NOTICE OF PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (“PAGA”)
SETTLEMENT AWARD**

This is to notify you that you have been designated to receive a settlement award pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, in connection with work you performed for UNIX CONSTRUCTION, INC. or ARCHIPRO CONSTRUCTION, INC. This settlement award arises from a lawsuit filed by Plaintiffs MARCO CALVILLO and OCTAVIO RIO CARRANZA (“Plaintiffs”) against UNIX CONSTRUCTION, INC., ARCHIPRO CONSTRUCTION, INC., YOUNG SOOK JUNG, EUI KYOUNG HWANG, and HO TAE SEOK in the Los Angeles County Superior Court, entitled MARCO CALVILLO, et al. vs. UNIX CONSTRUCTION, INC. et al., Case No. 20STCV48935 (the “Lawsuit”).

The alleged predicate violations that formed the basis for the claims under PAGA include: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Itemized Wage Statements; and (6) Continuing Wages Penalty.

Defendants vehemently deny any wrongdoing and defended against the Lawsuit. The parties entered into a settlement agreement (“PAGA Settlement Agreement”) that was approved by the Court, providing for payment of the enclosed PAGA settlement award. The PAGA settlement award represents civil penalties under PAGA for 103 non-exempt workers who were employed by Defendants at any time between October 19, 2019 and July 29, 2021 (the “PAGA Claim Period”).

The claims released under the PAGA Settlement Agreement are limited to civil penalties under PAGA. You are not releasing any individual rights by virtue of this PAGA Settlement.

The total sum of the PAGA Settlement Award is \$150,000.00 and is the result of a negotiation between the parties which took into account the risks inherent in litigation. Of that sum, \$1,950.00 will be paid to a third party administrator for administering the PAGA Settlement Award; \$53,885.00 will be paid to Plaintiffs' attorneys for attorney's fees and costs incurred in connection with the litigation; and \$92,165.00 shall be paid as follows: 75% (\$69,123.75) will be paid to the California Labor and Workforce Development Agency pursuant to Labor Code 2699(i) and the remaining 25% (\$23,041.25) will be divided between 103 Putative Aggrieved Employees pro-rata according to the number of pay periods worked during the PAGA Claim Period.

Your payment is enclosed herewith and there is no action required of you in this matter.

If you wish to find out more about the settlement, you may do the following:

- Refer to the pleadings and other papers filed in the Lawsuit, which you may obtain at the Office of the Clerk of the Los Angeles County Superior Court located at 111 N Hill St, Los Angeles, CA 90012, during regular business hours of each court day; or
- Visit the Los Angeles County Superior Court's website, at <https://www.lacourt.org/documentimages/pacommerce/login.aspx?appId=IMG&casetype=CIV>. Once there, click on the "Continue as Guest" option then follow the instructions and enter the Case Number 20STCV48935. A copy of the PAGA Settlement Agreement is attached as an Exhibit in Support of Plaintiff's Motion for Approval of Representative Settlement Under the Private Attorneys' General Act of 2004 ("PAGA").

If you have any questions regarding this award or this case, you may contact the third-party settlement administrator Phoenix Settlement Administrators at: (800) 523-5773.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

Nina Baumler

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Saturday, August 21, 2021 3:09 PM
To: Nina Baumler
Subject: Thank you for your Proposed Settlement Submission

08/21/2021 03:08:35 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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4 El Segundo, CA 90245
5 Tel: (424) 269-0624
6 Email: nina@baumlerlaw.com

7 Adrian Byrne (SBN 304020)
8 THE BYRNE LAW GROUP
9 8605 Santa Monica Blvd., Suite 48497
10 West Hollywood, CA 90069
11 Telephone: (800) 805-4002
12 Email: adrian@thebyrnelawgroup.com

13 *Attorneys for Plaintiffs and All Aggrieved Employees.*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES – UNLIMITED JURISDICTION**

16 MARCO CALVILLO, an individual;
17 OCTAVIO RIO CARRANZA, an individual;
18 and
19 All Aggrieved Employees,

20 Plaintiffs,

21 v.

22 UNIX CONSTRUCTION, INC., a California
23 corporation;
24 ARCHIPRO CONSTRUCTION, INC., a
25 California corporation;
26 YOUNG SOOK JUNG, an individual;
27 EUI KYOUNG HWANG, an individual;
28 HO TAE SEOK, an individual; and
DOES 1-20, inclusive,

Defendants

Case No. 20STCV48935

*[Assigned for all purposes to Hon. Michael P.
Linfield, Dept. 34]*

**DECLARATION OF ADRIAN C. BYRNE
IN SUPPORT OF MOTION FOR
APPROVAL OF REPRESENTATIVE
SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA") CAUSE OF ACTION**

Date: September 17, 2021
Time: 8:30 a.m.
Dept.: 34

Complaint Filed: December 23, 2020
Trial Date: January 18, 2021

Reservation ID: 407406797792

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1. I am an attorney duly admitted to the Bar of the State of California and counsel of record for Plaintiffs Marco Calvillo and Octavio Rio Carranza (“Plaintiffs”) and the putative Aggrieved Employees. I submit this declaration in support of Plaintiffs’ Motion for Approval of Representative Settlement of Private Attorneys General Act 2004 (“PAGA”) cause of action. Unless indicated otherwise, I have personal knowledge of the facts stated herein and if called as a witness I could and would competently testify thereto.

3. The following is a brief description of my legal background: I graduated from Bristol Law School in the United Kingdom and was called to the Bar of England and Wales in 2010. In 2013, I became licensed to practice as a Solicitor of England and Wales. I subsequently became licensed as an attorney in California in 2015.

5. In 2020 and 2021, I was selected to Southern California Super Lawyers – Rising Star list in the category of “Employment Litigation Plaintiff”.

7. In litigating this matter, I expended a total of 73.5 hours of billable time. My hourly rate is \$465.

8. In litigating this matter, I have incurred \$254.30 in costs. Throughout this litigation, I met extensively with Plaintiffs; drafted pleadings and amended pleadings; drafted and responded to discovery; and prepared detailed calculations on potential penalties.

9. Based on my evaluation of the strengths and challenges of this case and based on my experience litigating similar matters, I believe the PAGA Settlement represents a fair, reasonable, and adequate settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in California, on August 20, 2021.


Adrian C. Byrne



Make a Reservation

MARCO CALVILLO vs UNIX CONSTRUCTION, INC., et al.

Case Number: 20STCV48935 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2020-12-22 Location: Stanley Mosk Courthouse - Department 34

Reservation

Case Name:

MARCO CALVILLO vs UNIX CONSTRUCTION, INC., et al.

Case Number:

20STCV48935

Type:

Motion re: (to Approve Compromise and Settlement of
PAGA Cause of Action)

Status:

RESERVED

Filing Party:

Marco Calvillo (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 34

Date/Time:

09/17/2021 8:30 AM

Number of Motions:

1

Reservation ID:

407406797792

Confirmation Code:

CR-BPP2KEMT66QKDZKGB

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

AmericanExpress

Account Number:

XXXX1006

Authorization:

257118

Print Receipt

[Reserve Another Hearing](#)