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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

NICK COKER, as an individual on behalf of
the State of California and all other aggrieved
employees;

Plaintiff,

vs.

MIRAMAR PROFESSIONAL SERVICES, a
California corporation; and DOES 1 through
50, inclusive;

Defendants.

Case No. 37-2020-00032172-CU-OE-CTL

Assigned to the Hon. John S. Meyer, Dept. C-64

**Notice of Entry of Order Approving PAGA
Settlement under Labor Code § 2699(l)(2) and
Entering Judgment; Proof of Service**

Case Filed: Sept. 14, 2020
Trial Date: Not Set

1 TO THE COURT, THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT
2 AGENCY (LWDA), ALL PARTIES, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
3 NOTICE THAT:

4 1. On Oct. 21, 2021, Plaintiff Nick Coker, through counsel of record, filed a Joint
5 Stipulation Requesting Approval of PAGA Settlement; [Proposed] Order Approving PAGA
6 Settlement under Labor Code § 2699(1)(2) and Entering Judgment in this action entitled *Coker v.*
7 *Miramar Professional Services, Inc.*

8 2. On Oct. 25, 2021, the Honorable John S. Meyer signed the proposed order, which
9 became the Order of the Court. The Court entered final judgment according to its terms.

10 3. A true and correct copy of the **Joint Stipulation Requesting Approval of PAGA**
11 **Settlement; [~~Proposed~~] Order** is attached hereto as **Exhibit 1**.

12 4. A copy of the Court's judgment has been submitted to the LWDA via its online
13 electronic portal in accordance with Labor Code § 2699(1)(3).

14
15 Respectfully submitted,

16
17 Dated: October 26, 2021

Ferraro Vega Employment Lawyers, Inc.

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Nicholas J. Ferraro

Lauren N. Vega

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21 Attorneys for Plaintiff
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Exhibit 1

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Attorneys for Defendant Miramar Professional Services

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

NICK COKER, as an individual on behalf of
the State of California and all other aggrieved
employees;

Plaintiff,

vs.

MIRAMAR PROFESSIONAL SERVICES, a
California corporation; and DOES 1 through
50, inclusive;

Defendants.

Case No. 37-2020-00032172-CU-OE-CTL

Assigned to the Hon. John S. Meyer, Dept. C-64

**Joint Stipulation Requesting Approval of
PAGA Settlement**

Case Filed: Sept. 14, 2020

Trail Date: Not Set

1 **I. INTRODUCTION**

2 Plaintiff NICK COKER (“Plaintiff”) and Defendant MIRAMAR PROFESSIONAL
3 SERVICES (“Defendant”) (collectively, the “Parties”) have reached a settlement of Plaintiff’s
4 claims brought under the Private Attorneys General Act (“PAGA”).

5 The Parties now stipulate to the terms herein and request that the Court sign the
6 accompanying Proposed Order approving the PAGA settlement under Labor Code section
7 2699(1)(2) and enter judgment thereon.

8 **II. BACKGROUND**

9 Plaintiff alleges he was employed by Defendant as an hourly, non-exempt employee in San
10 Diego County until October 2019. Plaintiff alleges that he is an aggrieved employee who
11 experienced violations of the California Labor Code along with other current and former non-
12 exempt employees of Defendant. (See Representative Action Compliant, ¶ 7.) There are an
13 estimated 171 individuals affected by this settlement. (Settlement Agreement, § I.2.)

14 **A. Case Background**

15 On July 6, 2020, Plaintiff submitted a notice to the Labor and Workforce Development
16 Agency (“LWDA”) asserting his claims for civil penalties under the PAGA on behalf of himself
17 and the aggrieved employees. (Declaration of Nicholas J. Ferraro (“Ferraro Decl.”), ¶ 5.) On Sept.
18 14, 2020, Plaintiff filed a PAGA representative action in San Diego Superior Court. (ROA #1.) In
19 the Complaint, Plaintiff requested civil penalties under California Labor Code section 2699 *et seq.*
20 based on a single cause of action under the PAGA. (See Complaint.)

21 Throughout the litigation, Plaintiff obtained the applicable written employment policies and
22 handbooks governing the terms and conditions of employment for the alleged “aggrieved
23 employees,” who are defined in the operative complaint as:

24 **[A]ll [] current and former non-exempt employees of Defendants who**
25 **work or worked within the State of California within the one-year**
26 **period prior to the date on which Plaintiff first provided written**
27 **notice to the Labor and Workforce Development Agency and**
28

Defendants under Labor Code § 2699.3 and continuing through the present (the “aggrieved employees” and the “PAGA Period”).

(Complaint, ¶ 13.) Additionally, Plaintiff obtained a sampling of wage statements and time records, compensation records and data, payroll information, and anonymized employee information from Defendant, along with other records obtained by Plaintiff and counsel through independent investigation of the claims. (Ferraro Decl., ¶¶ 16-19.)

On June 24, 2021, the Parties attended mediation with employment law mediator Todd Smith. Mediation lasted all day but was unsuccessful. Based on the communications at the mediation, the Parties ultimately reached a tentative settlement on August 20, 2021. (Ferraro Decl., ¶ 18.) On October 21, 2021, the Parties fully executed a long-form settlement agreement which will entirely resolve this action upon Court approval (“Settlement Agreement”). (Ferraro Decl., ¶ 18.) A full copy of the Settlement Agreement is attached to the accompanying Declaration of Nicholas J. Ferraro as **Exhibit 1**. (Ferraro Decl., ¶ 3.)

C. Settlement Terms

The settlement covers all individuals employed by Defendants as non-exempt employees in California from July 6, 2019 through October 2, 2021 (“PAGA Members”). (Ferraro Decl., ¶ 21.) The Parties agreed to settle the underlying PAGA claims in exchange for a non-reversionary Maximum Settlement Amount of **\$210,000**, allocated as follows:

Maximum Settlement Amount:	\$210,000
Plaintiff’s Counsel Fees - 33.33% (minus):	(\$81,250)
Plaintiff’s Counsel Actual Costs (minus):	(9,887.90)
<u>Third Party Administration Costs (minus)</u>	<u>(\$2,750)</u>
Remaining PAGA Payment	\$116,112.10
To LWDA (75 percent)	\$87,084.08
To PAGA Members (25 percent)	\$29,028.02

(Ferraro Decl., ¶ 20.) Each PAGA Member will receive a portion of the PAGA Payment payable to the PAGA Members on a pro-rata basis based on the number of pay periods worked during the PAGA Period. (Settlement Agreement (“S.A.”), § III.5.) All PAGA Members will release the

1 “Released Claims” against Defendant (and the “Released Parties” as defined in the Settlement
2 Agreement) as follows:

3 **Plaintiff agrees that upon entry of an Order approving the Settlement,**
4 **all Aggrieved Employees will release any and all PAGA Released**
5 **Claims against the Released Parties that arose during the PAGA**
6 **Period. Upon entry of the Order approving the Settlement and**
7 **judgment entered thereon, Plaintiff and all Aggrieved Employees will**
8 **be forever barred from pursuing any and all of the PAGA Released**
9 **Claims that arose during the PAGA Period against the Released**
10 **Parties.**

11 (S.A., § III.7.) The “PAGA Released Claims” are defined as “any and all claims under PAGA that
12 are pled in Plaintiff’s Complaint, or which could have been pled under the PAGA based on the
13 factual allegations in Plaintiff’s Complaint, that arose during the PAGA Period.” (S.A., § I.13.)

14 The Maximum Settlement Amount will be paid in three installments of \$70,000: the first
15 payment no later than 15 business days of this Court’s Order upon entry of an Order by the Court
16 approving the Settlement (the “Effective Date”); the second payment no later than 182 days of the
17 Effective Date; the final payment no later than 365 days of the Effective Date. (S.A., § III.2.)
18 Within 10 business days of the Effective Date, Defendant will deposit the first payment for the
19 Maximum Settlement Amount with the Settlement Administrator along with the addresses and
20 contact information for the PAGA Members. Within 15 business days of Defendant’s funding of
21 the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator
22 will issue checks—pursuant to the allocation set forth in the Settlement Agreement. (S.A., § IV.2
23 (Funding of Maximum Settlement Amount).) The PAGA Members, who will also receive an
24 explanatory cover letter attached as Exhibit A to the Settlement Agreement. (S.A., § IV.3.)
25 Additionally, the Parties have entered into a Confidential Settlement Agreement in full satisfaction
26 of Plaintiff’s underlying individual wage and other claims, which shall be paid separate and apart
27 from the PAGA settlement set forth herein. (Ferraro Decl., ¶ 18.)
28

1 **C. Notice to LWDA of PAGA Settlement**

2 On October 21, 2021, Plaintiff submitted the proposed settlement of this PAGA action to the
3 LWDA electronically via the LWDA’s online filing system. (Ferraro Decl. ¶ 7.)

4 **III. LEGAL STANDARD**

5 **A. The PAGA Settlement is Fair and Reasonable and Should be Approved.**

6 PAGA settlements require judicial review and approval. (Labor Code § 2699(1)(2).) The
7 criteria for review and approval is not well-developed. But when a PAGA claim is settled, the
8 relief provided for must be genuine and meaningful, consistent with the purpose of the statute to
9 benefit the public. (*See Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d
10 959, 971-972.)

11 Civil penalties sought under the PAGA are “inherently regulatory, not remedial, and are
12 intended to secure obedience to statutes and regulations validly adopted under the police power” of
13 the State of California. (*Home Depot U.S.A, Inc. v. Superior Court* (2010) 191 Cal.App.4th 210,
14 225 (internal citations omitted).) This settlement has thus met the fundamental aim of the
15 legislation, to enforce compliance with California’s state wage and labor laws.

16 PAGA actions are not evaluated subject to the same requirements as class actions, though
17 courts like this one can and often do consider the factors applicable to class action settlements when
18 reviewing PAGA settlements. (*See, e.g., Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
19 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 240; *Kullar v. Foot Locker Retail,*
20 *Inc.* (2008) 168 Cal.App.4th 116 (factors include the (1) strengths of plaintiffs’ case; (2) risk,
21 expense, complexity, and duration of further litigation; (3) amount offered in settlement;
22 (4) discovery and investigation completed; (5) experience and views of counsel; and
23 (6) governmental participant involvement).)

24 These factors support approval of the settlement. (*See Ferraro Decl., ¶ 19(a)-(j).*) First,
25 Plaintiff’s case had numerous strengths but would have been subject to attack on various legal and
26 factual grounds. According to Plaintiff’s evaluation of the records, the violation rate for meal
27 periods was only 6.4 percent. This violation rate would have presented challenges to Plaintiff in
28 proving a common policy against premium payments for non-compliant meal periods.

1 Additionally, regarding rest periods, Defendant maintained compliant written policies and the trial
2 would have proceeded on conflicting testimonial evidence. Defendant would have maintained the
3 presumption of compliance in light of compliant policies that Plaintiff would have had the
4 significant burden to overcome. Additionally, while Plaintiff's economist calculated a tip pooling
5 violation in 94 percent of pay periods, there were significant concerns that Defendant would be able
6 to distinguish the "chain of service" restaurant cases from the facts at issue: namely, tip pooling and
7 tip sharing within a retail store. Although Plaintiff believes that his primary claims were
8 meritorious, Defendant maintained factual defenses to every claim and would have argued for
9 reduction of civil penalties on those and the derivative claims, such as wage statements and
10 recordkeeping violations. Even if Plaintiff established liability for each of his claims, Defendant
11 would request that the Court exercise its discretion to substantially reduce PAGA penalties on the
12 basis that awarding the full default penalty would be unjust, arbitrary, oppressive, or confiscatory.
13 Courts routinely reduce PAGA penalties as permitted by California Labor Code section 2699(f)(2).
14 (*See Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (approving trial court's
15 reduction of PAGA penalties by 90%).) Second, while the litigation could have proceeded with the
16 aforementioned strengths and weaknesses, there was an element of risk in terms of presenting
17 common proof at trial on each of the alleged claims. Defendant successfully persuaded Plaintiff to
18 a delayed payment schedule in light of its financial conditions. Delayed and prolonged litigation
19 would have only further depleted the ability for Defendant to pay a judgment. The remedial and
20 enforcement mechanisms of the PAGA are better served through this settlement than through
21 additional litigation. Third, the amount offered in settlement is significant and in line with other
22 PAGA settlements involving similar number of pay periods. Fourth, the settlement was only after
23 Plaintiff's counsel obtained all of the policies and data necessary to conduct a liability exposure
24 analysis. The settlement was negotiated at arms-length through an experienced mediator and by
25 counsel on both sides experienced in PAGA and wage and hour litigation. Fifth, Plaintiff's counsel
26 focuses entirely on labor and employment litigation, with a particular emphasis on wage and hour
27 litigation and PAGA cases. Plaintiff's counsel recommends the settlement as fair and reasonable.
28 There are no objections or intervenors and no related cases. Sixth, the LWDA was duly notified

1 upon filing of the PAGA notice in this case, and has not intervened nor stated intent to do so. The
2 absence of LWDA intervention, as a governmental party, supports approval of the settlement.
3 (Ferraro Decl., ¶ 19(a)-(j).)

4 Collectively, the factors support approval of this PAGA-only settlement.

5 **B. The Attorneys Fees Are Reasonable.**

6 According to the Declaration of Nicholas J. Ferraro, Plaintiff's counsel expended thus far
7 162.50 hours through the date of this Stipulation, not including additional hours worked for
8 forthcoming post-settlement tasks. (Ferraro Decl., ¶¶ 23-25.) This amount is based on Plaintiff's
9 counsel's lodestar rate of \$500 and 162.50 attorney hours. Plaintiff's request for costs reveal
10 ordinary litigation costs that may be reimbursed upon settlement of this PAGA action. (Ferraro
11 Decl., ¶¶ 21-25.) The settlement proposed for approval provides for \$82,250 in attorneys' fees
12 (\$500 x 162.50) and \$9,887.90 in hard costs actually incurred. (S.A., Sec. III.3.) Plaintiff's
13 attorneys' fees on this case will not be fully and finally paid until 365 days after the Court enters
14 judgment. Plaintiff has expended significant time on this case and will incur additional hours to
15 ensure that Settlement is properly effectuated on the delayed payment schedule. Plaintiff's fees and
16 costs are reasonable and should be approved.

17 **IV. STIPULATIONS**

18 Plaintiff and Defendant, through their respective attorneys of record, hereby stipulate that,
19 based on the foregoing, the PAGA settlement in this PAGA-only case is fair and reasonable and
20 therefore respectfully request that this Court enter an order approving the entire settlement.

21 The Parties further stipulate and agree that Phoenix Settlement Administration will serve as
22 the Settlement Administrator in this case.

23 The Parties further stipulate, agree, and request that the Court enter judgment upon approval
24 of this PAGA settlement if and at the time it signs the accompanying Order.

1 Respectfully submitted,

3 Dated: Oct. 21, 2021

Attorneys for Plaintiff
Ferraro Vega Employment Lawyers, Inc.

5 

6 Nicholas J. Ferraro

8 Dated: Oct. 21, 2021

Attorneys for Defendant
Fisher & Phillips LLP

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12 Danielle Hultenius Moore
Kelsey D. Cully

1 **~~PROPOSED~~ ORDER**

2 The Court has reviewed the papers on file in this action, the Joint Stipulation Requesting
3 Approval of PAGA Settlement, the supporting Declaration of Nicholas J. Ferraro, and its exhibits,
4 including the Settlement Agreement.

5 **NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS**
6 **FOLLOWS:**

7 1. The Parties' Joint Stipulation Requesting Approval of PAGA Settlement is
8 GRANTED and hereby APPROVED pursuant to Labor Code § 2699(1)(2). The Maximum
9 Settlement Amount shall be distributed as follows:

- 10 a. \$87,084.08 to the LWDA for PAGA penalties
11 b. \$29,028.02 to the PAGA Members
12 c. \$81,250 to Plaintiff's counsel for attorneys' fees
13 d. \$9,887.90 to Plaintiff's counsel for costs
14 e. \$2,750 to the Settlement Administrator

15 2. Plaintiff, Defendant, and the Settlement Administrator are ordered to carry out the
16 terms of the settlement in accordance with the Settlement Agreement and the Joint Stipulation. The
17 terms of the Settlement Agreement are hereby incorporated by reference into this Order.

18 **JUDGMENT**

19 Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc.,
20 § 668.5.) Plaintiff shall take from the operative complaint in this action only the relief set forth in
21 the settlement agreement and this order and judgment. The Court retains jurisdiction over the
22 parties to enforce the terms of the settlement agreement and the final order and judgment.

23
24 **IT IS SO ORDERED.**

25
26 Dated: **10/25/21** _____



27 HONORABLE JOHN S. MEYER
28 SUPERIOR COURT JUDGE

1 **PROOF OF SERVICE**

2 I, the undersigned, am employed in San Diego, California. I am over the age of 18 and not a
3 party to this action. My business address is 3160 Camino del Rio South, Suite 308, San Diego,
California 92108. My email address is nick@ferrarovega.com.

4 On **October 26, 2021**, I served true copies of the following document(s) on the interested
5 parties listed in the attached Service List as follows:

6 **Notice of Order Approving PAGA Settlement under Labor Code § 2699(1)(2)**
7 **and Entering Judgment (with Exhibit 1)**

8 ☒ **BY ELECTRONIC SERVICE**

9 I attached a true and correct copy of each of the above-entitled document(s) and served them via
electronic transmission pursuant to the electronic service rules applicable to this action.

10 Additionally, on **Oct. 26, 2021**, I electronically filed a copy of the Court's judgment in this
action with the LWDA via its online electronic portal in accordance with Labor Code § 2699(1)(3).

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

13 Executed **Oct. 26, 2021**, at San Diego, California.

14 
15 _____
Nicholas J. Ferraro
16 Attorney for Plaintiff

17 **SERVICE LIST**

18
19 Danielle Hultenius Moore (SBN 232480)
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