

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JAMES HAWKINS APLC, James R. Hawkins (#192925); Gregory Mauro (#222239); Michael Calvo (#314986); Lauren Falk (#316893); Ava Issary (#342252) 9880 Research Drive, Suite 200 Irvine, CA 92618 TELEPHONE NO.: 949-387-7200 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Arnulfo Esquivel, Jr.		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, 90011 BRANCH NAME: Stanley Mosk Courthouse			
PLAINTIFF/PETITIONER: Arnulfo Esquivel, Jr. DEFENDANT/RESPONDENT: Clean Energy			
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): ☒ UNLIMITED CASE ☐ LIMITED CASE (Amount demanded exceeded \$25,000) (Amount demanded was \$25,000 or less)		CASE NUMBER: 22STCV02455	

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: August 8, 2024
2. A copy of the judgment, decree, or order is attached to this notice.

Date: 8/8/2024

Gregory Mauro

(TYPE OR PRINT NAME OF	☒	ATTORNEY	☐	PARTY WITHOUT ATTORNEY)
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(SIGNATURE)

PLAINTIFF/PETITIONER: Arnulfo Esquivel, Jr.
 DEFENDANT/RESPONDENT: Clean Energy

CASE NUMBER:
 22STCV02455

**PROOF OF SERVICE BY FIRST-CLASS MAIL
 NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):

- a. ☐ deposited the sealed envelope with the United States Postal Service.
 b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on (*date*):
 b. from (*city and state*):

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:

City:

State and zip code:

c. Name of person served:

Street address:

City:

State and zip code:

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached _____.

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

Date: _____

 (TYPE OR PRINT NAME OF DECLARANT)

_____
 (SIGNATURE OF DECLARANT)

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On August 8, 2024, I served on the interested parties in this action the following document(s) entitled:

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Executed on August 8, 2024, at Irvine, California

Alma Chavarin
Alma Chavarin

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on behalf of the general public as private attorney general

***Additional Counsel List On Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

ARNULFO ESQUIVEL JR., and on behalf
of all others similarly situated,

Plaintiffs,

v.

CLEAN ENERGY, a California
Corporation, and DOES 1-10, inclusive,

Defendants.

CASE NO. 22STCV02455
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Bruce G. Iwasaki, Dept. 58*

**STIPULATION AND ~~PROPOSED~~ ORDER
APPROVING SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS,
AND ENTERING JUDGMENT THEREON**

Complaint: 11-16-2021
Trial Date: Not set

FILED
Superior Court of California
County of Los Angeles

08/08/2024

David W. Slayton, Executive Officer / Clerk of Court

By: M. Lopez Deputy

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STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. On November 15, 2021, Plaintiff Arnulfo Esquivel Jr., (“Plaintiff”) transmitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and Defendant Clean Energy (“Defendant”) in compliance with the exhaustion requirements of the California Labor Code Private Attorneys General Act (“PAGA”), articulating claims related to the: (a) failure to pay all lawful wages owed (including minimum and overtime wages); (b) failure to provide meal periods for every work period exceeding more than five (5) or ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ; (e) failing to provide accurate itemized wage statements; (f) failing to reimburse expenses; (g) failure to pay all wages for all hours worked at the proper rates of pay . See Declaration of James Hawkins (“Hawkins Decl.”) at ¶ 3; Exhibit “B” to Hawkins Decl.

2. On January 21, 2021, Plaintiff filed a Representative Action Complaint in the Superior Court of the State of California for the County of Los Angeles, entitled *Esquivel Jr., v. Clean Energy* case number 22STCV02455. Plaintiff filed his Complaint on behalf of the State of California and other aggrieved employees as a PAGA action based on violations of Labor Code §§ 201-203, 510, 511, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2698 *et seq.*, 2699, and all applicable Industrial Welfare Commission (“IWC”) Orders and California Code of Regulations, Title 8, section 11000 *et seq.* Hawkins Decl. at ¶ 4.

3. Defendant disputes and denies the allegations and claims asserted in Plaintiff’s Complaint. It was also Defendant’s position that Plaintiff could not maintain the PAGA Complaint because there is no evidence of a common policy or practice that makes a trial manageable and further because Plaintiff entered into a binding arbitration agreement with Defendant. Hawkins Decl. at ¶ 5.

4. On October 27, 2022, Defendant moved to Compel Arbitration of Plaintiff's individual PAGA claims. The Court subsequently granted Defendant's Motion and compelled Plaintiff's individual claims to arbitration and stayed the remaining PAGA representative claims. Plaintiff's individual claims are pending before the American Arbitration Association ("AAA"). Hawkins Decl. at ¶ 6.

5. During the course of the litigation, the Parties engaged in both formal and informal discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the action and potential defenses thereto including payroll and time keeping sampling for approximately 35% of the purported Aggrieved Employees along with policies and relevant data points. The Parties have reached this settlement only after discovery and investigation was performed. Hawkins Decl. at ¶ 7.

6. On March 25, 2024, the Parties participated in a day-long mediation with the mediator Daniel J. Turner, a well-respected wage and hour class action and PAGA action mediator. In preparation for the mediation, Plaintiff's counsel requested and Defendant's counsel provided sample time and payroll data for the purported Aggrieved Employees, personnel and employment documents. With Mr. Turner's assistance, the Parties agreed to fully and finally resolve the Action and the PAGA Released Claims as to Plaintiff, the State of California, the LWDA and the Aggrieved Employees. Hawkins Decl. at ¶ 10.

7. Being fully apprised of the value and strength of the PAGA theories alleged in the action, counsel for Plaintiff and Defendants successfully negotiated a settlement through arm's-length negotiations. The terms and conditions of the settlement are set forth in the Settlement Agreement ("Settlement" or "Settlement Agreement"). The Settlement Agreement resolves all claims asserted in the Complaint and contemplates that the settlement will be approved and the Court will enter judgment. Hawkins Decl. at ¶¶ 2, 3, 9, Exhibit A.

8. Counsel for Plaintiff and Defendant also considered the fact that the existence of numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel for

1 the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation demands
2 would far outweigh the potential benefits of additional litigation. Hawkins Decl. at ¶ 10.

3 9. Based on the information and documents obtained through both formal and informal
4 discovery, Plaintiff assessed the maximum value of the PAGA claims to be released by the
5 settlement to be approximately \$899,500.00 (at the rate of a \$100.00 penalty for approximately
6 8,995 pay periods at issue for approximately 201 Aggrieved Employees). Hawkins Decl. at ¶ 11.

7 10. Plaintiff's Counsel also took into account that even if Plaintiff prevailed on the
8 merits of the PAGA claim, Defendant could persuasively argue that the Court should exercise its
9 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A court
10 in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner
11 would have, as well as complete discretion to "award a lesser amount than the maximum civil
12 penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case,
13 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
14 And indeed, it is common for courts to reduce the penalties. *See e.g., Ghrdilyan v. RJ Financial,*
15 *et al.*, Los Angeles Superior Court, Case No. BC430633 (94% reduction); *Parr v. Golden State*
16 *Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94%
17 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011)
18 (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct.
19 Decision dates July 21, 2020) (85% reduction of PAGA penalties).

20 11. As set forth in the Settlement Agreement, the Gross Settlement Amount ("GSA") is
21 \$215,000.00 or approximately 23.8% of the maximum recoverable penalties, and includes an
22 apportionment of attorneys' fees and costs, payment to the settlement administrator, and a general
23 release payment to the Plaintiff. Hawkins Decl. at ¶ 28.

24 12. The settlement is intended to fully and finally resolve the PAGA claims asserted
25 by Plaintiff on behalf of the State of California and aggrieved employees. After deducting the
26 Attorneys' Fees of (1/3 i.e. 33.333%) (\$71,666.66) and Attorneys' Costs not to exceed \$13,000.00,
27 Settlement Administration Expenses not to exceed (\$7,500.00) APEX Class Action Administration

1 (the Settlement Administrator), and Plaintiff's separate Individual Wage and Hour Settlement
2 Payment (\$10,000.00), the remaining Net Settlement Amount is estimated to be \$112,833.34 and
3 will be distributed to the LWDA and Aggrieved Employees. An estimated \$28,208.34 (25% of the
4 NSA) will be distributed to the Aggrieved Employees on a pro rata basis, amounting to an average
5 of \$140.34 per Aggrieved Employee. The remaining \$84,625.00 (75% of the NSA) is to be
6 distributed to the LWDA. Hawkins Decl. at ¶ 29; Settlement Agreement at ¶¶ 3.2.1 – 3.2.4.

7 13. Based on Plaintiff's counsel's extensive experience litigating over 200
8 representative actions, counsel for Plaintiff believe the settlement here is fair and reasonable and
9 warrants approval by the Court. Hawkins Decl. at ¶¶ 30-34.

10 14. The parties agree that upon entry of the Order approving this settlement, Plaintiff
11 and all Aggrieved Employees, as defined in the Settlement Agreement will be forever barred from
12 pursuing against Defendant, and any of the Released Parties, as defined in the Settlement
13 Agreement, all claims for PAGA civil penalties that were alleged in the Complaint or could have
14 been alleged in the Complaint under PAGA for Labor Code claims, including but not limited to
15 meal period violations and failure to pay premiums; rest period violations and failure to pay
16 premiums; failing to properly maintain and submit accurate itemized wage statements; failure to
17 maintain accurate records; failure to timely pay wages during employment; failure to pay minimum,
18 regular, and overtime wages; failure to reimburse; and failure to timely pay final wages and waiting
19 time penalties associated therewith from the period beginning November 16, 2020 through the
20 earlier of either 60 days after full execution of the settlement agreement or the date the Court signs
21 the proposed order re PAGA Approval. Settlement Agreement at ¶¶ 1.19, 5.1.

22 16. The Parties agree that this stipulation should be sufficient for purposes of approving
23 the PAGA Settlement of the Complaint as set out in the Settlement Agreement pursuant to the
24 requirements set out in Labor Code section 2699(l)(2).

25 17. The Parties request that the Court enter the accompanying order, approving the
26 Settlement as permitted by Labor Code § 2699(l), and entering Judgment in accordance with the
27 terms and conditions of the Settlement Agreement. (Hawkins Decl. at ¶ 40).

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Dated: June 4, 2024

By: 
James R. Hawkins
Gregory Mauro
Michael Calvo

Dated: June 4, 2024

By: /s/ Aaron F. Olsen (with permission)
 Aaron F. Olsen
 Christopher H. Conti

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1 and Hour Settlement Payment; and (d) up to \$7,500.00 allocated to Settlement Administrator
2 Costs.

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- 4 (a) The Court approves payment to Plaintiff's counsel of Attorneys' Fees in the amount
5 of \$71,666.66 to be paid from the Gross Settlement Amount
- 6 (b) The Court approves payment to Plaintiff's counsel of actual litigation costs in the
7 amount of \$10,570.96 to be paid from the Gross Settlement Amount.
- 8 (c) The Court approves payment to the Settlement Administrator for its reasonable costs
9 and fees to administer the Settlement, up to \$7,500,000 to be paid from the Gross
10 Settlement Amount.
- 11 (d) The Court approves payment of \$10,000.00 as an Individual Wage and Hour
12 Settlement Payment to be paid to Plaintiff for Plaintiff's service as a PAGA
13 Representative.
- 14 (e) Any difference from these amounts will be added to the Net Settlement Amount.

15 9. In accordance with Labor Code § 2699(d), 75% of the Net Settlement Amount,
16 (\$84,625.00) is allocated to the LWDA, and the remaining 25% (\$28,208.34) is allocated to the
17 Aggrieved Employees on a pro-rata basis.

18 10. The "PAGA Period" means the period from November 16, 2020 through the
19 earlier of either 60 days after full execution of this settlement agreement or the date the Court
20 signed the proposed order re of PAGA Approval.

21 11. The "Effective Date" means July 10, 2024 or when the Court enters a Judgment
22 on its Order Approving the PAGA Settlement, whichever is sooner.

23 12. Within 15 days of the Effective Date, Defendant will deliver the Aggrieved
24 Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect
25 Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee
26 Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and
27 for no other purpose and restrict access to the Aggrieved Employee Data to Administrator

1 employees who need access to the Aggrieved Employee Data to effect and perform under this
2 Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it
3 discovers that the Aggrieved Employee Data omitted employee identifying information and to
4 provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without
5 any extension of the deadline by which Defendant must send the Aggrieved Employee Data to
6 the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith,
7 to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee
8 Data.

9 13. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds
10 to the Administrator no later than 30 days after the Effective Date.

11 14. Within 14 days after Defendant funds the Gross Settlement Amount, the
12 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment,
13 the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA
14 Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses
15 Payment shall not precede disbursement of Individual PAGA Payments.

16 15. The Administrator will issue checks for the Individual PAGA Payments and send
17 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each
18 check shall prominently state the date (not less than 180 days after the date of mailing) when the
19 check will be voided. The Administrator will cancel all checks not cashed by the void date.
20 Before mailing any checks, the Settlement Administrator must update the recipients' mailing
21 addresses using the National Change of Address Database.

22 16. The Administrator must conduct an Aggrieved Employee Address Search for all
23 Aggrieved Employees whose checks are returned undelivered without USPS forwarding address.
24 Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS
25 forwarding address provided or to an address ascertained through the Aggrieved Employee
26 Address Search. The Administrator need not take further steps to deliver checks to Aggrieved
27 Employees whose re- mailed checks are returned as undelivered. The Administrator shall

promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

17. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the aggrieved employees who have cashed their checks, on a pro rata basis.

18. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

19. By operation of this Order, Plaintiff shall fully, finally, and forever release and discharge Defendant and the Released Parties from any and all of Plaintiff's released claims and shall be forever barred from pursuing such released claims against Defendants and the Released Parties.

20. By operation of this Order, the State of California (including the LWDA) and the Aggrieved Employees (including Plaintiff) shall for the PAGA Period fully, finally and forever release and discharge Defendants and the Released Parties from any and all PAGA Released Claims, as defined in the Settlement Agreement, and shall be forever barred from pursuing such PAGA Released Claims against Defendant and the Released Parties.

21. Under California Code of Civil Procedure section 664.6, the Court retains jurisdiction over the Parties to the fullest extent necessary to interpret, enforce, and effectuate the terms and intent of the Settlement and this Order.

22. Plaintiff's counsel shall submit a copy of this Order to the LWDA within seven (7) days of the entry of the Order.

23. The above-referenced action and all claims asserted by Plaintiff individually and in a representative capacity are hereby dismissed with prejudice.

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1 IT IS SO ORDERED AND ADJUDGED. LET JUDGMENT BE FORTHWITH
2 ENTERED ACCORDINGLY.

3 DATED: 08/08/2024




4 THE HONORABLE BRUCE G. IWASAKI
5 JUDGE OF THE SUPERIOR COURT
6 Bruce G. Iwasaki / Judge
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