

COPY

Joseph R. Becerra (State Bar No. 210709)
BECERRA LAW FIRM
4014 Long Beach Boulevard, Suite 300
Long Beach, CA 90807
Telephone: (213) 542-8501
Facsimile: (213) 542-5556
Email: jbecerra@jrbecerrallaw.com

Torey Joseph Favarote (State Bar No.: 198521)
GLEASON & FAVAROTE, LLP
4014 Long Beach Boulevard, Suite 300
Long Beach, CA 90807
Telephone: (213) 452-0510
Facsimile: (213) 452-0514
Email: tfavarote@gleasonfavarote.com

Scott Warmuth (State Bar No.: 110128)
LAW OFFICES OF SCOTT WARMUTH, a Professional Corporation
801 East Valley Boulevard, Suite 206
San Gabriel, CA 91776
Tel: (626) 282-6868
Email: swarmuth@law888.com

Attorneys for Plaintiff Eusebio Estrada
Private Attorney General Action on behalf of
themselves and all other aggrieved employees

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 27 2022

Paola Iniguez
BY: PAOLA INIGUEZ, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

EUSEBIO ESTRADA, on behalf of himself
and all other Aggrieved Employees,

Plaintiff,

vs.

PALS, LLC, a California Limited Liability
Company; RODNEY MOJARRO, a
California Resident and DOES 1 to 10,
inclusive,

Defendants.

) Case No. CIVSB2115649

) **PLAINTIFF EUSEBIO ESTRADA'S**
) **NOTICE OF MOTION AND MOTION**
) **FOR APPROVAL OF PAGA**
) **SETTLEMENT (CAL. LAB. CODE**
) **§ 2699(L)(2)); MEMORANDUM IN**
) **SUPPORT OF MOTION**

) [Filed concurrently with Declaration of Joseph
) R. Becerra; Declaration of Torey Joseph
) Favarote; [Proposed] Order]

) Date: January 13, 2023
) Time: 9:00 a.m.
) Judge: Hon. David Cohn
) Dept.: S-26

) Action Filed: May 27, 2021
) Trial Date: None

1 **NOTICE OF MOTION**

2 To the Clerk of the Court, all parties and their attorneys of record, and the California Labor
3 and Workforce Development Agency (the "LWDA"):

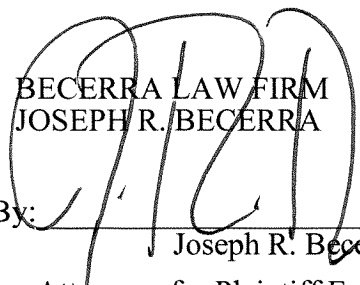
4 **PLEASE TAKE NOTICE** that on January 13, 2023, at 9:00 a.m., or as soon thereafter as
5 counsel may be heard, in Department S-26 of this Court, located at 247 W. Third Street, San
6 Bernardino, California 92415, plaintiff Eusebio Estrada ("Plaintiff") will and hereby does move,
7 pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Lab. Code
8 § 2699(l)(2), for approval of the PAGA settlement reached by the Parties.

9 This motion is made on the grounds that the Parties have reached a fair and reasonable
10 settlement of Plaintiff's PAGA claim, which will deliver substantial value to the California LWDA
11 and the alleged aggrieved individuals with respect to whom Plaintiff brought his claim, and the
12 settlement is deserving of approval by this Court. Pursuant to PAGA, Cal. Lab. Code § 2699(l)(2),
13 settlement of a PAGA claim requires notice to the LWDA of the settlement (which the Parties are
14 giving) as well as court approval.

15 The motion is supported by this notice and the following memorandum in support of the
16 motion and declarations of Torey Joseph Favarote and Joseph R. Becerra, as well as all exhibits
17 attached thereto; the proposed order granting the motion; the Court's record of this action; all
18 matters of which the Court may take notice; and any and all oral argument and/or evidence as may
19 be offered at the time of the hearing on this matter.

20 Dated: December 23, 2022

21
22
23
24
25
26
27
28

By:  BECERRA LAW FIRM
JOSEPH R. BECERRA

Joseph R. Becerra

Attorneys for Plaintiff Eusebio Estrada, on
behalf of himself and all others aggrieved
employees

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. BACKGROUND AND PROCEDURAL HISTORY.....	2
A. Motion Practice	3
B. Discovery and Investigation of Facts	3
C. Mediation.....	4
III. SETTLEMENT TERMS	4
A. Essential Terms of the Settlement	4
B. Funding of the Settlement	5
C. Scope of the Release.....	5
IV. THE COURT SHOULD APPROVE THE SETTLEMENT.....	6
A. Standards for Approval of a PAGA Settlement	6
B. The Settlement Is Reasonable and Effectuates PAGA’s Objectives.....	8
1. The Settlement Is Fair Adequate and Reasonable	8
2. The Scope of the Release Is Appropriately Limited	10
3. No Notice to the Settlement Group Members is Required.....	11
V. CONCLUSION	11

TABLE OF AUTHORITIES

Page(s)

Federal Cases

<i>Baumann v. Chase Inv. Servs. Corp.</i> , 747 F.3d 1117 (9th Cir. 2014).....	11
<i>Fleming v. Covidien, Inc.</i> , No. EDCV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011).....	10
<i>Hopson v. Hanesbrands, Inc.</i> , No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. April 3, 2009)	7
<i>Linney v. Cellular Alaska Partnership</i> , 151 F.3d 1234 (9th Cir. 1998).....	9
<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 WL 1340777 (N.D. Cal. 2010).....	7, 8
<i>Sakkab v. Luxottica Retail N. Am., Inc.</i> , 803 F.3d 425 (9th Cir. 2015).....	6

State Cases

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal. App. 4th 1157 (2008).....	6
<i>Arias v. Super. Ct.</i> , 46 Cal. 4th 969 (2009)	6, 7, 11
<i>Brown v. Ralphs Grocery Co.</i> , 197 Cal. App. 4th 489 (2011).....	7
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018).....	9
<i>Cash v. Winn</i> , 205 Cal. App. 4th 1285 (2012).....	8, 9
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal.App.4th 1794.....	7
<i>Iskanian v. CLS Transportation Los Angeles LLC</i> , 59 Cal. 4th 348 (2014)	6
<i>Mallick v. Sup. Ct.</i> , 89 Cal. App. 3d 434 (1979).....	7
<i>Neary v. Regents of Univ. of Cal.</i> , 3 Cal. 4th 273 (1992)	10
<i>People v. Pac. Land Research Co.</i> , 20 Cal. 3d 10 (1997).....	7
<i>Wesson v. Staples the Off. Superstore, LLC</i> , 68 Cal. App. 5th 746 (2021), reh'g denied.....	9
<i>Williams v. Super. Ct.</i> , 3 Cal. 5th 531 (2017)	7

State Statutes

Cal. Lab. Code § 2698	1
Cal. Lab. Code § 2699	6

Cal. Lab. Code § 2699(i) 4, 6
Cal. Lab. Code § 2699(e)(2)..... 9
Cal. Lab. Code § 2699(L)(2) 1, 6, 1

State Rules

California Rule of Court 3.769 7

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab.
4 Code § 2698 *et seq.*, plaintiff Eusebio Estrada (“Plaintiff”) seeks approval of the \$155,000.00
5 PAGA settlement reached in this action (the “Settlement”) with defendants PALS, LLC (“PALS”),
6 Rodney Mojarro (“Mojarro”), Harbor Development Disabilities Foundation, Inc., dba Harbor
7 Regional Center (“Harbor”), Eastern Los Angeles Regional Center for the Developmentally
8 Disabled, Inc. (“ELARC”), and Inland Regional Center (“Inland”) (collectively, “Defendants”).
9 The Settlement resolves Plaintiff’s claims for civil penalties under PAGA with respect to
10 approximately 99 aggrieved employees who worked as support staff and home attendants to
11 developmentally challenged adults in California between March 24, 2020 and November 1, 2022
12 (the “Settlement Group Members” or “Aggrieved Employees”). The relief provided for under the
13 Settlement is solely for settlement of the Aggrieved Employees’ claim for civil penalties under
14 PAGA.¹

15 The Settlement provides for \$155,000.00, less the cost of settlement administration (up to
16 \$5,000.00), the proposed enhancement payment to the named Plaintiff for bringing this matter on
17 behalf of the LWDA (\$5,000.00), Plaintiff’s Counsels’ proposed attorneys’ fees of 35%
18 (\$54,250.00) and litigation costs (up to \$12,000.00) for a total of \$78,750.00 to the LWDA and
19 Aggrieved Employees. Pursuant to PAGA, 75% of the remainder (\$59,062.50) will be distributed
20 to the LWDA, and 25% of the remainder (\$19,687.50) will be distributed to the Settlement Group
21 Members, who are defined as “all alleged current and former non-exempt employees of Defendants
22 in California at any time from March 24, 2020 to November 1, 2022.” If the Court approves the
23 Settlement and all amounts sought, the average Settlement Group Members’ settlement share for
24 solely PAGA penalties will be \$198.86 (\$19,687.50 ÷ 99 Settlement Group Members = \$198.86).
25 A true and correct copy of the Settlement Agreement is attached to this declaration as **Exhibit 1**.

26 ¹ Other than a PAGA claim derived from them, the Settlement does not resolve any individual
27 Labor Code wage-and-hour claims that could be brought by Settlement Group Members, with the
28 exception of Plaintiff, who has agreed to settle all of his claims, settle the cross-complaints in this
action, and sign a general release with Defendants PALS and Mojarro. (Becerra Decl. ¶¶ 4, 16-17.)

Total Settlement Amount:	\$155,000.00
Minus Court-approved attorneys' fees (35%):	\$54,250.00
Minus Court-approved attorneys' costs:	\$12,000.00
Minus Court-approved enhancement awards:	\$5,000.00
Minus Settlement administration cost:	\$5,000.00
Net Settlement Amount:	\$78,750.00
Minus LWDA's 75% Share:	\$59,062.50
Total Paid to Settlement Group Members:	\$19,687.50

(Declaration of Joseph R. Becerra ("Becerra Decl.") ¶ 2.)

The Settlement represents a fair compromise of Plaintiff's PAGA claim in view of the uncertainties, expense, time, and risks of continued litigation, as well as the hotly contested issues of law and fact involved in this matter. For these reasons, and as demonstrated below, the Settlement warrants the Court's approval. (Becerra Decl. ¶ 3.)

II. BACKGROUND AND PROCEDURAL HISTORY

Defendants provide home attendant services to developmentally disabled individuals in California. The regional centers like ELARC, Inland, and Harbor receive contracts to provide these services from the State of California and then engage direct service providers like PALS to provide the actual "boots on the ground" labor. Plaintiff and all of the Aggrieved Employees are then directly hired by PALS, while the regional centers ELARC, Inland, and Harbor still retain some management, pay and training rights over the Aggrieved Employees.

On February 25, 2021, Plaintiff sent a notice letter to the LWDA, and Defendants describing the Labor Code violations alleged in this action and Plaintiff's theories of liability. The gravamen of Plaintiff's action is that PALS and Mojarro failed to properly pay Plaintiff and the Aggrieved Employees because they do not meet the personal attendant exemption and that PALS and Mojarro both failed to pay reporting time pay and reimburse the use of the Aggrieved Employees' cellular telephones and personal vehicles. On May 27, 2021, Plaintiff filed his PAGA complaint alleging that PALS and Mojarro were joint employers and collectively failed to: 1) pay minimum wages, 2) pay overtime wages, 3) pay termination wages, 4) pay accrued paid time off at termination, 5) pay reporting time pay, 6) failed to reimburse all necessary business expenses, 7) failed to provide meal periods and rest breaks, and 8) failed to provide accurate itemized wage statements. On July 22, 2021, Plaintiff amended his complaint to add ELARC, Inland, and Harbor

1 as Doe defendants alleging that they were both statutory and common law joint employers
2 responsible for the Labor Code violations alleged in his complaint. (Becerra Decl. ¶¶ 6-13.)

3 In response to a cross-complaint filed by PALS against Plaintiff on October 15, 2021,
4 Plaintiff filed a compulsory cross-complaint to PALS' cross-complaint seeking recovery for his
5 individual, underlying Labor Code claims. On December 8, 2021, Plaintiff's cross-complaint to
6 PALS cross-complaint was deemed an amended complaint. (Becerra Decl. ¶¶ 10-13.)

7 **A. Motion Practice**

8 On September 27, 2021, Inland filed a demurrer which was joined by Harbor and ELARC.
9 Inlands' demurrer sought to determine whether ELARC, Inland, and Harbor could be held liable
10 for civil penalties as either statutory or common law joint employers. The Court denied Inland's
11 demurrer on December 8, 2021 and held that there was a question of fact which went beyond the
12 pleadings. (Becerra Decl. ¶¶ 6-13.)

13 On October 15, 2021, Mojarro filed a demurrer, PALS and Mojarro filed a motion to strike,
14 and PALS filed a cross-complaint against Plaintiff. PALS argued in its motion to strike that
15 Plaintiff's action was unmanageable because of the cross-complaint it had just filed. Mojarro
16 argued in his demurrer that an individual could not be held liable for PAGA penalties. Mojarro's
17 demurrer was denied on November 22, 2021 on the basis that an individual can be held liable for
18 PAGA penalties. PALS and Mojarro's motion to strike was also denied on November 22, 2021.
19 (Becerra Decl. ¶¶ 10-12.)

20 **B. Discovery and Investigation of Facts**

21 Plaintiff's Counsel have conducted significant investigation since the inception of this
22 action, as detailed in the Favarote and Becerra declarations. Their investigation included reviewing
23 all of Defendants' policies, procedures and practices, applicable during the relevant time period;
24 reviewing hundreds of pages of documents produced by Defendants in response to 124 document-
25 production requests; and reviewing Defendants' responses to 48 special interrogatories.
26 Defendants produced more than 892 documents, including wage statements and time records
27 produced for the purposes of mediation. Additionally, Defendants produced a 10% sample of all
28 Aggrieved Employees' payroll and time records. (Becerra Decl. ¶¶ 14-15.)

1 **C. Mediation**

2 After litigating Defendants' respective demurrers and motion to strike, answering both the
3 complaint and cross complaints, and engaging in significant written discovery, the Parties agreed to
4 participate in a mediation to determine if a settlement could be reached and considerable litigation
5 expenses avoided. The mediation took place on July 22, 2022, before Steve Pearl, a respected
6 wage-and-hour mediator. During mediation, the Parties debated the legal bases for their claims and
7 defenses, their respective data analyses, their respective positions regarding the extent to which the
8 Court would likely impose and reduce any PAGA penalties recovered, whether the personal
9 attended exemption would apply, and whether ELARC, Inland, and Harbor could be liable as joint
10 employers. After a full-day session, the Parties failed to reach any agreement. Over the following
11 months, the Parties continued to negotiate a settlement and on September 19, 2022, the Parties
12 came to an agreement on the Settlement. Over several more months the Parties worked out the
13 Settlement Agreement now before the Court.

14 **III. SETTLEMENT TERMS**

15 **A. Essential Terms of the Settlement**

16 Defendants will pay \$155,000.00 (the "Total Settlement Amount") in settlement of the
17 action on a representative basis for approximately 99 Settlement Group Members. (Settlement,
18 §§ IV(1-8).) The Total Settlement Amount will cover: (i) the payment to the LWDA for its share
19 of civil penalties pursuant to PAGA, Cal. Lab. Code § 2699(i); (ii) the Settlement Shares to
20 Settlement Group Members; (iii) Plaintiff's proposed enhancement award (requested to be
21 \$5,000.00 each); (iv) Plaintiff's Counsels' proposed reasonable fees (requested to be 35%, or
22 \$54,250.00) and litigation costs (\$12,000); and (v) the cost of settlement administration (estimated
23 to be \$5,000). (Settlement, §§ III(3)(a-c).) After deduction for Plaintiff's enhancement award,
24 Plaintiff's Counsels' attorneys' fees and expenses, and the settlement administration cost, the
25 resulting Net Settlement Amount will be paid 75% to the LWDA and 25% to the Settlement Group
26 Members, pursuant to Labor Code section 2699(i). (Settlement, § III(5).)

27 100% of the Settlement Shares will be reported using IRS Form 1099s, since all funds are
28 for the settlement of a claim for civil penalties that do not trigger payroll taxes or withholdings.

(Settlement, § IV(5).) Each Settlement Group Member's Settlement Share will be calculated based on the ratio of his or her pay periods to all Settlement Group Members' pay periods. (Settlement, § III(5).) PALS represents that there are approximately 99 Settlement Group Members and 3,024 pay periods covered by the Settlement. (Settlement, § IV(2).) Based on that number, if the Court approves the Settlement and awards the amounts sought for attorneys' fees and costs, Plaintiff's enhancement award, and settlement administration cost, the average Settlement Group Member settlement share will be \$198.86. (Becerra Decl. ¶ 2.)

B. Funding of the Settlement

Within 15 business days after the Court's order approving the Settlement becomes "Final," as that term is defined in the Settlement, PALS will provide the Settlement Administrator with a list that includes each Settlement Group Member's information including the total pay periods worked during the relevant time period of March 24, 2020 through November 1, 2022. (Settlement, § IV(3).) Within 30 days thereafter, Defendants will wire-transfer the first payment of \$77,500.00 to the Settlement Administrator and within eight months of the first payment Defendants shall make the second final payment of \$77,500.00 (Settlement, § IV(4).) Within 14 days of receiving the entire Settlement Amount, and after receiving approval from the Parties' counsel, the Settlement Administrator will mail the Settlement Shares to the Settlement Group Members via first-class U.S. mail, accompanied by the proposed one-page cover letter, in both English and Spanish, attached as Exhibit A to the Settlement, and will distribute the Court-approved amounts for the LWDA Payment, the Settlement Administrator's cost, Plaintiff's enhancement award, and Plaintiff's Counsels' attorneys' fees and costs. (Settlement, § IV(5).)

C. Scope of the Release

The Settlement Group Members are not waiving any claims except the PAGA claim that is the subject of this action. The Settlement Group Members, aside from Plaintiff, are not waiving any of their underlying Labor Code claims.

///

///

///

1 **IV. THE COURT SHOULD APPROVE THE SETTLEMENT**

2 **A. Standards for Approval of a PAGA Settlement**

3 A PAGA claim is a form of a *qui tam* action. *See Iskanian v. CLS Transportation Los*
4 *Angeles LLC*, 59 Cal. 4th 348, 382 (2014). When enacting PAGA in 2003, the California
5 Legislature declared that adequate financing of enforcement is necessary to achieve maximum
6 compliance with state labor laws, that staffing levels for labor law enforcement agencies in
7 California had declined and were unlikely to keep pace with the future growth of the labor market,
8 and that it was therefore in the public interest to allow aggrieved employees, acting as private
9 attorneys general, to recover civil penalties for Labor Code violations, with the understanding that
10 the State was to retain primacy over private enforcement efforts. *See Arias v. Super. Ct.*, 46 Cal.
11 4th 969, 986-987 (2009). A plaintiff suing under PAGA does so as the proxy or agent of the State
12 and represents the same legal right and interest as the State—namely, recovery of civil penalties
13 that otherwise would have been assessed and collected by the LWDA. *See id.*; Cal. Lab. Code,
14 § 2699; *Iskanian*, 59 Cal.4th at 388 (“[A] PAGA litigant’s status as ‘the proxy or agent’ of the state
15 is not merely semantic; it reflects a PAGA litigant’s substantive role in enforcing our labor laws on
16 behalf of state law enforcement agencies.”) (internal citations omitted).

17 Fundamentally, “a PAGA action is a statutory action in which the penalties available are
18 measured by the number of Labor Code violations committed by the employer.” *Sakkab v.*
19 *Luxottica Retail N. Am., Inc.*, 803 F.3d 425, 435 (9th Cir. 2015). Under the general provisions of
20 the PAGA scheme, 75% of the civil penalties recovered goes to the State, while the remaining 25%
21 goes to the alleged aggrieved employees. Cal. Lab. Code § 2699(i). Although PAGA penalties are
22 mandatory and must be awarded by a court if a violation is found, the court “may award a lesser
23 amount than the maximum civil penalty amount specified by this part if, based on the facts and
24 circumstances of the particular case, to do otherwise would result in an award that is unjust,
25 arbitrary and oppressive, or confiscatory.” *Id.*, 2699(e)(2); *see also Amaral v. Cintas Corp. No. 2*,
26 163 Cal. App. 4th 1157, 1213 (2008).

27 Court approval of a PAGA settlement is governed by Labor Code section 2699(l)(2), which
28 provides, in relevant part: “The superior court shall review and approve any settlement of any civil

1 action filed pursuant to this part.” Unlike parties to a class action settlement, parties to a PAGA
2 settlement are not obligated to “satisfy class action requirements,” including the standards for class
3 action settlement approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that
4 “plaintiff need not satisfy class action requirements” to assert PAGA claim). Also, unlike a court
5 reviewing a class settlement, a court reviewing a PAGA settlement should not consider whether the
6 settlement provides “compensation” to private parties, since the action is not one for damages. *See*
7 *id.* at 986 (holding that action to recover civil penalties “is fundamentally a law enforcement action
8 designed to protect the public and *not* to benefit private parties”) (citing *People v. Pac. Land*
9 *Research Co.*, 20 Cal. 3d 10, 17 (1997)) (emphasis supplied); *see also Brown v. Ralphs Grocery*
10 *Co.*, 197 Cal. App. 4th 489, 499 (2011) (explaining that restitution is not the goal of PAGA;
11 instead, it is law enforcement action designed to protect public). An additional aspect of a PAGA
12 settlement that makes it different from a class settlement is that allegedly aggrieved employees
13 under PAGA are not parties to the action and are not clients of the plaintiff’s counsel; therefore,
14 “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to
15 opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
16 1340777 at *5 (N.D. Cal. 2010); *see Williams v. Super. Ct.*, 3 Cal. 5th 531, 546-547 (2017)
17 (explaining civil penalties recovered on State’s behalf are intended to “remediate present violations
18 and deter future ones,” *not* to redress employees’ injuries). Thus, the approval process of a PAGA
19 settlement is distinct from that in a class action settlement; there is no need for the Court to employ
20 the “two-step approval process” required under California Rule of Court 3.769.

21 In deciding whether to approve a PAGA settlement, a trial court has broad powers to
22 determine if the settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.*, 89 Cal.
23 App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a
24 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
25 1794, 1800, *as modified* (Sept. 30, 1996) (internal quotations omitted). Ultimately, where the
26 settlement is negotiated in good faith and “there is no indication that [the] amount was the result of
27 self-interest at the expense of other” aggrieved employees, the settlement is generally considered
28 reasonable. *Hopson v. Hanesbrands, Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D.

1 Cal. April 3, 2009).

2 **B. The Settlement Is Reasonable and Effectuates PAGA's Objectives**

3 **1. The Settlement Is Fair Adequate and Reasonable**

4 The Settlement has achieved the Legislature's goals of deterring alleged future violations
5 and recovering penalties for the State and has done so without burdening the State's enforcement
6 agencies. When reviewing a PAGA settlement, the Court must take into account the fact that
7 settlement of a PAGA claim—like any settlement—involves a “compromise” that stops short of
8 rendering findings of liability and damages. *Ochoa-Hernandez*, 2010 WL 1340777 at *4. There
9 are considerable risks involved in litigation, even before considering the length of time it would
10 take to bring the case to trial. There legal and factual questions regarding whether the personal
11 attendant exemption would apply, and the degree of the regional center's liability are hotly
12 disputed and while Plaintiff believes that his theory of liability is meritorious there is room for
13 reasonable disagreement on these issues. Plaintiff believes that the Settlement represents a more
14 than reasonable compromise and recovery for the State.

15 Here, the Settlement was reached after sufficient investigation and formal discovery,
16 including 48 interrogatories, 124 requests for production, and month of negotiation. It is
17 understood that there are approximately 99 aggrieved employees who worked approximately 3,024
18 pay periods during the PAGA liability period of March 24, 2020 and November 1, 2022. The
19 sample data provided for mediation makes it clear that: 1) the violation rate in this case is not
20 100%, 2) that some employees regularly worked less than 5 hours in a day, and 3) that many
21 employees did not work more than 8 hours in a day. Assuming violation rates present in the
22 sample records provided for mediation, Plaintiff's Counsel believes that the maximum liability in
23 this matter is \$1,451,900.00,² assuming a complete victory on all issues and with no reduction in
24 PAGA penalties. However, Defendants have asserted that the personal attendant exemption in
25 Wage Order No. 15 applies to the aggrieved employees based on a letter by the DLSE (DLSE
26 Opinion Letter 2005.11.23) and *Cash v. Winn*, 205 Cal. App. 4th 1285, 1300 (2012), and that the

27 ²A detailed breakdown of this calculation, as well as a *Kullar* analysis of the claims, is included in
28 the Becerra Declaration. (Becerra Decl. ¶¶ 17-24.)

1 adjudication of whether this exemption applies to each Aggrieved Employee would be
2 unmanageable under *Wesson v. Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746, 773
3 (2021), *reh'g denied* (Sept. 27, 2021), *review denied* (Dec. 22, 2021).

4 The personal attendant exemption in Wage Order No. 15 exempts personal attendants from
5 daily overtime, reporting time pay, meal periods and rest breaks. Wage Order No. 15 §1(B).
6 Furthermore, the DLSE's opinion letter, while not having the force of law, provides a somewhat
7 expansive number of activities which qualify for the personal attendant exemption in Wage Order
8 No. 15. If the Court were to agree that the Aggrieved Employees meet the exemption or that the
9 adjudication of it would be unmanageable it would eliminate Plaintiff's overtime, reporting time
10 pay/minimum wage, meal periods, and rest break claims, and their derivative claims, leaving only
11 Plaintiff's failure to reimburse claim remaining, which may also be subject to Defendant's
12 manageability argument. These well founded and significant risks, in addition to the normal risks
13 present in all litigation, were seminal in Plaintiff's Counsels' decision to settle the case.

14 Defendants may also contend that Plaintiff's PAGA penalties calculation is erroneous and
15 that only the initial-penalty rate, not the subsequent-penalty rate, should apply; that the correct rate
16 for the alleged overtime, wage-statement and meal-period violations is \$50 per pay period; that
17 penalties may not be stacked; and that pursuant to California Labor Code section 2699(e)(2), even
18 if liability were found, penalties properly would be substantially reduced. *Carrington v. Starbucks*
19 *Corp.*, 30 Cal.App.5th 504, 520 (2018) (Approving a deduction of PAGA penalties to \$5.00 per
20 pay period.) Additionally, Defendants would be correct in asserting that there is little caselaw on
21 the personal attendant exemption, which heightens the risk of continued litigation. *Cash v. Winn*,
22 205 Cal. App. 4th 1285, 1300 (2012).

23 In light of the foregoing considerations, the Settlement is fair and reasonable and avoids the
24 risks of proceeding through trial. "The fact that a proposed settlement may only amount to a
25 fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
26 grossly inadequate and should be disapproved." *Linney v. Cellular Alaska Partnership*, 151 F.3d
27 1234, 1242 (9th Cir. 1998) (internal quotations omitted); *see also Carrington v. Starbucks Corp.*,
28 30 Cal. App. 5th 504, 528 (2018) (awarding only 0.21% of maximum recoverable PAGA

1 penalties); *Fleming v. Covidien, Inc.*, No. EDCV10-01487 RGK (OPx), 2011 WL 7563047, *4
2 (C.D. Cal. Aug. 12, 2011) (awarding only 18% of maximum recoverable PAGA penalties).
3 Plaintiff acknowledges that there is substantial uncertainty and risk should he proceed through trial,
4 and that even in the event that he prevailed, the Court still maintains discretion to reduce the
5 penalties awarded. The Settlement also accomplishes PAGA's objectives, in that it deters future
6 alleged violations. Therefore, approval is appropriate since the Settlement will provide tangible,
7 monetary relief to the State and Settlement Group Members.

8 The Settlement is also consistent with the State's public policy favoring the resolution of
9 disputes. California law favors the settlement of disputes because settlement is efficient; it reduces
10 costs, saves resources, and minimizes court congestion. The Parties are best positioned to
11 understand their interests and resolve a dispute in a mutually beneficial manner without court
12 intervention into the settlement. *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-278 (1992).

13 The Settlement was reached following arm's length bargaining with experienced wage-and-
14 hour attorneys. The Settlement was reached at the end of a process that was neither fraudulent nor
15 collusive. To the contrary, counsel for the Parties advanced their respective positions throughout
16 the Settlement negotiations.

17 **2. The Scope of the Release Is Appropriately Limited**

18 As it relates to the Settlement Group Members, the Settlement only resolves the PAGA
19 representative claim for the Labor Code violations alleged in the First Amended Complaint,
20 including Plaintiff's allegation that Defendants failed to: 1) pay minimum wages, 2) pay overtime
21 wages, 3) pay termination wages, 4) pay accrued paid time off at termination, 5) pay reporting time
22 pay, 6) failed to reimburse all necessary business expenses, 7) failed to provide meal periods and
23 rest breaks, and 8) failed to provide accurate itemized wage statements. The Settlement Group
24 Members are not releasing any non-PAGA claims or any individual claims that may be alleged
25 under the Labor Code. Only the Plaintiff is releasing his non-PAGA related claims pursuant to a
26 general release of all claims, as part of an agreement to resolve the cross-complaints filed in this
27 action. (Settlement, §§ III(6-7).)

28 ///

3. **No Notice to the Settlement Group Members is Required**

The Court need not order the Parties to disseminate notice of the Settlement to other allegedly aggrieved employees. *Arias v. Superior Court*, 46 Cal.4th 969, 977 (2009); *see also Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) (noting that PAGA has no notice requirement for unnamed allegedly aggrieved employees, nor may such employees opt out of PAGA action). Accordingly, no notice of this Settlement is required. The Parties have, however, agreed upon a letter (Exhibit A to the Settlement) that will be included in both English and Spanish with the Settlement Group Members' Settlement Shares.

V. CONCLUSION

For all of the foregoing reasons, the Plaintiff respectfully requests that this Court grant his Motion for Approval of PAGA Settlement.

Dated: December 23, 2022

BECERRA LAW FIRM
JOSEPH R. BECERRA

By: _____

Joseph R. Becerra

Attorneys for Plaintiff Eusebio Estrada, on
behalf of himself and all others aggrieved
employees

Dated: December 23, 2022

GLEASON & FAVAROTE LLP
TOREY JOSEPH FAVAROTE

By: _____

Torey Joseph Favarote

Attorneys for Plaintiff Eusebio Estrada, on
behalf of himself and all others aggrieved
employees

PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On December 23, 2022, I served a copy(ies) of the following document(s):

**PLAINTIFF EUSEBIO ESTRADA'S NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT (CAL. LAB. CODE § 2699(L)(2));
MEMORANDUM IN SUPPORT OF MOTION**

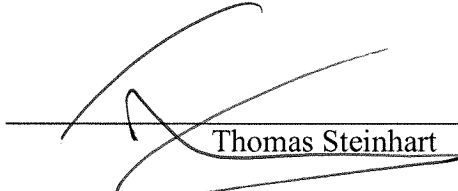
on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Addressee	Party(ies) Served	Method of Service
Kyle C. Worrell Jonathan P. Schmidt JACKSON LEWIS P.C. 200 Spectrum Center Dr. Suite 500 Irvine, CA 92618 Tel: (949) 885-1360 Kyle.Worrell@jacksonlewis.com Jonathan.Schmidt@jacksonlewis.com	Attorneys for Defendants PALS, LLC and RODNEY MICHAEL MOJARRO	Email
Richard R. Clouse Katharine L. Spaniac Erin A. Halas CLOUSESPANIAC ATTORNEYS 8038 Haven Avenue, Suite E Rancho Cucamonga, CA 91730 Tel: (909) 941-3388 Fax: (909) 941-3389 rrclouse@csattys.com klspaniac@csattys.com eahalas@csattys.com service@csattys.com	Attorneys for Defendant EASTERN LOS ANGELES REGIONAL CENTER FOR THE DEVELOPMENTALLY DISABLED, INC.	Email
Kathleen Mary Kushi Carter MESSNER REEVES LLP 650 Town Center Drive, Suite 700 Costa Mesa, California 92626 Telephone: (949) 612-9128 Facsimile: (949) 438-2304 E-mail: kcarter@messner.com	Attorneys for Defendant INLAND COUNTIES REGIONAL CENTER, INC.	Email
Charles C. Cavanagh MESSNER REEVES LLP 1430 Wynkoop Street, Suite 300 Denver, Colorado 80202 Telephone: (303) 623-1800 Facsimile: (303) 623-0552 E-mail: ccavanagh@messner.com	Attorneys for Defendant INLAND COUNTIES REGIONAL CENTER, INC.	Email

Gregory K. Sabo, Esq. Chelsea Zwart, Esq. CHAPMAN GLUCKSMAN DEAN & ROEB A PROFESSIONAL CORPORATION 11900 W. Olympic Blvd., Ste. 800 Los Angeles, CA 90064-0704 Tel: (310) 207-7722 Fax: (310) 207-6550 <u>gsabo@cgdrlaw.com</u> <u>czwart@cgdrlaw.com</u>	Attorneys for Defendant HARBOR DEVELOPMENTAL DISABILITIES FOUNDATION, INC. dba HARBOR REGIONAL CENTER	Email
---	---	-------

- ☐ [BY MAIL] I placed the sealed envelope(s) for collection and mailing by following the ordinary business practice of Gleason & Favarote, LLP, Long Beach, California. I am readily familiar with Gleason & Favarote, LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.
- ☐ [BY OVERNIGHT COURIER] I caused the sealed envelope(s) to be delivered by a commercial courier service for overnight delivery to the offices of the addressee(s).
- ☐ [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by Ace Attorney Service, Inc. this date.
- ☐ [BY FACSIMILE TRANSMISSION] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.
- ☒ [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic transmission to the e-mail address indicated for the party(ies) listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on December 23, 2022, at Long Beach, California.


Thomas Steinhart