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13 SUPERIOR COURT OF CALIFORNIA
14 IN AND FOR THE COUNTY OF CONTRA COSTA COUNTY
15 UNLIMITED JURISDICTION
16

17 OSCAR CORONA, FAVIAN G GOMEZ,
18 JOSE B GONZALEZ, and ALBERTO LOYA

19 Plaintiffs,

20 vs.

22 ROBERT ROSS HAZARD dba HAZARD
23 CONCRETE CONSTRUCTION; HAZARD
24 CONCRETE, INC.; SAUSAL
25 CORPORATION; JAMES E. WARD; LESLIE
26 L. WARD; JOSHUA L. WARD; KEVIN
27 HALLAS AND DOES 1 THROUGH 50

28 Defendants.

CASE NO: MSC21-00637

**DECLARATION OF ALEXANDER S.
RUSNAK IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES AND COSTS.**

Date: TBD
Time: TBD
Dept. Dept. 39

Complaint Filed: April 2, 2021
SAC Filed: November 4, 2021

1
2 I, Alexander S. Rusnak, declare as follows:

3 1. I am one of the attorneys of record in this case. I have personal knowledge of the
4 facts set forth in this declaration, and, if called as a witness, I could and would testify thereto.

5 2. I am submitting this declaration to provide the factual basis for Plaintiffs' Motion
6 Approval of PAGA Settlement to approve the settlement reached to claims asserted under the
7 Private Attorneys General Act, Cal. *Labor Code* § 2698 *et. seq.* ("PAGA").

8 3. I have checked the Department of Industrial Relations PAGA search website, and
9 as of the date of this declaration, I have not found any other PAGA submissions or claims, nor am
10 I aware of any other PAGA claims against the settling Defendants, SAUSAL CORPORATION or
11 individual defendants affiliated with SAUSAL CORPORATION.

12 4. I am providing this declaration on three issues: (1) the investigation into this case
13 and my opinion as to the value of this case; (2) my experience in wage and hour employment law;
14 and (3) my view on the settlement including the settlement amount and the PAGA apportionment.

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16 **Procedural History and Valuation**

17 5. On July 27, 2020, the Court granted Plaintiffs leave to file a Second Amended
18 Complaint, which was filed on August 3, 2020, to incorporate the amendments in the April 2,
19 2020, notice to the LWDA.

20 6. The Parties engaged in both formal and informal discovery during litigation. As
21 for formal discovery, Plaintiffs propounded written discovery on Defendants. Additionally,
22 Defendants deposed Plaintiff Oscar Corona. Plaintiffs noticed the depositions of Defendants
23 Sausal Corporation and Kevin Hallas.

24 7. Plaintiffs' counsel reviewed over 9,000 pages of documentation consisting of
25 communications, contracts, and billing between Defendants Sausal Corporation, James E. Ward,
26 Leslie L. Ward, Joshua L. Ward, and Kevin Hallas (collectively "SETTLING DEFENDANTS")
27 and other non-parties for the work performed, daily sign-in sheets maintained at the construction
28 site and records maintained by putative class members.

8. On September 19, 2023, the parties attended a mediation session with Mark LeHocky, Esq, of ADR services an experienced litigator and mediator. Mediator LeHocky worked with the parties to propose a global settlement which was rejected by Plaintiffs. However, Plaintiffs' counsel and counsel for the Settling Defendants used that proposal to reach the settlement by carving out Defendants Robert Ross Hazard and Hazard Concrete, Inc. (collectively "HAZARD").

9. For Plaintiffs' individual claims, based upon records produced during discovery and through independent investigation, we valued Plaintiffs' individual claims as follow:

<u>Claim</u>	<u>Oscar Corona</u>	<u>Jose Gonzalez</u>	<u>Favian Gomez</u>	<u>Alberto Loya</u>
Off Clock Wages	\$73,721.22	\$34,094.03	\$4,760.15	\$4,719.46
Misclassification Wages	\$13,356.32	\$11,209.12	\$4,631.28	\$4,631.28
Missing Hours Not Paid	\$2,441.10	\$1,627.40	\$1,981.56	\$2,211.33
Liquidated Damages 1194.2	\$56,914.92	\$26,572.86	\$3,674.97	\$3,643.56
Meal Periods	\$29,562.78	\$27,604.98	\$7,635.42	\$7,570.16
Rest Breaks	\$29,562.78	\$27,604.98	\$7,635.42	\$7,570.16
Sausal 203 Penalty	\$15,076.80	\$15,076.80	\$15,076.80	\$15,076.80
Hazard 203 Penalty	\$15,076.80	\$15,076.80	\$15,076.80	\$15,076.80
Hazard 203 Penalty (2nd Term)	\$15,076.80	0	0	0
LC 226 Penalty	\$4,000	\$4,000	\$4,000	\$4,000
Labor Code 98.6	\$20,000	\$10,000	\$10,000	\$10,000
FEHA Damages	\$75,408.00	\$20,000.00	\$20,000.00	\$20,000.00
LC 2802 Reimbursement	\$14,543.04	0 0	0	
Interest	\$20,810.19	\$14,299.67	\$3,730.14	\$3,738.33
TOTAL	\$385,550.75	\$192,866.97	\$94,472.40	\$94,499.55

10. An issue unique to the aggrieved employees who were previously HAZARD employees, but were later directly hired by SETTLING DEFENDANTS is that these aggrieved workers were paid the prevailing wage of cement masons for all work performed on public works, including such as work under the jurisdiction of an iron worker (for structure rebar bending and tying in masonry work) and of a carpenter (building forms for the cement masonry work), which pay a higher prevailing wage than that of a cement mason. The other of SETTLING

1 DEFENDANTS other employees, those not directly hired from HAZARD, were not involved in
2 such work and appeared to perform work within their own jurisdiction.

3 11. As for valuation of Plaintiffs' PAGA claims, based upon a weekly pay period
4 payment scheme, I calculated that there were 3,830 weekly pay periods subject to civil penalties
5 for the 80 employees of SETTLING DEFENDANTS. All penalties were calculated under the
6 "initial penalty" condition.

7 a. *Labor Code* § 226, failure to provide accurate wage statements each pay
8 period pursuant to *Labor Code* § 226, in the amount of \$100 per pay period. No
9 previous citations by the LWDA or a court have been identified through written
10 discovery.

11 b. *Labor Code* § 1174, failure to keep payroll records showing the hours
12 worked daily by and wages paid to employees, in the amount of \$500 per
13 employee.

14 c. *Labor Code* § 1198, violating the maximum hours of work and the
15 standard conditions fixed by the commission, in the amount of in the amount of
16 \$100 per employee per pay period for the initial violation. *Labor Code* §
17 2699(f)(2) provides for a \$100 civil penalty for each employee per pay period for
18 an initial violation and \$200 per employee per pay period for each subsequent
19 violation when a provision of the *Labor Code* does not provide for a specific civil
20 penalty.
21

22 d. *Labor Code* § 226.7, for failing to provide an employee a meal or rest or
23 recover period in accordance with state law, at \$100 per pay period for initial
24 violations. and \$200 per pay period for subsequent violations. *Labor Code* §
25 2699(f)(2) provides for a \$100 civil penalty for each employee per pay period for
26 an initial violation and \$200 per employee per pay period for each subsequent
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violation when a provision of the *Labor Code* does not provide for a specific civil penalty.

e. *Labor Code* § 204, failure to pay all wages due at least twice each calendar month, at \$100 per pay period for initial violations. *Labor Code* § 210(a)(1) and (2) provides for a \$100 civil penalty for each employee per pay period for an initial violation and \$200 plus 25% of unlawfully withheld wages per employee per pay period for each subsequent or willfully.

f. *Labor Code* §558, violation of a section of *Labor Code* regulating hours and days of work, at \$50 per pay period for initial violation. *Labor Code* § 558(a)(1) and (2) provide for a civil penalty of \$50 per pay period for initial violation.

g. *Labor Code* § 256, for failing to pay all wages due upon termination, a civil penalty no exceeding 30 days' pay. *Labor Code* §256 "impose a civil penalty in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203". A daily rate \$171.00 per day (\$18.00 per hour x 9 hours per day (9th hour a 1.5 OT). Thirty days at \$171.00 per day yields a civil penalty of \$5,130 per worker.

h. *Labor Code* § 2810.5 for failing to provide an employee upon hiring a compliant written notice containing their rates of pay, paydays, names of employer, employer's workman's compensation insurance carrier, right to sick leave, etc. *Labor Code* § 2699(f)(2) provides for a \$100 civil penalty for each employee per pay period for an initial violation and \$200 per employee per pay period for each subsequent violation when a provision of the *Labor Code* does not provide for a specific civil penalty.

1 i. *Labor Code* § 2802, for failing to Indemnification for necessary
2 expenditures and losses incurred in direct consequence of discharge of duties. This
3 claim is limited to Plaintiff Oscar Corona for expenses he incurred for material and
4 tools and was not reimbursed. *Labor Code* § 2699(f)(2) provides for a \$100 civil
5 penalty for each employee per pay period for an initial violation and \$200 per
6 employee per pay period for each subsequent violation when a provision of the
7 *Labor Code* does not provide for a specific civil penalty. This penalty was applied
8 for 9 pay periods that Oscar Corona worked for SETTLING DEFENDANTS.

9 j. *Labor Code* § 1774 for paying less than the specified prevailing rates of
10 wages to all workmen employed in the execution of the contract for public works.
11 *Labor Code* § 2699(f)(2) provides for a \$100 civil penalty for each employee per
12 pay period for an initial violation and \$200 per employee per pay period for each
13 subsequent violation when a provision of the *Labor Code* does not provide for a
14 specific civil penalty.

15 k. *Labor Code* § 512 failure to provide compliant meal periods. *Labor Code* §
16 2699(f)(2) provides for a \$100 civil penalty for each employee per pay period for
17 an initial violation and \$200 per employee per pay period for each subsequent
18 violation when a provision of the *Labor Code* does not provide for a specific civil
19 penalty.

20 l. *Labor Code* §510 failure to pay overtime premiums for work in excess of 8
21 hours in a workday or 40 hours in a work week. *Labor Code* § 2699(f)(2) provides
22 for a \$100 civil penalty for each employee per pay period for an initial violation
23 and \$200 per employee per pay period for each subsequent violation when a
24 provision of the *Labor Code* does not provide for a specific civil penalty.
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Labor Code §	Sausal Violations	Sausal Total
204	3,830 pay periods x \$200	\$766,000.00
226	3,830 pay periods x \$100	\$383,000.00
226.7	3,830 pay periods x \$100	\$383,000.00
256	26 employees x \$13,497.60 per employee	\$350,937.60
510	3,830 pay periods x \$100	\$383,000.00
512	3,830 pay periods x \$100	\$383,000.00
558	3,830 pay periods x \$50	\$191,500.00
1174	80 employees x \$500	\$40,000.00
1198	3,830 pay periods x \$100	\$383,000.00
1774	3,830 pay periods x \$100	\$383,000.00
2802	9 pay periods x \$100	\$900.00
2810.5	3,830 pay periods x \$100	\$383,000.00
Total		\$4,030,337.60

Counsel Experience

12. I have been licensed to practice law in California since 2014. My practice focuses exclusively on consumer rights and representing employees in wage and hour as well as discrimination and retaliation claims.

13. I attended law school at Santa Clara University School of Law and graduated in 2014. Prior to attending law school, I received a Bachelor of Science in Biochemistry from UC Davis and a Master's in Science in Chemistry from UC San Diego. Prior to law school, I worked as a research scientist as in both academic and private institutions.

14. After graduating from law school and being admitted to the California Bar in 2014, I worked as a research fellow at the Katherine and George Alexander Community Law Center, which is affiliated with Santa Clara University School of law and as a sole practitioner. In 2017, my practice became a two-attorney law partnership. My partner and co-counsel Jennifer L. Rusnak graduated from Thomas Jefferson School of Law in 2006 and was admitted to the California Bar in 2006.

1 15. In 2014, I opened my own practice in San Jose as a sole practitioner focusing on
2 consumer and employee rights. Later, the practice became a two-person partnership with Jennifer
3 Rusnak.

4 16. I have been in practice for nearly eight years, focused exclusively on consumer
5 and employee rights. I am admitted and practice in both California and Oregon. I maintain an
6 office in Oregon City, OR.

7 17. I have litigated numerous PAGA cases which settled an in which I have secured
8 penalties to the State of California after a Fairness Hearing. Amongst them, On March 29, 2023,
9 in the matter of *Vallarta, et al. v. Consolidated Cable California, Inc. et al*, Santa Clara County
10 Court, Case No. 19CV34820, before the honorable Theodore Zayner, the Court approved a
11 \$1,272,00.00 PAGA Settlement (with a confidential individual settlement for two aggrieved
12 workers), for 179 aggrieved employees amongst two companies. In the matter of *Gruhlke v.*
13 *Atilekt Inc. et al*, Santa Clara County Court, Case No. 19CV341870 before Hon. Socrates P.
14 Manoukian, which approved a PAGA (four-worker) and individual settlement of a single
15 employee for \$215,027.34 with \$124,859.30 allocated for civil penalties. Attorneys' fees and
16 costs were awarded by motion and not taken from the above total. In addition, the matter of
17 *Maldonado et al v. Excel Hotel Services, Inc. et al*, Northern District of California, San Francisco
18 Division, Case No. 20-cv-07512-LB, an FLSA with an accompanying PAGA claim was settled
19 for \$190,000 with \$46,673.00 allocated to PAGA penalties (with 10 disclosed aggrieved workers
20 with up to 27 aggrieved workers based on employers' failure to maintain any records of a
21 predominantly migrant construction workforce). As for class actions, I was approved as class
22 counsel in the matter of *Berumen et al. v. Allied Construction Management, Inc. et al.* Santa Clara
23 County Court, Case No. 19CV354617, a PAGA and Class Action regarding *Labor Code*
24 violations for a Class of 16 migrant construction workers who performed construction work on
25 multiple hotels. This Court issued a final approval of a \$400,000 Class Action and PAGA
26 settlement.

View of Settlement

18. In my opinion, the settlement reached is fair both as to the individual confidential agreement with Plaintiffs and the PAGA settlement.

19. Plaintiffs had strong individual claims both as to wage and penalty claims and claims under the FEHA.

20. The PAGA settlement of \$139,213.92 is by no way a token amount. Again, we valued the PAGA claims as to liability as to each pay period, but we used 12 different penalty provisions to “stack” penalties to reach the overall PAGA valuation.

Fees and Costs

21. My billing rate for legal services, both contingent and non-contingent, at \$535 per hour. Based upon my knowledge of fees charged for services in the California Bay area from other attorneys with similar experience, this rate is within the usual rates charged for legal services for attorneys with similar years of experience and for civil litigation.

22. In this matter, I billed at least 267.8 hours for legal services. I record the hours spent performed for legal services contemporaneously using an electronic time keeping application, Clio. Some communications with Co-counsel, Defendants’ counsel, and my clients were not recorded due to my being out of the office at the time of communication.

23. The time spent can be grouped as follows:

- a. Initial Investigation and Pleadings: intake and drafting of Complaint and letter to the LWDA- 27.6 hours;
- b. Communications with Co-Counsel: communications via both email and telephonic/videoconference - 34.4 hours;
- c. Communications with Defendants’ Counsel: communications via both email and telephonic/videoconference - 68.2 hours;
- d. Attorney-Client Communication: - 41.2 hours;

- 1 e. Discovery, Research and Investigation: Propounding and responding to
2 written discovery; reviewing documents produced and preparing
3 documents for production; Preparing for and defending Plaintiffs'
4 deposition over two days; preparing audits and damage models for
5 mediation -70.1 hours;
6 f. Motions and Mediation: Preparing motion for PAGA approval and
7 supporting documents; preparation of mediation brief and attending
8 mediation-26.3 hours.
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11 I declare under penalty of perjury under the laws of California that the foregoing is true
12 and correct. Executed this March 7, 2025, in Oregon City, Oregon.
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16 ALEXANDER S. RUSNAK
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