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9 Attorneys for Plaintiff
10 ARTURO VAZQUEZ HERNANDEZ

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 ARTURO VAZQUEZ HERNANDEZ, an
individual, for the real party in interest, the
14 State of California

15 Plaintiff,

16 v.

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18 EAGLE PAVING COMPANY, INC.; and
DOES 1 through 50,

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20 Defendants.
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Case No. 37-2021-00003255-CU-OE-CTL

Judge: Hon. James A Mangione
Dept.: C-75

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Judge: Hon. James A Mangione
Dept.: C-75
Date: January 14, 2022
Time: 9:00 a.m.

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

2 PLEASE TAKE NOTICE that on **January 14, 2022 at 9:00 a.m.**, or as soon thereafter as
3 the matter may be heard in Department C-75 of the Superior Court of California, County of San
4 Diego, 330 W. Broadway, San Diego, California 92101, Plaintiff ARTURO VAZQUEZ
5 HERNANDEZ, will, and hereby does, move for an order approving the proposed settlement
6 pursuant to the Private Attorneys General Act of 2004.

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

10 Date: December 20, 2021

MASHIRI LAW FIRM APC

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12 By: 
13 Alex Asil Mashiri
14 Attorney for Plaintiff
15 ARTURO VAZQUEZ HERNANDEZ
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1 Counsel also requested Plaintiff's employment/personnel file and subsequently, researched and
2 investigated all of Plaintiff's concerns. (Declaration of Alex Asil Mashiri [Mashiri Decl.] ¶ 13; Jami
3 Decl. ¶ 17.)

4 On January 22, 2021, Plaintiff filed his complaint under the PAGA in this matter. (Mashiri
5 Decl. ¶ 14; Jami Decl. ¶ 18.) The complaint alleged representative claims for civil penalties, only,
6 under the PAGA for (1) violation of Labor Code sections 1720 et seq., 1771, 1774, 1776, 1777.5,
7 1815; (2) violation of Labor Code sections 510 and 1194; (3) violation of Labor Code section
8 226(a)(1); (4) violation of Labor Code section 226(a)(5); (5) violation of Labor Code section
9 226(a)(2); (6) violation of Labor Code section 226(a)(9); (7) violation of Labor Code section 226(a);
10 (8) violation of Labor Code sections 512, 226.7 and the IWC Wage Order; (9) violation of Labor
11 Code section 226.7 and the IWC Wage Order; (10) violation of Labor Code section 246; (11)
12 violation of Labor Code sections 233 and 234; (12) violation of Labor Code section 227.3; (13)
13 violation of Labor Code section 204; (14) violation of Labor Code sections 201, 202, and 203; and
14 (15) violation of Labor Code sections 226(b), 1198.5, and 432. (*Id.*)

15 After service of the complaint, the Parties, through counsel, engaged in several discussions
16 regarding the substantive claims, including Plaintiff's allegations and anticipated defenses, in this
17 case. (Mashiri Decl. ¶ 15; Jami Decl. ¶ 19.) The Parties ultimately agreed to attend a mediation.
18 (*Id.*) The Parties filed a stipulated protective order with the Court and Defendant agreed to produce
19 in addition to the relevant personnel file and applicable employment policies for Plaintiff, a sample
20 of putative aggrieved employee time and payroll records (in an appropriately redacted form) which
21 consisted of 21 randomly-selected employees chosen by Plaintiff's counsel (plus Plaintiff) (which
22 constituted over 20% of the approximate total population of putative aggrieved employees
23 employed during the PAGA period known at that time) ("Sample Set") prior to mediation.

24 **C. SETTLEMENT NEGOTIATIONS**

25 On September 24, 2021, the Parties attended a full day mediation with Mr. Tripper Ortman,
26 Esq., a well-regarded mediator of complex class and representative wage and hour actions. (Mashiri
27 Decl. ¶ 16; Jami Decl. ¶ 20.)

28 The Parties were able to resolve this matter with the assistance of Mr. Ortman and ultimately

1 reached a proposed settlement in the gross amount of \$325,000.00. (Mashiri Decl. ¶ 17; Jami Decl. ¶
2 21.)

3 Prior to the mediation, Plaintiff's counsel conducted a thorough investigation into the facts
4 and claims in this case and conducted extensive legal research as to the claims and applicable law.
5 (Mashiri Decl. ¶ 18; Jami Decl. ¶ 22.) Plaintiff's counsel also had several discussions with defense
6 counsel regarding the substantive claims alleged, including Plaintiff's allegations and anticipated
7 defenses, in this case. (*Id.*)

8 Additionally, prior to mediation, Defendant provided the aforementioned Sample Set of data
9 for randomly selected putative aggrieved employees. (Mashiri Decl. ¶ 19; Jami Decl. ¶ 23.) The
10 time and payroll records were produced, in part, in native format; however, based on technical
11 limitations for the company, many of the documents could only be produced in PDF format. The
12 total document exchange consisted of thousands of documents, which Plaintiff's counsel had to go
13 through manually in detail in order to assess and evaluate for purposes of the mediation. (*Id.*) Using
14 the information in the native and PDF documents, Plaintiff's counsel created an Excel spreadsheet
15 outlining the alleged systemic violations, resulting claims, and civil penalty exposure in preparation
16 for mediation. (*Id.*) Plaintiff's counsel also prepared and provided a detailed mediation brief to Mr.
17 Ortman's office. (*Id.*)

18 Following the mediation, the Parties negotiated and signed a long-form settlement agreement
19 ("Settlement Agreement") outlining the material terms of the settlement. (Mashiri Decl. ¶ 20; Jami
20 Decl. ¶ 24.) A copy of the Settlement Agreement is attached to the Declaration of Alex Asil Mashiri
21 as Exhibit 3. A copy of the Settlement Agreement was provided to the LWDA on November 9,
22 2021, as required by statute. (Mashiri Decl. ¶ 20.)

23 The proposed PAGA settlement amount is \$325,000.00. (Mashiri Decl. ¶ 21; Jami Decl. ¶
24 25.) The Parties' proposed settlement includes PAGA civil penalties, administration costs, litigation
25 costs, and Plaintiff's attorney's fees. (*Id.*) The proposed PAGA civil penalties are \$204,644.10 of
26 which 75% (or \$153,483.07) will be paid to the LWDA and the remaining 25% (or \$51,161.03) will
27 be allocated to the PAGA Aggrieved Employees. (*Id.*) Of the remaining balance, \$10,130.90 will be
28 allocated towards litigation costs incurred in this case, \$2,000 will be allocated towards the

1 Settlement Administrator’s costs, and the remaining amount of \$108,225 will be allocated towards
2 Plaintiff’s attorneys’ fees. (*Id.*)

3 **III. THE PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

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

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

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

26 While a case under the PAGA is representative in nature, it is **not** a class action, and
27 therefore, may be brought *without* the procedural requirements involved in a class action, *i.e.*, class
28 certification. (*Kim, supra*, 9 Cal.5th at pp. 86-87.)

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

3 IV. ARGUMENT

4 A. CONTROLLING LAW REGARDING PAGA APPROVAL

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

6 75 percent to the Labor and Workforce Development Agency for
7 enforcement of labor laws and education of employers and employees about
8 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.

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

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

22 B. THIS PAGA SETTLEMENT IS FAIR UNDER LABOR CODE SECTION 2699(L)(2)

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

The Nordstrom Commission Cases settlement agreement identifies liability

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

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

12 Moreover, courts in California have routinely approved settlements which allocate less than
13 2% of the overall settlement amount to PAGA penalties. (*See e.g., Haji v. be.group*, San Diego
14 Superior Court Case No: 37-2017-00025918-CU-OE-CTL (Taylor T.) [approving allocation of
15 \$20,000.00 to civil penalties under PAGA out of \$1,693,000.00 settlement]; *Chu v. Wells Fargo*
16 *Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 672645, at *1 [approving allocation of
17 \$10,000.00 to PAGA penalties out of \$6,900,000.00 settlement]; *see also Schiller v. David's Bridal,*
18 *Inc.* (E.D. Cal., June 11, 2012) 2012 WL 2117001, at * 14 [approving allocation of \$7,500.00 to
19 PAGA penalties out of \$518,245.00 settlement].)

20 Here, this is a PAGA-only settlement. Of the total settlement amount, the Parties seek to
21 allocate \$204,644.10 in civil penalties under Labor Code section 2699(i). From that amount, 75%
22 (or \$153,483.07) will be paid to the LWDA and the remaining 25% (or \$51,161.03) will be
23 allocated to the PAGA Aggrieved Employees, per statute.

24 The Parties reached the terms of their proposed settlement after the exchange of extensive
25 informal discovery, including time and payroll records of more than 20% of the PAGA Aggrieved
26 Employees, Plaintiff's counsel's research on esoteric legal issues, and a full day of mediation with a
27 well-regarded complex action mediator, Mr. Ortman.

28 Notably, the Parties' proposed PAGA settlement is limited in scope to a release of civil
penalties under the PAGA, only. The proposed settlement does not seek to release any individual
claims that Plaintiff or the PAGA Aggrieved Employees may have in their individual capacity.

Based on counsel's professional experience, the circumstances of this case, and the work
performed, the Parties agree that the PAGA penalty of \$204,644.10 under Labor Code section

1 2699(i) is fair, adequate, and reasonable, and request the Court to approve the same.

2 **V. CONCLUSION**

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

5 Respectfully submitted,

6 Date: December 20, 2021

MASHIRI LAW FIRM APC

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8 By: 
9 Alex Asil Mashiri
10 Attorney for Plaintiff Arturo V. Hernandez
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