

1 Alex Asil Mashiri, Esq. (SBN 283798)
alex@mashirilawfirm.com
2 **MASHIRI LAW FIRM**
A Professional Corporation
3 11251 Rancho Carmel Drive #500694
San Diego, CA 92150
4 Tel: (858) 348-4938
Fax: (858) 348-4939
5

6 Tamim Jami, Esq. (SBN 311351)
tamim@jamilaw.com
7 **THE JAMI LAW FIRM P.C.**
3525 Del Mar Heights Rd #941
8 San Diego, CA 92130
Tel: (858) 284-0248
9 Fax: (858) 284-0977

10 Attorneys for Plaintiffs
ANA ABUNDIS and ANA DELGADO
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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
COUNTY OF SAN DIEGO

13 ANA ABUNDIS, ANA DELGADO, both
14 individuals, for the real party in interest, the
State of California

15 Plaintiffs,

16 v.
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19 SILK SCREEN SHIRTS, INC.; and DOES 1
through 50,

20 Defendants.
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Case No. 37-2020-00029744-CU-OE-NC

Judge: Hon. Cynthia A. Freeland
Dept.: N-27

**PLAINTIFFS' UNOPPOSED EX PARTE
NOTICE AND EX PARTE APPLICATION
FOR APPROVAL OF PAGA
SETTLEMENT**

Judge: Hon. Cynthia A. Freeland
Dept.: N-27

Date: May 27, 2021

Time: 8:30 a.m.

*Hearing Held Telephonically Due to COVID-19

1 **TO ALL PARTIES HEREIN AND THEIR COUNSEL OF RECORD:**

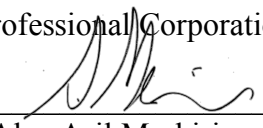
2 PLEASE TAKE NOTICE that on **May 27, 2021 at 8:30 a.m.**, or as soon thereafter as the
3 matter may be heard in Department N-27 of the Superior Court of California, County of San Diego,
4 325 S. Melrose, Vista, California 92081, Plaintiffs Ana Abundis and Ana Delgado will, and hereby
5 do, move for an ex parte order approving the proposed settlement pursuant to the Private Attorneys
6 General Act of 2004. This ex parte application is unopposed by Defendant Silk Screen Shirts, Inc.

7 This ex parte application is based upon this notice, the declaration of Alex Asil Mashiri, the
8 declaration of Tamim Jami, exhibits, all other papers filed in this action, and upon such other
9 evidence and argument as may be presented at the hearing.

10 Date: May 17, 2021

MASHIRI LAW FIRM

A Professional Corporation

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12 By: 
13 Alex Asil Mashiri
14 Attorney for Plaintiffs
15 Ana Abundis and Ana Delgado
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour case seeking civil penalties under the Private Attorneys General Act pursuant to Labor Code section 2698 *et seq.* (“PAGA”).¹ Plaintiffs Ana Abundis and Ana Delgado (“Plaintiffs”), brought this enforcement action against Defendant Silk Screen Shirts, Inc. (“Defendant”) on behalf of the real party in interest, the State of California for Labor Code² violations Defendant allegedly committed against its current and former employees who were employed between June 18, 2019 until the present (“PAGA Represented Employees”).

After multiple exchanges of informal discovery, including the production of payroll records on PAGA Represented Employees, several telephonic and written meet and confers, research on esoteric legal issues, and an exchange of settlement briefs, the Parties were able to reach a reasonable settlement in this case.

Accordingly, Plaintiffs seek court approval of the PAGA settlement pursuant to Labor Code section 2699(l). Defendant does not oppose this Ex Parte request.

II. FACTUAL AND PROCEDURAL HISTORY

On June 18, 2020, after conferring with Plaintiffs regarding their Labor Code claims and grievances, counsel for Plaintiffs sent the statutorily required notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant, declaring Plaintiffs’ intent to proceed with the enumerated Labor Code claims on behalf of themselves and all other aggrieved employees against Defendant. (Declaration of Alex Asil Mashiri [Mashiri Decl.] ¶ 13; Declaration of Tamim Jami [“Jami Decl.”] ¶ 17.) Plaintiffs’ Counsel also requested Plaintiffs’ employment/personnel file and subsequently, researched and investigated all of Plaintiffs’ concerns. (Mashiri Decl. ¶ 14; Jami Decl. ¶ 17.)

On August 21, 2020, Plaintiffs filed their complaint under the PAGA in this matter. (Mashiri Decl. ¶ 15; Jami Decl. ¶ 18.) The complaint asserts a claim for civil penalties for violation of Labor Codes sections 201, 202, 203, 204, 206.5, 226, 226(c), 226(a)(1)-(a)(9), 226.3, 227.3, 246, 432.5,

¹ This is a PAGA-only action.

² All further statutory references will be to the California Labor Code unless otherwise noted.

1 510, and 2699 et seq.

2 Between October 2020 and November 2020, the Parties, through counsel, engaged in several
3 discussions regarding the claims in this case. (Mashiri Decl. ¶ 16; Jami Decl. ¶ 19.) The Parties,
4 subsequently decided to engage in good faith settlement discussions amongst themselves for the sole
5 purpose of short-circuiting protracted litigation, and incurring any additional fees and costs. (*Ibid.*)

6 As a result, Defendant agreed to provide Plaintiffs with a sampling of data—payroll records
7 and timesheets—for 10% of the allegedly aggrieved employees. (Mashiri Decl. ¶ 17; Jami Decl. ¶
8 20.) These payroll records were produced by way of PDF documents, consisting of hundreds of
9 documents, which had to be manually analyzed and audited. (*Ibid.*) Plaintiffs’ counsel analyzed the
10 10% sample in detail and created multiple Excel Workbooks outlining the nature of the claims,
11 occurrences, and civil penalties. (*Ibid.*)

12 Based on the sampling, Plaintiffs, through counsel, were able to evaluate the case, prepare
13 risk assessment and litigation cost estimates, provided a detailed settlement brief, and engaged in
14 detailed settlement discussions surrounding potential liability and civil penalty exposure. (Mashiri
15 Decl. ¶ 18; Jami Decl. ¶ 21.) Additionally, due to COVID-19, Defendant’s financial viability was
16 uncertain, as COVID-19 caused an economic crisis which significantly affected Defendant’s
17 business. (*Ibid.*)

18 The Parties engaged in numerous rounds of settlement discussions spanning the course of
19 three months. (Mashiri Decl. ¶ 19; Jami Decl. ¶ 22.) Ultimately the Parties agreed to settle this
20 matter for \$106,000.00. However, due to Defendant’s financial viability, it agreed to pay the
21 \$106,000.00 in six monthly installments. (*Ibid.*)

22 The Parties subsequently, entered into a long-form settlement agreement (“Settlement
23 Agreement”) outlining the terms of the Parties’ agreement. (Mashiri Decl. ¶ 20; Jami Decl. ¶ 23.) A
24 copy of the Settlement Agreement is attached to the Declaration of Alex Asil Mashiri as Exhibit 3.
25 A copy of the Settlement Agreement was provided to the LWDA on May 10, 2021. (Mashiri Decl. ¶
26 20.)

27 The Parties’ proposed settlement included PAGA civil penalties, administration costs,
28 litigation costs, and attorney’s fees. (Mashiri Decl. ¶ 21; Jami Decl. ¶ 24.) The proposed PAGA civil

1 penalties are \$58,200.05, of which 75% (or \$43,650.04) will be paid to the LWDA and the
2 remaining 25% (or \$14,550.01) will be allocated to the approximately 110 PAGA Represented
3 Employees. (*Ibid.*) Of the remaining balance, \$1,299.95 will be allocated towards litigation costs
4 incurred in this case, \$1,500.00 will be allocated towards the Settlement Administrator's costs, and
5 the remaining amount of \$45,000.00 will be allocated towards Plaintiff's attorneys' fees incurred as
6 a result of the PAGA lawsuit. (*Ibid.*) In addition to the proposed monetary settlement, Defendant has
7 already taken affirmative steps to both cure and avoid any of the alleged violations. (*Ibid.*)

8 Prior to negotiating a settlement in this case, Plaintiffs' counsel conducted a thorough
9 investigation into the facts of this case, conducted extensive legal research as to the claims and
10 applicable laws, engaged in several discussions with defense counsel regarding the scope of the
11 claims alleged in this case, engaged in informal discovery, reviewed sample records on 10% of the
12 total employee population, and prepared a detailed settlement brief. (Mashiri Decl. ¶¶ 11, 17, 18;
13 Jami Decl. ¶ 14, 20, 21.)

14 **III. GOOD CAUSE EXISTS TO GRANT THIS RELIEF ON AN EX PARTE BASIS**

15 Good cause exists to grant *ex parte* relief on this issue because: (a) approval of the
16 settlement of the PAGA claims will fully and entirely resolve this case; (b) waiting for the
17 process of a noticed motion will simply delay the resolution of the case; and (c) the Parties are
18 operating under the expectation that the matter has been resolved and, thus, are not taking action
19 that otherwise would need to be taken (*e.g.*, discovery, depositions, etc.) if the case is not
20 resolved. Moreover, because this is an unopposed *ex parte* application and the LWDA has been
21 notified via online filing of the settlement agreement between the parties, no party would be
22 prejudiced by having this matter heard on an *ex parte* basis.

23 Additionally, the San Diego Superior Court has routinely heard and approved PAGA
24 settlements on an *ex parte* basis. (See, *e.g.*, *Ramirez v. The Helm Management Co. et al.*, 37-2019-
25 00008434-CU-OE-NC (Hon. T. M. Casserly); *Lopez v. Temco Logistics et al.*, 37-2019-00027884-
26 CU-OE-CTI (Hon. R. Frazier); *Garcia et al. v. Courtyard by Marriott et al.*, 37-2019-00008681-CU-
27 OE-CTL (Hon. R. Strauss); *Baker v. Vivint*, 37-2018-00058265-CU-OE-CTL (Hon. T. Taylor.);
28

1 *Wilkins v. Hotel Investment Group, Inc.* (37-2017-00017266-CU-CTL) (Hon. K. Bacal); *Hashemi v.*
2 *Trademark Constructions Co.*, 37-2017-00041889-CU-OE-CTL (Hon. G. Pollack); *Derocco v.*
3 *Irvine Company Apartment Communities, Inc.*, 37-2017-00034528-CU-OE-CTL (Hon. R. Trapp).)

4 **IV. THE PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

5 “In September 2003, the Legislature enacted the Labor Code Private Attorneys General Act
6 of 2004.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980 (*Arias*).) PAGA is the acronym for
7 the Private Attorneys General Act of 2004, which is codified under California Labor Code sections
8 2698 - 2699.6. (Labor Code § 2698.)

9 “[T]he Legislature ‘declared that adequate financing of labor law enforcement was necessary
10 to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement
11 agencies had declined and were unlikely to keep pace with the future growth of the labor market,
12 and that it was therefore in the public interest to allow aggrieved employees, acting as private
13 attorneys general, to recover civil penalties for Labor Code violations, with the understanding that
14 labor law enforcement agencies were to retain primacy over private enforcement efforts.’”
15 (*Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1125–26, citation
16 omitted disapproved on other grounds in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175.)

17 Thus, the PAGA is a type of *qui tam* action, “authorizing a private party to bring an action
18 to recover a penalty on behalf of the government and receive part of the recovery as compensation.”
19 (*Huff v. Securitas Sec. Servs. USA, Inc.* (2018) 23 Cal.App.5th 745, 753 (*Huff*) review denied (Aug.
20 8, 2018) citing *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 379.)
21 When an employee brings a representative action under the PAGA, he or she does so as the proxy or
22 agent of state labor law enforcement agencies, representing the same legal right and interest as those
23 agencies, in a proceeding that is designed to protect the public, not to benefit private parties.”
24 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Super. Ct.* (2009) 46 Cal. 4th 993, 1003.)
25 Thus, “[e]very PAGA claim ‘is a dispute *between an employer and the state.*’” (*Kim v. Reins Int’l*
26 *California, Inc.* (2020) 9 Cal.5th 73, 81 (*Kim*), citation omitted.)

27 While a case under the PAGA is representative in nature, it is **not** a class action, and
28 therefore, may be brought *without* the procedural requirements involved in a class action,

1 i.e., class certification. (*Kim, supra*, 9 Cal.5th at pp. 86-87.)

2 Lastly, non-party aggrieved employees in a PAGA action are not entitled to notice and have
3 no right to opt out. (*Arias, supra*, 46 Cal.4th at p. 986.)

4 V. ARGUMENT

5 A. Controlling Law Regarding PAGA Approval

6 Labor Code section 2699(i) mandates that PAGA penalties shall be allocated as follows:

7 75 percent to the Labor and Workforce Development Agency for
8 enforcement of labor laws and education of employers and employees about
9 their rights and responsibilities under this code, to be continuously
appropriated to supplement and not supplant the funding to the agency for
those purposes; and 25 percent to the aggrieved employees.

10 Under Labor Code section 2699(l)(2), the court is required to review and approve any PAGA
11 settlement. (Lab. Code § 2699(l)(2).) “PAGA settlements are subject to trial court review and
12 approval, ensuring that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
13 *Court* (2017) 3 Cal.5th 531, 549.)

14 Civil penalties recovered under the PAGA “are intended to ‘*remediate present violations*
15 *and deter future ones,*’ **not to redress employees’ injuries.**” (*Kim, supra*, 9 Cal.5th at p. 86) Indeed,
16 the share of civil penalties (25%) distributed to the aggrieved employees are designed as a “financial
17 incentive” to enforce the labor laws under the PAGA, not to compensate them for any damages or
18 injuries suffered. (*Kim, supra*, 9 Cal.5th at p. 86; *Brown v. Ralphs Grocery Co.* (2011) 197
19 Cal.App.4th 489, 501[stating that “the purpose of the PAGA is not to recover damages or
20 restitution...”]; *Huff, supra*, 23 Cal.App.5th at p. 753 [same]; *Provost v. YourMechanic, Inc.* (2020)
21 55 Cal.App.5th 982, 992 [stating that the Legislature provided the 25% share of civil penalties to
22 aggrieved employees as an “financial incentive” to pursue PAGA cases].)

23 B. The PAGA Settlement Is Fair Under Labor Code Section 2699(l)(2)

24 While Labor Code section 2699(l)(2) requires a court to “review and approve any settlement
25 of any civil action filed pursuant to [the PAGA],” it does not provide any guidance as to what is
26 considered “fair.” However, at the lower end of the spectrum, the California Court of Appeal has
27 held that an allocation of **zero dollars** to resolve PAGA claims may be appropriate in certain
28

1 circumstances:

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3 The Nordstrom Commission Cases settlement agreement identifies liability for PAGA
4 penalties as a claim against Nordstrom and includes the following language: “The Parties
5 allocate \$0 to any Private Attorneys General Act penalty claim under Labor Code § 2699 *et*
6 *seq.*, for penalty claims based on the Released Claims. During the Class Period, Nordstrom
7 paid Putative Class Members' commissions pursuant to a commission plan that it contends
was approved by the United States District Court in *Rios*, and consequently, Nordstrom
contends no claim for penalties of any nature is valid.” Thus, the PAGA penalty claims were
at issue, and were resolved as a part of the overall settlement of the case. We find no abuse
of discretion in the trial court's approval of the settlement agreement containing these terms.

8 (*Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589.)

9 Moreover, courts in California have routinely approved settlements which allocate less than
10 2% of the overall settlement amount to PAGA penalties. (*See e.g., Haji v. be.group*, San Diego
11 Superior Court Case No: 37-2017-00025918-CU-OE-CTL (Taylor T.) [approving allocation of
12 \$20,000.00 to civil penalties under PAGA out of \$1,693,000.00 settlement]; *Chu v. Wells Fargo*
13 *Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 672645, at *1 [approving allocation of
14 \$10,000.00 to PAGA penalties out of \$6,900,000.00 settlement]; *see also Schiller v. David's Bridal,*
15 *Inc.* (E.D. Cal., June 11, 2012) 2012 WL 2117001, at * 14 [approving allocation of \$7,500.00 to
16 PAGA penalties out of \$518,245.00 settlement].)

17 The Parties seek to allocate \$____ in civil penalties under Labor Code section 2699(i). From
18 that amount, 75% (or \$43,650.04) will be paid to the LWDA and the remaining 25% (or
19 \$14,550.01) will be allocated to the 110 PAGA Represented Employees.

20 The Parties reached the terms of their proposed settlement following the production of
21 numerous employment records, analysis of sample payroll records of the PAGA Represented
22 Employees at issue, and extensive legal research. (Mashiri Decl. ¶¶ 11, 17, 18; Jami Decl. ¶ 14, 20,
23 21.) Critically important here is that Defendants have already taken affirmative steps to both cure
24 and avoid any of the alleged violations. (Mashiri Decl. ¶ 21; Jami Decl. ¶ 24.)

25 As a result, and based on counsel's professional experience, the circumstances of this case,
26 and the work performed, the Parties contend that the proposed PAGA settlement is adequate, fair,
27 and appropriate. (Mashiri Decl. ¶ 22; Jami Decl. ¶ 25.)

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VI. CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court approve the proposed PAGA settlement.

Respectfully submitted,

Date: May 17, 2021

MASHIRI LAW FIRM
A Professional Corporation
By: 
Alex Asil Mashiri
Attorney for Plaintiffs
Ana Abundis and Ana Delgado