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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
SPRING STREET COURTHOUSE**

CECILIA A. RABAYA, individually, on behalf
of all others similarly situated, and as
representative of the State of California on
behalf of all aggrieved employees,

Plaintiff,

v.

MABUHAY INTERNATIONAL SERVICES,
INC., a Nevada corporation, JULIET M.
BOXALL, an individual, and DOES 1 through
20, inclusive,

Defendants.

Case No. 21STCV47596

**MEMORANDUM OF POINTS AND
AUTHORTIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR AN ORDER: (1) APPROVING THE
SETTLEMENT OF PLAINTIFF'S PAGA
CLAIMS ON BEHALF OF HERSELF
AND DISMISSING THOSE CLAIMS
WITH PREJUDICE; (2) DISMISSING
PLAINTIFF'S PAGA CLAIMS ON
BEHALF OF THE OTHER ALLEGEDLY
AGGRIEVED EMPLOYEES WITHOUT
PREJUDICE; AND (3) DISMISSING
PLAINTIFF'S PUTATIVE CLASS
ACTION CLAIMS WITHOUT
PREJUDICE**

Judge: The Honorable Carolyn B. Kuhl
Department: 12
Complaint Filed: December 30, 2021

The Plaintiff, Cecelia A. Rabaya, by and through her undersigned counsel, respectfully
submits this Memorandum of Points and Authorities in support of Plaintiff's Unopposed Motion for
an Order: (1) approving the settlement of Plaintiff's PAGA claims on behalf of herself against the
Defendants, Mabuhay International Services, Inc. ("MISI") and Juliet M. Boxall ("Ms. Boxall"),
and dismissing those claims with prejudice; (2) dismissing Plaintiff's PAGA claims against the
Defendants on behalf of the other aggrieved employees without prejudice; and (3) dismissing

1 Plaintiff's putative class action claims against the Defendants without prejudice (hereinafter referred
2 to as "Plaintiff's Unopposed Motion").

3 **I. SUMMARY OF THE CLAIMS AT ISSUE**

4 Plaintiff filed her Individual, Class Action and Representative Action Complaint
5 ("Complaint") against the Defendants on December 30, 2021. (Declaration of Daniel V. Santiago
6 in Support of Plaintiff's Unopposed Motion ["Santiago Declaration"], ¶3). Plaintiff's claims
7 against Defendants arise from Defendants' alleged failures, *inter alia*: (a) to pay Plaintiff, the Class
8 members and the aggrieved employees all wages due and owing (including the applicable minimum
9 wages and overtime wages as appropriate) under California Labor Code ("Labor Code") §§204(a),
10 1194(a), 1197 and 1454, Industrial Welfare Commission ("IWC") Wage Order No. 15-2001, §§3
11 and 4, and the Los Angeles Minimum Wage Ordinance; (b) to provide Plaintiff, the Class members
12 and the aggrieved employees with accurate itemized wage statements under Labor Code §226(a)
13 and IWC Wage Order No. 15-2001, §7; and (c) to timely pay all wages due and owing upon
14 termination of the employment of the Plaintiff, the Class members and the aggrieved employees
15 who are no longer employed by MISI under Labor Code §§201-203. (Santiago Declaration, ¶4.)

16 As defined in the Complaint, the term "the Class" is defined as all persons who worked for
17 Defendant MISI in the State of California as in-home caregivers or domestic work employees as
18 defined in Labor Code §1451(b)(1) at any time within four (4) years preceding the filing of the
19 Complaint up to and through the date of the trial of the Action. (Santiago Declaration, ¶5.)
20 Similarly, as defined in the Complaint, the term "aggrieved employees" is defined as all Class
21 members who worked for Defendant MISI in the State of California as in-home caregivers or
22 domestic work employees as defined in Labor Code §1451(b)(1) at any time within the time period
23 of one (1) year preceding the filing of the Complaint up to and through the date of the trial of the
24 Action. (Santiago Declaration, ¶6.)

25 Defendants deny the material allegations in Plaintiff's Complaint. (Santiago Declaration,
26 ¶7.) Defendants further deny any violation of the Labor Code or IWC Wage Order No. 15-2001 or
27 other wrongdoing. (Santiago Declaration, ¶7.)
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II. STATUS OF THE LITIGATION

This case is not currently set for trial. (Santiago Declaration, ¶8). At the Initial Case Management Conference on February 25, 2022, the Court encouraged the parties to try to resolve this case via mediation. (Santiago Declaration, ¶9). To that end, the Court continued the Status Conference and the corresponding stay of all discovery to May 13, 2022, and then continued it again to June 10, 2022. (Santiago Declaration, ¶9).

On May 26, 2022, Plaintiff's counsel submitted Plaintiff's Unopposed Status Report and related papers to the Labor and Workforce Development Agency ("LWDA") via its online filing system as well as to the Court via the Case Anywhere document-management system. (Santiago Declaration, ¶15). Later on May 26, 2022, Plaintiff's counsel notified Defendants' counsel via e-mail that he had submitted those papers to the LWDA and the Court and provided him with pdfs of those papers. (Santiago Declaration, ¶15). Those papers sought the same relief requested herein.

On June 9, 2022, the Court entered a Minute Order that, *inter alia*: took the Status Conference previously set for June 10, 2022, off the Court's calendar; instructed Plaintiff's counsel to file a regularly noticed motion seeking the relief requested in Plaintiff's Unopposed Status Report; and further instructed Plaintiff's counsel to address in greater detail why dismissal of Plaintiff's putative class action claims without prejudice is warranted under California Rule of Court 3.770. (Santiago Declaration, ¶16).

III. THE PARTIES' SETTLEMENT AGREEMENT

On April 28, 2022, the parties attended a mediation with John Edwards, Esq. of the National Conflict Resolution Center / West Coast Resolution Group. (Santiago Declaration, ¶17.) At the conclusion of the mediation session, Mr. Edwards made a mediator's proposal to settle Plaintiff's individual claims against Defendants for Ninety Thousand Dollars (\$90,000). (Santiago Declaration, ¶18.) Mr. Edwards requested the parties to respond to his mediator's proposal by close of business on April 29, 2022. (Santiago Declaration, ¶18.) On April 29, 2022, Mr. Edwards notified the parties' counsel that all parties had agreed to his mediator's proposal subject to the execution of a formal written settlement agreement to all parties' satisfaction. (Santiago Declaration, ¶19.)

1 The parties have executed a Confidential Settlement Agreement and Mutual Release of All
2 Claims ("Settlement Agreement") reflecting the settlements of Plaintiff's individual PAGA claims
3 against the Defendants for \$2,000 and Plaintiff's individual non-PAGA claims against the
4 Defendants for \$88,000, for a Gross Settlement Amount of \$90,000. (Santiago Declaration, ¶20.)
5 A copy of the parties' Settlement Agreement is attached as Exhibit 1 to the Santiago Declaration.

6 Under the Settlement Agreement, Defendants shall pay a Gross Settlement Amount of
7 \$90,000 as follows: (a) \$1,500 to the Labor and Workforce Development Agency ("LWDA") in
8 connection with the settlement of Plaintiff's individual PAGA claims against the Defendants (i.e.,
9 75% of the PAGA settlement in accordance with Labor Code §2699(i)); (b) \$500 to Plaintiff in
10 connection with the settlement of Plaintiff's individual PAGA claims against the Defendants (i.e.,
11 25% of the PAGA settlement in accordance with Labor Code §2699(i)); (c) \$45,500 to Plaintiff in
12 connection with the settlement of Plaintiff's individual non-PAGA claims, penalties and interest
13 against the Defendants (to be reported on an IRS Form 1099 and its state and local equivalents); and
14 (d) \$42,500 to Plaintiff's counsel's firm in connection with the settlement of Plaintiff's individual
15 non-PAGA claims against the Defendants (to be reported on an IRS Form 1099 and its state and
16 local equivalents). (Santiago Declaration, ¶21.)

17 Upon receipt of notice of the Court's entry of an Order granting the relief requested in
18 Plaintiff's Unopposed Motion, Plaintiff's counsel will file a Request for Dismissal of Plaintiff's
19 individual non-PAGA claims against the Defendants. (Santiago Declaration, ¶22.) Such dismissal
20 will be with prejudice pursuant to the Settlement Agreement. (Santiago Declaration, ¶22.)

21 Notably, the Settlement Agreement is subject to and expressly conditioned upon: (1) the
22 Court's entry of an Order (a) approving of the settlement of Plaintiff's PAGA claims on behalf of
23 herself and dismissing those claims with prejudice, (b) dismissing Plaintiff's PAGA claims on
24 behalf of the other aggrieved employees without prejudice, and (c) dismissing Plaintiff's putative
25 class action claims without prejudice; and (2) Plaintiff's filing of a Request for Dismissal of her
26 individual non-PAGA claims against the Defendants with prejudice. (Santiago Declaration, ¶23.)
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1 **IV. THE PROPOSED SETTLEMENT OF PLAINTIFF'S INDIVIDUAL PAGA CLAIMS**
2 **FOR \$2,000 IS FAIR AND REASONABLE.**

3 Plaintiff's counsel respectfully submits that the proposed settlement of Plaintiff's individual
4 PAGA claims against the Defendants is fair and reasonable in light of the following factors, among
5 others: (a) Plaintiff's counsel has conducted sufficient investigation of the facts underlying
6 Plaintiff's claims that support his conclusion that the proposed settlement of Plaintiff's individual
7 PAGA claims is fair and reasonable (such investigation and discovery have included, *inter alia*:
8 engaging in numerous, detailed conversations with Plaintiff regarding the underlying facts and the
9 status of the parties' settlement discussions; analyzing Plaintiff's timecards and related papers
10 provided by Plaintiff; and evaluating the arguments made by Defendants' counsel during the
11 aforementioned mediation); (b) any settlement should take into consideration the time,
12 inconvenience and uncertainty of trial that are avoided by the settlement; (c) under Labor Code
13 §2699(i), allegedly aggrieved employees like Plaintiff are entitled to receive only 25% of any
14 PAGA settlement with the remaining 75% to be paid to the LWDA; and (d) as explained below, the
15 proposed settlement of Plaintiff's individual PAGA claims for \$2,000 exceeds Plaintiff's counsel's
16 evaluation of a fair and reasonable settlement of those PAGA claims. (Santiago Declaration, ¶24.)

17 Plaintiff estimates that the civil penalties potentially recoverable with regard to her
18 individual PAGA claims based upon Defendants' direct, non-derivative violations of the Labor
19 Code and applicable IWC Wage Order (i.e., Defendants' alleged failures to pay her all wages due
20 and owing including minimum wages and overtime wages) is approximately \$2,350¹ calculated as
21 follows: \$50 for the initial pay period + \$100 for each of the subsequent 23 pay periods = \$2,350.
22 Of note, the relevant time period with regard to Plaintiff's individual PAGA claim for unpaid wages
23 is the 23+ week time period December 30, 2020 (one year preceding the filing of Plaintiff's
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26 ¹ Plaintiff asserts two claims that are derivative of Defendants' alleged failure to pay all wages due and
27 owing to him. More specifically, those derivative claims are Defendants' alleged failures: (1) to furnish
28 accurate itemized wage statements in violation of Labor Code §226(a); and (2) to timely pay all wages due
upon termination of employment in violation of Labor Code §§201-203.

1 Complaint) to November 18, 2021 (the date on which Defendants terminated Plaintiff's
2 employment). (Santiago Declaration, ¶25.)

3 Plaintiff's counsel respectfully submits that, for settlement purposes, it is reasonable to
4 discount Plaintiff's estimate of the civil penalties potentially recoverable with regard to her
5 individual PAGA claims that are based upon the direct, non-derivative violations of the Labor Code
6 and applicable IWC Wage Order (\$2,350) by 50% to reflect the benefits of avoiding the delays
7 associated with continued litigation and by another 50% to reflect the uncertainty of obtaining a
8 favorable verdict at trial. (Santiago Declaration, ¶26.) The resulting figure is \$587.50 which
9 Plaintiff's counsel contends would be a fair and reasonable settlement of Plaintiff's individual
10 PAGA claims. (Santiago Declaration, ¶26.) The proposed settlement of Plaintiff's individual
11 PAGA claims for \$2,000 exceeds that figure.

12 Plaintiff requests the Court's approval of the proposed settlement of her PAGA claims on
13 behalf of herself in accordance with Labor Code §2699(1)(2) which requires Court approval for
14 every PAGA settlement. Labor Code §2699(1)(2) further requires that the proposed PAGA
15 settlement be submitted to the LWDA at the same time that it is submitted to the Court.
16 Accordingly, Plaintiff's counsel submitted copies of Plaintiff's Unopposed Motion and all related
17 papers to the LWDA (via online filing with the LWDA) immediately before filing those papers in
18 the Los Angeles County Superior Court. (Santiago Declaration, ¶55.) A copy of the email
19 Plaintiff's counsel received from the DIR PAGA Unit on behalf of the LWDA confirming his
20 submission of those papers to the LWDA earlier that day is attached to the Santiago Declaration as
21 Exhibit 2. (Santiago Declaration, ¶55.)

22 Plaintiff's counsel does not anticipate receiving any objection or other communication from
23 the LWDA regarding the relief requested herein. (Santiago Declaration, ¶56.) Plaintiff's counsel
24 will advise the Court whether he has received any such objection or other communication from the
25 LWDA during the hearing on this Unopposed Motion. (Santiago Declaration, ¶56.)

1 **V. THE SETTLEMENT OF PLAINTIFF'S INDIVIDUAL NON-PAGA CLAIMS FOR**
2 **\$88,000 IS FAIR AND REASONABLE.**

3 Plaintiff's counsel respectfully submits that the settlement of Plaintiff's individual non-
4 PAGA claims against the Defendants for \$88,000 as set forth above reflects a fair and reasonable
5 settlement of those claims. (Santiago Declaration, ¶27.) That conclusion is supported by, *inter alia*,
6 Plaintiff's counsel's estimate that Plaintiff's potentially recoverable damages for her individual non-
7 PAGA claims against the Defendants is \$438,662.25, as described more fully below. (Santiago
8 Declaration, ¶27.) Accordingly, the settlement of Plaintiff's individual non-PAGA claims for
9 \$88,000 is 20% of Plaintiff's counsel's estimate of the damages potentially recoverable for those
10 claims. (Santiago Declaration, ¶27.) For this reason, among others, Plaintiff and Plaintiff's counsel
11 are not arrogating to themselves any amount justifiable only because class claims were asserted in
12 the Complaint (one of the issues raised in the Court's Minute Order dated June 9, 2022). (Santiago
13 Declaration, ¶27.)

14 Plaintiff's counsel's estimate of the damages potentially recoverable for Plaintiff's
15 individual non-PAGA claims (\$438,662.25) is calculated as the sum of the following: (a) unpaid
16 minimum wages of \$134,712 as outlined below; (b) unpaid overtime wages of \$298,100.25 as
17 outlined below; (c) the amount recoverable for the itemized wage statement violations under Labor
18 Code §226(a) of \$2,250 (\$50 for the initial pay period plus \$100 for each of the subsequent 22 bi-
19 weekly pay periods within the 46-week time period of December 30, 2020 [one year preceding the
20 filing of Plaintiff's Complaint] to November 18, 2021 [the date of Defendants' termination of
21 Plaintiff's employment]); and (d) the amount recoverable for the waiting time penalty under Labor
22 Code §203 of \$3,600 (\$15 per hour minimum wage X 8 hours per day X 30 days = \$3,600)²².
23 (Santiago Declaration, ¶28.)

24 Plaintiff's counsel estimates that the total amount of Plaintiff's unpaid minimum wages is at
25 least \$134,712 as outlined in the following damages model:

26
27 ²² Plaintiff contends, *inter alia*: Defendants terminated her employment on November 18, 2021; to date,
28 Defendants have failed to pay all wages that were – and remain – due and owing to her; and, therefore, the
30-day waiting time penalty for her has fully accrued. (Santiago Declaration, ¶28.)

Time Period / Pay Periods	Hours Worked / Pay Period	Min. Wage Rate / Hr.	Min. Wages Earned	Wages Paid	Unpaid Minimum Wages
4/1/19 – 6/30/19 / 6.5 pay periods	144 hours (24 hours per day X 6 days)	\$13.25	\$12,402	\$5,850 (\$900 per pay period X 6.5 pay periods)	\$6,552
7/1/19 – 3/31/20 / 19.5 pay periods	144 hours (24 hours per day X 6 days)	\$14.25	\$40,014	\$17,550 (\$900 per pay period X 19.5 pay periods)	\$22,464
4/1/20 – 6/30/20 / 6.5 pay periods	288 hours (24 hours per day X 12 days)	\$14.25	\$26,676	\$11,700 (\$1,800 per pay period X 6.5 pay periods)	\$14,976
7/1/20 – 11/18/21 / 36 pay periods	288 hours (24 hours per day X 12 days)	\$15.00	\$155,520	\$64,800 (\$1,800 per pay period X 36 pay periods)	\$90,720
Totals			\$234,612	\$99,900	\$134,712

(Santiago Declaration, ¶30.)

Plaintiff's counsel further estimates that the total amount of Plaintiff's unpaid overtime wages is \$298,100.25 as outlined in the following damages model:

Time Period / Pay Periods	Overtime Hours Worked / Pay Period	Overtime Rate / Hr.	Overtime Wages Earned	Overtime Wages Paid	Unpaid Overtime Wages
4/1/19 – 6/30/19 / 6.5 pay periods	108 (54 hours per week X 2 weeks)	\$19.875	\$13,952.25	\$0	\$13,952.25
7/1/19 – 3/31/20 / 19.5 pay periods	108 (54 hours per week X 2 weeks)	\$21.375	\$45,015.75	\$0	\$45,015.75
4/1/20 – 6/30/20 / 6.5 pay periods	252 (126 hours per week X 2 weeks)	\$21.375	\$35,012.25	\$0	\$35,012.25
7/1/20 – 11/18/21 / 36 pay periods	252 (126 hours per weeks X 2 weeks)	\$22.50	\$204,120	\$	\$204,120
Totals			\$298,100.25	\$0	\$298,100.25

(Santiago Declaration, ¶31.)³

³ Plaintiff contends it is undisputed that, under Labor Code §1454, personal attendants like she are entitled to overtime at 1.5 times their regular rates of pay for working more than 9 hours per day and/or 45 hours per

For settlement purposes, it is very reasonable to discount Plaintiff's counsel's estimate of the damages potentially recoverable with regard to Plaintiff's individual non-PAGA claims against the Defendants (\$438,662) as follows: a 50% reduction to reflect the benefits of avoiding the delays associated with continued litigation; another 50% reduction to reflect the uncertainty of obtaining a favorable verdict at trial; and a 25% reduction to reflect the uncertainty of being able to recover a judgment against the Defendants in the full amount of those damages. (Santiago Declaration, ¶29.) The resulting figure is \$82,249 which would be a fair and reasonable settlement of Plaintiff's individual non-PAGA claims against the Defendants. (Santiago Declaration, ¶29.) The proposed settlement of Plaintiff's individual non-PAGA claims against the Defendants for \$88,000 exceeds that figure by a relatively small amount.

VI. PLAINTIFF'S REQUEST FOR AN ORDER DISMISSING WITHOUT PREJUDICE HER PUTATIVE CLASS ACTION CLAIMS AGAINST THE DEFENDANTS IS WARRANTED UNDER CALIFORNIA RULE OF COURT 3.770.

California Rule of Court 3.770 provides:

“(a) Court approval of dismissal

A dismissal of an entire class action, or of any party or cause of action in a class action, requires court approval. The court may not grant a request to dismiss a class action if the court has entered judgment following final approval of a settlement. Requests for dismissal must be accompanied by a declaration setting forth the facts on which the party relies. The declaration must clearly state whether consideration, direct or indirect, is being given for the dismissal and must describe the consideration in detail.

(b) Hearing on request for dismissal

The court may grant the request without a hearing. If the request is disapproved, notice of tentative disapproval must be sent to the attorneys of record. Any party may seek, within 15 calendar days of the service of the notice of tentative disapproval, a hearing on the request. If no hearing is sought within that period, the request for dismissal will be deemed denied.

week. Plaintiff further contends the evidence she worked 24 hours per day is evidenced by, *inter alia*: (a) her timesheets that she regularly submitted to Defendants; (c) her text messages with Defendant Boxall; and (c) Defendants' inability to identify any other personal attendants who worked for the elderly woman for whom Plaintiff provided caregiving services on the days Plaintiff worked for her (because there was no need for anyone else to work on the days Plaintiff worked, as she worked 24 hours per day). Under California law, there is no good faith or "innocent misunderstanding" defense to Plaintiff's claims for unpaid minimum and overtime wages. (Santiago Declaration, ¶31.)

1 (c) Notice to class of dismissal

2 If the court has certified the class, and notice of the pendency of the action has
3 been provided to class members, notice of the dismissal must be given to the class
4 in the manner specified by the court. If the court has not ruled on class
5 certification, or if notice of the pendency of the action has not been provided to
6 class members in a case in which such notice was required, notice of the proposed
7 dismissal may be given in the manner and to those class members specified by the
8 court, or the action may be dismissed without notice to the class members if the
9 court finds that the dismissal will not prejudice them.”

10 Plaintiff respectfully requests that the Court enter an Order dismissing without prejudice her
11 putative class action claims against the Defendants. Such relief is warranted under California Rule
12 of Court 3.770 for the reasons described below.

13 As an initial matter, no consideration is being given for the dismissal without prejudice of
14 Plaintiff’s putative class action claims against the Defendants. (Santiago Declaration, ¶34.)

15 Additionally, pursuant to Rule 3.770(c), notice of the dismissal without prejudice of
16 Plaintiff’s putative class action claims against the Defendants is not required to be given to the
17 proposed class given that: (1) the Court has not certified the proposed class or any of the proposed
18 subclasses; and (2) notice of the pendency of Plaintiff’s putative class action claims against the
19 Defendants has not been required to be provided – and has not been provided – to any of the
20 proposed class members. (Santiago Declaration, ¶35.)⁴ Similarly, pursuant to Rule 3.770(c),
21 Plaintiff’s putative class action claims against the Defendants may be dismissed without prejudice
22 and without notice to the proposed class members given that: (1) the Court has not ruled on class
23 certification; and (2) a dismissal without prejudice of Plaintiff’s putative class action claims against
24 the Defendants would not prejudice any of the proposed class members. (Santiago Declaration,
25 ¶36.)

26 ⁴ The conclusion that notice to the proposed class members and aggrieved employees of the proposed
27 dismissals described herein is not required is supported by, among other cases, *Baumann v. Chase Inv. Servs.*
28 *Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) (“PAGA has no notice requirements for unnamed aggrieved
employees, nor may such employees opt out of a PAGA action); *O’Connor v. Uber Techs., Inc.*, 201 F.
Supp. 3d 1110, 1134 (N.D. Cal. 2016) (“PAGA does not require class actions procedures, such as notice and
opt-out rights.”); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 134077, at *5 (N.D. Cal. Apr. 2,
2010) (“Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to
opt-out of the representative PAGA claim.”) (Santiago Declaration, ¶38.)

1 Further, a dismissal without prejudice of Plaintiff's putative class action claims against the
2 Defendants would not prejudice any of the proposed class members in light of the following factors,
3 among others: (a) Plaintiff's counsel is informed by Plaintiff that she is unaware of any proposed
4 class member who is relying on Plaintiff or me to prosecute any of the putative class action claims
5 alleged in the Action; (b) Plaintiff's counsel is unaware of any proposed class member who is
6 relying on Plaintiff or Plaintiff's counsel to prosecute any of the putative class action claims alleged
7 in the Action; (c) Plaintiff's counsel is informed by Plaintiff that she is unaware of any proposed
8 class member who is planning to prosecute any claims against the Defendants, or either of them; (d)
9 Plaintiff's counsel is unaware of any proposed class member who is planning to prosecute any
10 claims against the Defendants, or either of them; (e) going forward, nothing precludes any of the
11 proposed class members from pursuing any claims against the Defendants, or either of them, if they
12 elect to do so; (f) Plaintiff's counsel has not communicated with any proposed class member
13 regarding the facts underlying this case, the status of this case, or any other issue; (g) if the Court
14 grants the relief requested in Plaintiff's Unopposed Motion, there is no need for Plaintiff's counsel
15 (or anyone acting on his behalf) to communicate with any proposed class member regarding any
16 issue; and (h) if the Court grants the relief requested in Plaintiff's Unopposed Motion, Plaintiff's
17 counsel does not intend to communicate with any proposed class member regarding any issue, and
18 he does not intend for anyone to do so on his behalf. (Santiago Declaration, ¶37.)

19 Still further, a dismissal without prejudice of Plaintiff's putative class action claims against
20 the Defendants is further warranted in light of Defendants' defenses to class certification that
21 Defendants' counsel articulated during the mediation process. (Santiago Declaration, ¶39.) Those
22 defenses, as described more fully below, cast significant doubt on Plaintiff's ability to obtain class
23 certification of her putative class action claims against the Defendants. (Santiago Declaration, ¶39.)

24 With regard to Defendants' defenses to class certification, Defendants' counsel argued, *inter*
25 *alia*, Plaintiff and the proposed class members are not similarly situated given that: Plaintiff's
26 factual situation is unique to her; she was retained to work 10-hour shifts, as were other caregivers;
27 after being kicked out of her housing, she took it upon herself to sleep at the residence of one of
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1 Defendants' clients and then claim she was working 24+ hour shifts; and no other proposed class
2 member had these same circumstances.⁵ (Santiago Declaration, ¶40.)

3 With regard to Defendants' defenses to class certification, Defendants' counsel further
4 argued, *inter alia*, this lawsuit is unsuitable for a class action because individualized issues
5 predominate. (Santiago Declaration, ¶41.) In that regard, Defendants' counsel argued that:
6 Defendants did not misclassify Plaintiff as an independent contractor; class certification in cases
7 involving misclassification issues are very often denied because the misclassification question
8 requires an individualized inquiry and therefore cannot meet the predominance requirement; the
9 inquiry into what work is actually done can be heavily individualized (citing *Duran v. U.S. Bank*
10 *Nation Assn.* (2014) 59 Cal.4th 1, 27 ["the outside salesperson exemption [to overtime pay] has the
11 obvious potential to generate individual issues because the primary considerations are how and
12 where the employee actually spends his or her workday"]; *Sav-On Drug Stores, Inc. v. Superior*
13 *Court* (2004) 34 Cal.4th 319, 337 ["Any dispute over 'how the employee actually spends his or her
14 time' [citation], of course, has the potential to generate individual issues."]; and *Soderstedt v. CBIZ*
15 *Southern California, LLC*, (2011) 197 Cal.App.4th 133, 148 ["evaluation of whether the elements of
16 the administrative exemption have been established requires a fact-intensive inquiry, including an
17 examination of the actual work performed by the employee"]); and individualized issues are likely
18 to predominate in determining whether Defendants misclassified proposed class members.
19 (Santiago Declaration, ¶41.)

20 Moreover, a dismissal without prejudice of Plaintiff's putative class action claims against
21 the Defendants is further warranted in light of the difficulty of obtaining a class action settlement
22 that would be fair and reasonable to the proposed class members. (Santiago Declaration, ¶42.) In
23 that regard, during the course of the parties' settlement discussions, it became very clear that

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25 ⁵ Plaintiff contends that Defendants' argument that she "squatted" at the residence of the elderly woman for
26 whom she provided caregiving services is unpersuasive for several reasons. First, Plaintiff stayed at that
27 residence during Covid largely to reduce the risk of her inadvertently bringing Covid into the residence
28 (given the elderly woman's advanced age, extreme caution was warranted). Second, Plaintiff stayed at that
residence without opposition by the elderly woman and her family. Finally, with Plaintiff's 24-hour-per-day
presence, she provided exceptional care and supervision for the elderly woman (of which the elderly woman
was in unmistakable need).

1 Defendants were unwilling to consider paying any settlement amount even remotely close to a
2 reasonable settlement of Plaintiff's putative class action claims against the Defendants. (Santiago
3 Declaration, ¶42.)

4 For settlement purposes, and subject to confirmatory discovery in the event the parties were
5 able to reach a tentative settlement of Plaintiff's putative class action claims via mediation,
6 Plaintiff's counsel estimated that the total amount of the Class members' unpaid wages (not
7 including any civil penalties resulting therefrom) was at least \$2,214,000. (Santiago Declaration,
8 ¶43.) This estimate reflects the sum of the following: (a) the total estimated amount of the Class
9 members' unpaid minimum wages was at least \$756,000 (\$7,560 per Class member X at least 100
10 Class members)⁶; and (b) the total estimated amount of the Class members' unpaid overtime wages
11 was at least \$1,458,000 (\$14,580 per Class member X at least 100 Class members)⁷. (Santiago
12 Declaration, ¶43.)

13 Finally, a dismissal without prejudice of Plaintiff's putative class action claims against the
14 Defendants is further warranted in light of the difficulty of enforcing any judgment in the amount of
15 the damages potentially recoverable for Plaintiff's putative class action claims. (Santiago
16 Declaration, ¶44.) In that regard, during the course of the parties' settlement discussions, it became
17 very clear that, even if Plaintiff obtained class certification and later obtained a verdict in her favor
18 on one or more of her class action claims, it would be very difficult, if not impossible, to enforce
19 any judgment in the amount of the damages potentially recoverable for her individual, non-class
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21 _____
22 ⁶ If Defendant MISI paid each of the 100+ Class members in the same fashion it paid Ms. Rabaya (i.e., a flat
23 daily rate of \$150) and that each Class member worked 24 hours per day for only 3 days per week (i.e., 6
24 days per pay period) and for only 6 pay periods (i.e., slightly less than 3 months), then the total amount of
25 each Class members' unpaid minimum wages would be \$7,560 (i.e., the difference between the minimum
wages earned of \$12,960 and the wages paid of \$5,400).

26 ⁷ If Defendant MISI paid each of the 100+ Class members in the same fashion it paid Ms. Rabaya (i.e., a flat
27 daily rate of \$150 with no overtime) and that each Class member worked 24 hours per day for only 3 days
28 per week (i.e., 6 days per pay period) and for only 6 pay periods (i.e., slightly less than 3 months), then the
total amount of each Class members' unpaid overtime wages would be \$14,580 (i.e., the difference between
the overtime wages earned of \$14,580 and the overtime wages paid of \$0).

1 action claims (*not to mention a judgment in the exponentially larger amount of the damages*
2 *potentially recoverable for her class action claims*). (Santiago Declaration, ¶44.)

3 Plaintiff and Plaintiff's counsel carefully considered the poverty defense that Defendants
4 repeatedly asserted during the parties' settlement discussions. (Santiago Declaration, ¶45.)
5 According to Defendants' counsel, Defendants' poverty defense included the distinct possibility
6 they would be forced to file bankruptcy if Plaintiff continued with the prosecution of her putative
7 class action claims. (Santiago Declaration, ¶45.) Defendants' poverty defense was consistent with
8 the results of Plaintiff's counsel's research of publicly available information concerning Defendant
9 MISI.⁸ (Santiago Declaration, ¶46.) Defendants' poverty defense was also consistent with
10 Plaintiff's counsel's several communications with Defendant Boxall (via phone, e-mail and written
11 correspondence) prior to her retention of counsel. (Santiago Declaration, ¶47.)

12 **VII. ADDITIONAL FACTORS SUPPORTING PLAINTIFF'S UNOPPOSED MOTION**

13 Plaintiff's counsel respectfully submits that Plaintiff's Unopposed Motion is further
14 warranted in light of the following additional factors, among others: (1) the parties are prepared to
15 consummate their Settlement Agreement immediately after the Court approves of the settlement of
16 Plaintiff's PAGA claims on behalf of herself and dismisses those claims with prejudice, dismisses
17 Plaintiff's PAGA claims on behalf of the other aggrieved employees without prejudice, and
18 dismisses Plaintiff's putative class action claims without prejudice; and (2) there is no just reason to
19 delay the consummation of the parties' Settlement Agreement. (Santiago Declaration, ¶48.)
20 Additionally, as explained in greater detail in the Santiago Declaration at ¶¶49-54, Plaintiff's
21

22 ⁸ For example, see https://allbiz.com/business/mabuhay-international-services_1E-213-268-9810 which
23 states in part under the heading "Business Description": "Mabuhay International Services is located in Los
24 Angeles, California, and was founded in 2001. At this location, Mabuhay International Services employs
25 approximately 2 people. This business is working in the following industry: Employment agencies. Annual
26 sales for Mabuhay International Services are around USD 192,474.00. . . [¶] Revenue: USD 192,474.00. [¶]
27 Employees: 2" (Santiago Declaration, ¶46.) For another example, see
28 https://bizarchive.com/business/mabuhay-international-services_21-213-384-3228 which states in part under
the heading "BUSINESS DESCRIPTION": "Mabuhay International Services is located in Los Angeles,
California, and was founded in 2001. At this location, Mabuhay International Services employs
approximately 2 people. This business is working in the following industry: Employment agencies. Annual
sales for Mabuhay International Services are around 160,000. . . [¶] Employees: 2 . . . [¶] Revenue: USD
160,000." (Santiago Declaration, ¶46.)

1 counsel's background and experience support the conclusion that the proposed settlement of
2 Plaintiff's PAGA claims on behalf of herself is fair and reasonable.

3 **VIII. REQUESTED RELIEF**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order, *inter*
5 *alia*: (1) approving the settlement of Plaintiff's PAGA claims against the Defendants on behalf of
6 herself in the total amount of \$2,000 (with corresponding settlement payments of \$1,500 to the
7 LWDA and \$500 to Plaintiff) and dismissing those claims with prejudice; (2) dismissing Plaintiff's
8 PAGA claims against the Defendants on behalf of the other aggrieved employees without prejudice;
9 (3) dismissing Plaintiff's putative class action claims against the Defendants without prejudice; and
10 (4) granting such additional relief as the Court deems just and appropriate. Plaintiff respectfully
11 files under separate cover a [Proposed] Order reflecting the relief requested herein.

12 Plaintiff's counsel has provided Defendants' counsel with almost final drafts of Plaintiff's
13 Unopposed Motion and related papers. (Santiago Declaration, ¶57). Defendants' counsel has
14 informed Plaintiff's counsel that Defendants do not oppose the relief requested herein. (Santiago
15 Declaration, ¶57).

16 Dated: June 24, 2022

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

17 By:



18 Daniel V. Santiago, Esq.
19 Attorney for Plaintiff, Cecelia A. Rabaya
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