

RIZIO LIPINSKY LAW FIRM PC

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Attorneys for Plaintiffs, RAFAEL LOPEZ and RAMON MOTA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE COUNTY

MATEO LOZANO; RAFAEL LOPEZ;
RAMON MOTA,

Plaintiffs,

v.

GOLDEN UNIVERSE INVESTMENT INC.
DBA URBAN SEOUL; KESHEN CAI; and
DOES 1 through 100,

Defendants.

Case No. 30-2020-01175299-CU-WT-CJC

[Hon. Peter Wilson, Dept. CX102]

**NOTICE OF, AND MOTION FOR
APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL'S
ACT OF 2004; DECLARATION OF
PLAINTIFFS' COUNSEL; [PROPOSED]
ORDER**

Hearing Date: August 11, 2022

Hearing Time: 2:00 p.m.

Department: CX102

Trial Date: None Set

Complaint Filed: 12/18/2020

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD, AND TO THE
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS:

Notice is hereby given that on **August 11, 2022, at 2:00 p.m.** in Department CX102 of the
above court, located at Civil Complex Center, 751 W. Santa Ana Boulevard, Santa Ana, CA 92701,
plaintiffs Rafael Lopez and Ramon Mota will and do hereby move this Court for an order approving
the proposed settlement of their respective claims which include a claim for violation of California
Private Attorney General's Act of 2004 (Labor Code section 2699 *et seq.*, "PAGA"), and dismissing

1 said PAGA claims with prejudice. The proposed settlement of the PAGA claims is to dismiss the
2 claims, without prejudice, for a waiver of costs.

3 This motion is brought pursuant to the provisions of Labor Code section 2699(1)(2), which
4 requires the court's approval of any settlement of PAGA claims. The proposed gross settlement in
5 favor of Ramon Mota is for a total of \$1,000.00, and the proposed gross settlement in favor of Rafael
6 Lopez is for \$10,436.00. Good cause exists for the Court to approve the proposed settlement of the
7 PAGA claims for a dismissal of said claims in exchange for a waiver of costs because the gross
8 recovery by each plaintiff is far less than the value of their respective claims – the settlement is for a
9 nominal amount that will keep the defendant employer from filing for bankruptcy. Indeed, defendant
10 Keshen Cai, the owner of Golden Universe Investment Inc. dba Urban Seoul, which is no longer is
11 business, has borrowed the total settlement funds from family members and friends, and the settlement
12 amounts will be paid in monthly installments of \$2,859.00 per month.

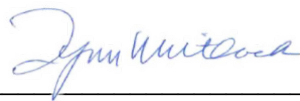
13 This motion is based on this notice of motion, the accompanying memorandum of points and
14 authorities, the declaration of plaintiffs' counsel Lynn P. Whitlock filed concurrently herewith, all of
15 the pleadings and other documents on file in this case, all other matters of which this Court may take
16 judicial notice, and any further argument or evidence that may be received by the Court at the hearing.

17 A copy of this motion has been served on the California Labor and Workforce Development
18 Agency ("LWDA") consistent with Labor Code section 2699(1)(2).

19 Wherefore, plaintiffs pray for an order of this Court dismissing plaintiffs' PAGA claims, and
20 approving the proposed settlement. Plaintiffs pray for such additional relief as this Court should deem
21 proper.

22
23 Dated: July 7, 2022

RIZIO LIPINSKY LAW FIRM PC

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26 _____
27 LYNN P. WHITLOCK
28 Attorneys for Plaintiffs,
RAFAEL LOPEZ and RAMON MOTA

MEMORANDUM OF POINTS AND AUTHORITES

Plaintiffs submit the following points and authorities in support of their motion for approval of the proposal to dismiss their PAGA claims in exchange for a waiver of costs:

I. STATEMENT OF FACTS

The operative First Amended Complaint (“FAC”), filed February 23, 2021, alleges wage and hour claims arising from plaintiffs’ employment with Golden Universe Investment Inc. dba Urban Seoul and Keshen Cai. As the FAC alleges, plaintiffs were employed in the kitchen of Urban Seoul 2.0, a restaurant located in the Irvine Spectrum shopping center, locate at 714 Spectrum Center Drive, Irvine, California. (FAC, para. 7.) Defendant Keshen Cai is the alleged owner, CEO, Director and managing agent of Golden Universe Investment, Inc. (FAC, para. 3.) The FAC alleges nine causes of action, as follows:

1. Failure to Pay Minimum Wage (Lab. Code §§ 1194, 1197);
2. Failure to Pay Overtime (Lab. Code §§ 1194, 510);
3. Failure to Provide Proper Wage Statements (Lab. Code § 226);
4. Failure to Keep Required Records (Lab. Code § 1174);
5. Failure to Pay Compensation Upon Discharge (Lab. Code §§ 201-203);
6. Violation of California Bus. & Prof. Code §§ 17200, et seq.;
7. Retaliation (Lab. Code §§ 98.6 and 1102.50);
8. Wrongful Termination in Violation of Public Policy; and
9. Private Attorneys General Act Claim.

Plaintiffs’ wage and hour claims are based on alleged off-the-clock work. Plaintiffs allege that, as a matter of standard practice, they were automatically clocked out at their scheduled end time; however, they typically worked far beyond their scheduled end time, for which they were not paid. (FAC, para. 7-11.) The wrongful termination claim is based on plaintiffs’ allegations that they were involuntarily terminated in retaliation for complaining about these wage claims. (FAC, para. 3, 12.)

By order dated March 11, 2022, the Court granted the motion of plaintiffs’ counsel to be relieved as counsel for plaintiff Mateo Lozano.

The parties thereafter entered into settlement negotiations with respect to the remaining claims

of plaintiffs Ramon Mota and Rafael Lopez. Defendant Cai contends that his business suffered greatly as a result of the Covid shut-down, and in fact, the restaurant shut down completely in August, 2021, and Golden Universe Investment, Inc. ceased all operations at the same time. Defendant Cai claimed that he was unemployed, and had no, or at least insufficient assets with which to satisfy plaintiffs' claims. Ultimately, in May, 2022, the parties agreed to settle Mr. Mota's claims for the gross amount of \$1,000, and Mr. Lopez's claims for the gross amount of \$10,436, to be paid in monthly installments of \$2,859 per month. Plaintiffs accepted the settlement based on Mr. Cai's representation that this was the most he could pay, or he was looking at bankruptcy, and further the he would have to borrow the funds from family and friends to make this settlement happen.

Mr. Mota was employed by defendants as a cook/dishwasher from August 1, 2020, through October 31, 2020, a total of 13 weeks and seven pay periods, at \$13.00/hour. Mr. Lopez was a cook, and worked for defendants from approximately September 10, 2018, to October, 31, 2020, a total of 111 weeks, and 55 pay periods. His hourly pay was \$14.00/hour when he was terminated.

Plaintiffs estimate the value of their respective claims as follows:

MR. MOTA:			
Description	Authority	Amount	Calculation
Unpaid wages (overtime)	Labor Code ("LC") section 1194; Wage Order 4-2001, section 3	\$507.00	Based on 2 hours OT on Saturday's (\$19.50 x 2 hours x 1 day/week x 13 weeks)
Penalties for failure to pay wages due	LC section 558	\$650.00	\$50 for initial violation; \$100 for each subsequent pay period: \$50 + (6 x \$100)
Waiting time penalties (failure to pay wages due upon termination)	LC section 203	\$2,340.00	30 days' wages at the regular rate: 30 days x \$13/hour x 6 hours/day
Non-compliant pay statements	LC section 226	\$650.00	\$50 for initial violation; \$100 for each subsequent pay period, not to exceed \$4,000: \$50 + (6 x

			\$100)
Total		\$4,147.00	

MR. LOPEZ:			
Description	Authority	Amount	Calculation
Unpaid wages (overtime)	Labor Code ("LC") section 1194; Wage Order 4-2001, section 3	\$23,310.00	Based on 2 hours OT every day (\$21.00 x 2 hours x 5 days/week x 111 weeks)
Penalties for failure to pay wages due	LC section 558	\$5,450.00	\$50 for initial violation; \$100 for each subsequent pay period: \$50 + (54 x \$100)
Waiting time penalties (failure to pay wages due upon termination)	LC section 203	\$3,360.00	30 days' wages at the regular rate: 30 days x \$14/hour x 8 hours/day
Non-compliant pay statements	LC section 226	\$4,000.00	\$50 for initial violation; \$100 for each subsequent pay period, not to exceed \$4,000: \$50 + (54 x \$100) = \$5,450.00, so capped at \$4,000
Total		\$36,120.00	

The above does not include PAGA penalties, which are, pursuant to Labor Code section 2699(f)(2), \$100 per employee per pay period for the first violation, then \$200 per employee per pay period for each subsequent violation, subject to a one-year statute of limitations. Plaintiffs' original complaint was filed on December 18, 2020, such that they can recover for a total of 98 weeks, or 49 pay periods, or \$9,700.00 each (\$100 + (48 x \$200).) Thus, the respective recoveries by Mr. Mota and Mr. Lopez does not even cover their own individual, compensatory damages, and they are waiving PAGA penalties.

The facts set forth in this motion are attested to by the declaration of plaintiffs' counsel, filed herewith.

II. EVENTS LEADING TO SETTLEMENT

As noted, ultimately the case settlement in or about May, 2021, with Mr. Mota recovering a gross

total of \$1,000, and Mr. Lopez recovering a gross total of \$10,436.00. A total of \$2,660.56 has been incurred in costs. Mr. Mota will be responsible for .0874 of those costs, or \$232.53. His attorneys' fees, per the retainer agreement with his attorneys, is 40% of his gross recovery, or \$400.00, such that Mr. Mota will net approximately \$367.47 from this settlement. Mr. Lopez is responsible for reimbursing \$2,428.03 of the costs, and his attorneys' fees are \$4,174.40, so that he will net approximately \$3,833.57.

For these reasons, the proposal to dismiss the PAGA claims without prejudice is fair and equitable. It is anticipated that no other employees will be prejudiced by this dismissal since there are insufficient funds available to the defendants to pay even plaintiffs' individual, compensatory damages, much less PAGA penalties to any other employees, and/or to the LWDA.

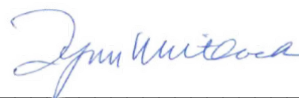
III. CONCLUSION

A trial court does not abuse its discretion in approving the settlement of a case involving PAGA claims even when the settlement allocates none of the settlement payment to PAGA claims. (*Nordstrom Commission Cases* (2010) 186 Cal. App. 4th 576, 589.) In other cases, nominal sums under 5% of the total penalties available have been determined to be reasonable. (*See Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324-AWI-SKO, 2012 WL 5364575, at 7 (E.D. Cal. Oct. 31, 2012); *Syed v. M-1, LLC*, No. 1:12-CV-10718-DAD-MJS, 2017 WL 714367, at *13 (E.D. Cal. February 22, 2017); *Viceral v. Mistras Group, Inc.*, No. 15-CV-02198-EMC, 2017 WL 661352, at *3 (N.D. Cal. February 17, 2017).) As noted, in this case, given that plaintiffs have failed to recover even their compensatory damages due to the financial condition of defendants, it is faire and equitable that the PAGA claims be dismissed, and that the entire settlement be recovered by these two plaintiffs.

Wherefore, plaintiffs pray for an order of this Court dismissing plaintiffs' PAGA claims, and approving the proposed settlement. Plaintiffs pray for such additional relief as this Court should deem proper.

Dated: July 7, 2022

RIZIO LIPINSKY LAW FIRM PC



LYNN P. WHITLOCK
Attorney for Plaintiffs,
RAFAEL LOPEZ and RAMON MOTA

DECLARATION OF LYNN P. WHITLOCK IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENT OF PAGA CLAIMS

I, Lynn P. Whitlock, declare:

1. I am an attorney with Lipinsky Law, counsel herein for plaintiffs Ramon Mota and Rafael Lopez. I have personal knowledge of the facts herein stated, and am qualified to testify thereto if called as a witness.

2. The facts set forth above in the points and authorities regarding this matter are true and correct.

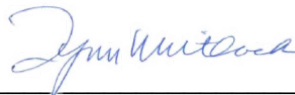
3. The expertise of my law firm to handle matters such as this case is described below:

4. I graduated from Marshall Wythe School of Law at the College of William and Mary in Williamsburg, Virginia, in 1981. I have passed not only the California bar, but also the Virginia and Colorado state bar. I have been practicing law for 41 years. I was formally with Marlin & Saltzman for ten years, whose practice is primarily these kinds of wage and hour cases, and specifically, class actions, and including PAGA claims. During my ten years with Marlin & Saltzman, I handled many wage and hour class actions, which typically included PAGA claims. I have been with this law firm for approximately ten years. Rizio Lipinsky Law Firm PC specializes in personal injury and employment cases, and I specialize in the wage and hour claims. During the course of my career, I have handled many PAGA cases, including PAGA settlements, and have obtained court approval of said settlements. I have never been denied approval of any proposed PAGA settlement.

5. The principle of this law firm responsible for this case, and who was present at, and participated in the mediation is Daren Lipinsky. Mr. Lipinsky graduated from Loyola Law School, Los Angeles, in 1997, and passed the California bar the same year. Mr. Lipinsky was initially employed with Dryden, Margoles, Schimanek, Kelly & Wait in Claremont, California. In 2000, he founded Brown & Lipinsky, an Inland Empire firm specializing in employee rights litigation and trial work. In 2017, he founded Lipinsky Law. Mr. Lipinsky is an experienced lawyer specializing in employment law, including sexual harassment, disability and pregnancy discrimination, race, age, sexual orientation, and gender discrimination, California Family Rights Act violations, retaliation, breach of contract, and wrongful termination in violation of public policy. He also routinely handles wage and hour claims, including PAGA claims. In 2017, Mr. Lipinsky was recognized as one of the "Top 100 Trial Lawyers in America"

1 by the prestigious National Trial Lawyers organization. He has also been recognized by *Inland Empire*
2 *Magazine*'s "Top Lawyers in the Inland Empire" 2010-2018 Editions and as "AV-preeminent" rated by
3 Martindale-Hubbell. Mr. Lipinsky has been honored as a "Super Lawyer" every year since 2012 and
4 has been named as one of the Best Lawyers in California by *The Wall Street Journal*. For the past five
5 consecutive years, Mr. Lipinsky was named "Whistleblower Attorney of the Year- California" by
6 *Corporate Int'l Magazine*. In 2017, Mr. Lipinsky served as President of the Consumer Attorneys of the
7 Inland Empire, and Immediate Past-President of the Western San Bernardino County Bar Association.
8 Mr. Lipinsky also serve on the Board of Governors of the Consumer Attorneys of California. Mr.
9 Lipinsky has been a member of the California Employment Lawyers Association and National
10 Employment Lawyers Association since 2000. He is also an inducted Member of the American Board
11 of Trial Advocates (ABOTA), Inland Empire Chapter. Mr. Lipinsky likewise has vast experience
12 handling, evaluating, and resolving PAGA claims.

13 I declare under penalty of perjury under the laws of the state of California that the foregoing is
14 true and correct. Executed on July 7, 2022, at Santa Ana, California.

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Lynn P. Whitlock
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I am a resident of the State of California, County of San Bernardino. I am over the age of eighteen years and not a party to the within action. My business address is 5811 Pine Avenue, Suite A, Chino Hills, California 91709.

On July 7, 2022, I served on the interested parties in this action the within document(s) entitled:

**NOTICE OF, AND MOTION FOR APPROVAL OF SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE ATTORNEY GENERAL’S ACT OF 2004; DECLARATION
OF PLAINTIFFS’ COUNSEL; [PROPOSED] ORDER**

☐ **BY FAX: (C.C.P. § 1013(a), (e); CRC 2008)** - by transmitting via electronic facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.; I also caused the fax machine to print such record(s) of the transmission.

☐ **BY MAIL: (C.C.P. § 1013(a))** - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Chino Hills, California addressed as set forth below. I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE** - I personally delivered such envelope to the offices of the addressee.

☐ **BY OVERNIGHT MAIL (C.C.P. § 1013(c))** - By FEDERAL EXPRESS, following ordinary business practices for collection and processing of correspondence with said overnight mail service, and said envelope(s) will be deposited with said overnight mail service on said date in the ordinary course of business.

☐ **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED** - By placing true copy(ies) thereof in sealed envelope(s) with Certified Mail, Return Receipt Requested, postage thereon fully prepaid and by causing such envelope(s) to be deposited in the mail at 5811 Pine Avenue, Suite A, Chino Hills, California 91709.

☒ **BY ELECTRONIC SERVICE (C.C.P. § 1010.6(a)(6))** - the parties listed below were served electronically with the document(s) listed above by e-mailed PDF files. The transmission was reported as complete and without error. My electronic notification address is 5811 Pine Avenue, Suite A, Chino Hills, California 91709. My e-mail address is msambrano@riziolawfirm.com.

1 Laurie M. Cortez, Esq.
2 Emilio Law Group APC
3 12832 Valley View Street, Suite 106
4 Garden Grove, CA 92845
5 (714) 379-6239 / Office
6 (714) 379-5444 / Fax
7 lauriecortez@emiliolaw.com;
8 chelseaboldrini@emiliolaw.com

**Attorney for Defendants, GOLDEN
UNIVERSE INVESTMENT INC. DBA
URBAN SEOUL and KESHEN CAI**

- 7 [X] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the
8 above is true and correct.
- 9 [] **FEDERAL:** I declare that I am employed in the office of a member of the Bar of this Court at
10 whose direction this service was made.

11 Executed on July 7, 2022, at Chino Hills, California.

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14 MARY ELLEN SAMBRANO