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ISRAEL NUNEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

ISRAEL NUNEZ, an individual, and in a representative capacity on behalf of the State of California and other Aggrieved Employees, Plaintiffs, vs. EPS, INC DBA EXPRESS PLUMBING & SEWER SERVICES, a California Corporation, and DOES 1-15 Defendants.	Case No: 25CIV02264 **DECLARATION OF HARRIS EMRAN, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA") SETTLEMENT** *Filed concurrently with Notice of Motion and Motion for Approval of PAGA Settlement; Memorandum of Points and Authorities In Support of Plaintiff's Motion For Approval of PAGA Settlement; [Proposed] Order Approving PAGA Settlement; [Proposed] Judgment Approving PAGA Settlement* Complaint Filed: March 28, 2025 Hearing Date: February 10, 2027 Time: 2:00 p.m. Dept: 28 Hon. Nicole S. Healy

I, Harris Emran, declare as follows:

1. I am an attorney at law duly licensed to practice law before all the courts in the State of California and the attorney of record herein for Plaintiff Israel Nunez ("Plaintiff"). The information contained herein is based on my personal knowledge and belief. If called to testify to this information under oath, I could and would do so competently. This declaration is being submitted

in support of Plaintiff's unopposed Motion for Approval of California Labor Code Private Attorneys General Act of 2004 ("PAGA") Settlement.

2. Plaintiff sought our Firm's assistance after allegedly experiencing wage and hour issues during his employment with Defendant EPS, INC dba Express Plumbing & Sewer Services ("Defendant") (collectively, the "Parties"). As discussed below, Plaintiff, with the assistance of my Firm, investigated his alleged claims and ultimately decided to file this Action asserting individual claims and representative claims seeking civil penalties under PAGA.

A. Plaintiff's Contentions

3. Plaintiff worked for Defendant as a non-exempt employee laborer between August 2021 and August 30, 2024. Plaintiff alleges that Defendant systematically violated the California Labor Code with respect to Plaintiff and other Aggrieved Employees by failing to provide compliant meal and rest periods, failing to pay all minimum and overtime wages, failing to pay all wages when due and upon termination, failing to reimburse required business expenses, failing to maintain accurate payroll records, failing to provide accurate itemized wage statements. Defendant disputes and denies these allegations.

B. Procedural History

4. On January 15, 2025, Plaintiff provided the Labor Workforce and Development Agency ("LWDA") written notice by online filing and Defendant via certified mailing of specific provisions of Lab. Code §§ 2699 et seq. alleged to be violated including the facts and theories to support the alleged violation (the "PAGA Notice"). The LWDA did not provide any notice of its intent to investigate the alleged violation within 65 calendar days of the postmark date of the PAGA Notice.

5. On March 28, 2025, Plaintiff filed the above-entitled action against Defendant alleging violations of the California Labor Code including: 1) Failure to Provide Rest Periods; 2) Failure to Provide Meal Periods; 3) Failure to Pay All Minimum Wages; 4) Failure to Pay Overtime Wages; 5) Failure to Pay All Wages; 6) Failure to Pay Wages Upon Termination; 7) Failure to Reimburse Business Expenses; 8) Failure to Provide Accurate Itemized Wage Statements; and 9) Violation of the Private Attorneys General Act, Labor Code §2698, *et seq.*

6. After formal discovery and Defendant taking Plaintiff's deposition, the Parties agreed to mediate Plaintiff's claims.

7. On April 7, 2026, the Parties participated in a full-day mediation before the Hon. John Pacheco (Ret), a well-regarded and experienced mediator of wage-and-hour and PAGA actions, who provided a useful, neutral analysis of the issues and risks to both sides. At the conclusion of mediation, the Parties memorialized a PAGA Settlement Agreement. At the time the Parties executed the PAGA Settlement Agreement, Plaintiff's costs were not finalized. While the Parties originally agreed to a Service Award for Plaintiff's work in bringing the representative action, Plaintiff's final costs prevented the parties from maintaining the Service Award as it reduced the PAGA Penalties and jeopardized approval of the Parties' PAGA Settlement. Accordingly, the Parties executed an Amended PAGA Settlement Agreement removing Plaintiff's service award once all costs were finalized. Defendant denies all claims, denies liability, and asserts multiple defenses, but agreed to resolve the Action to avoid the risks and costs of continued litigation. Nonetheless, having resolved the matter, the Parties hereby submit this Amended PAGA Settlement Agreement ("Settlement," "Amended Settlement" or "Settlement Agreement") to the Court for its approval. A true and correct copy of the Amended PAGA Settlement Agreement is attached hereto as **Exhibit A.**

8. At the same time of submission to the Court, my office submitted a copy of the Amended Settlement Agreement, this Motion, and all accompanying documents to the LWDA through its online submission portal in accordance with Labor Code § 2699(s)(2). A true and correct copy of the LWDA submission record is attached hereto as **Exhibit B.**

9. By way of this settlement, Plaintiff and Defendant seek to fully and finally resolve alleged PAGA violations on behalf of the State of California and all other Aggrieved Employees as defined in the Amended Settlement Agreement. The Parties' settlement, if approved, will resolve the Action in its entirety. See **Exhibit A.**

C. Investigation and Settlement Discussions

10. Between January 2025 and April 2026, Plaintiff's Counsel conducted a thorough investigation into the claims and defenses of each party. Plaintiff expended considerable time and

effort advocating on behalf of himself and the alleged PAGA Aggrieved Employees, including providing documents, payroll information, communications, witnesses, and information relevant to the alleged Labor Code violations. Plaintiff provided all documents and evidence in his possession.

11. In anticipation of mediation, the Parties discussed and exchanged substantive information through formal and informal discovery about Plaintiff's employment, including several sets of written discovery, the deposition of Plaintiff, and a 20% sampling of time and pay records for the alleged Aggrieved Employees. Defendant identified fifty-one (51) Aggrieved Employees who worked approximately two thousand seven hundred thirty (2,730) weekly PAGA Pay Periods, or one thousand three hundred sixty-five (1,365) bi-weekly Pay Periods, during the PAGA Period.

12. Plaintiff's Counsel then retained the statisticians and economists at Berger Consulting Group ("BCG") to evaluate the Aggrieved Employee payroll and time data. BCG provides data analysis and damages modeling consulting services, specializing in PAGA and wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases.

13. BCG analyzed Defendant's time and payroll data to assist in the development of various damages models. BCG's model determined the civil penalties based on rebuttable assumptions provided by Plaintiff's and Defendant's time and payroll records for each of the alleged representative claims. Defendant disputes these assumptions.

14. Defendant maintained written policies regarding meal and rest periods that are consistent with the law and their employee handbook encourages employees to notify management if they are in any way discouraged or impeded from taking their breaks. Defendant additionally provided executed Employee Handbook Acknowledgments for each Aggrieved Employee included in the sample. Defendant further has witnesses to dispute missed breaks and meal periods, witnesses that would testify that there were no missed rest breaks or meal periods. Additionally Plaintiff claims in his deposition contrary testimony to these breaks, raising questions of his credibility that the creates risk for the Plaintiff if litigation moved forward. Such contradictory testimony was further seen in the allegations of "off the clock" work and could not identify any date where he missed overtime.

While these allegations are disputed by Plaintiff, this increased the risk if Plaintiff pursued the case making settlement reasonable and fair and in the best interest of the Aggrieved Employees.

15. Plaintiff's Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a representative through interviews, background investigations; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour PAGA actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Aggrieved Employees' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect PAGA approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

16. The Parties Settlement Agreement is the final product of mediation and the Parties' acceptance of the mediator's proposal made by Hon. John Pacheco. Objectively, the Amended Settlement terms are fair, adequate, and represent a reasonable compromise of the disputed claims given the facts of the case and the risk borne by each party.

17. The Parties represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Amended Settlement.

D. The Court Should Approve the Amended Settlement Because the Amended Settlement is Fair, Adequate, and Reasonable

18. The Amended Settlement is a compromise reached after informed, non-collusive, arm's-length negotiations with the assistance of an experienced mediator and assisted negotiations. The Amended Settlement reflects a reasonable assessment of the risks for each, as well as the recognition that continued litigation will cause extensive and costly discovery for all parties and further litigation would cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation.

19. Counsel in this action is of the opinion that the Settlement for the consideration and on the terms set forth in the Amended Settlement Agreement is fair, reasonable, and adequate and is in the best interest of Plaintiff and other Aggrieved Employees in light of all known facts and circumstances including reasonably considering the nature and magnitude of the claims being settled, and the role of judicial discretion, and the various potential impediments to recovery.

20. Plaintiff and Plaintiff's counsel conducted a thorough investigation into the facts of the Action, including by discovery and informal document and data exchange which requested information from Defendant to evaluate the potential damages and for respective counsel to engage in meaningful mediation with the assistance of the Hon. John Pacheco (Ret).

21. In addition to discovery, Plaintiff's counsel performed document review, interviewed several Aggrieved Employees, analyzed data and legal research including multiple exchanges with BCG to identify all claims, and researched similar cases. Although no two cases are identical, this research provided Plaintiff's Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Plaintiff's Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court.

22. Both Parties' counsel has experience in employment litigation, specifically PAGA litigation, and conducted an extensive investigation of the factual allegations involved in this case. Each side has apprised the other, informally of their respective factual contentions, legal theories and defenses, resulting in extensive arms-length negotiations taking place among the Parties.

23. Approval of the Parties' Settlement Agreement is warranted because counsel for all Parties agree that the amount allocated for civil penalties under PAGA, is fair and reasonable considering Defendant's compliant employment policies and practices during the PAGA period, Defendant's position of compliance with such policies, an informed, non-collusive, arms-length negotiation following mediation with Hon. John Pacheco, the uniqueness of Plaintiff's injuries which may have undermined his individual and representative claim, the ability for alleged "aggrieved employees" to bring their own claims for non-PAGA claims, and Plaintiff's counsel's risk of obtaining full recovery of claimed PAGA penalties in light of Defendant's disclosures.

24. Continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff were successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real.

E. The Court Should Approve the Negotiated Counsel Award of Attorney's Fees

25. Plaintiff's Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's individual and representative claims. Considering the positive outcome for the Aggrieved Employees, and in light of the supporting authority, the proposed Attorneys' Fees and Expenses are fair and reasonable. The requested percentage fee is reasonable and should be awarded as confirmed by relevant case law and when compared with counsel's lodestar.

26. As part of the Amended Settlement Agreement, the Parties agreed to an award of attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or Fourteen Thousand Eight Hundred Seventy-Five Dollars ($14,875.00), and reimbursement of litigation costs totaling Seventeen Thousand Seven Hundred Ninety-One Dollars and Three Cents ($17,791.03), subject to Court approval. **Exhibit A** to Emran Decl., section 3.2.1.

27. In defining a reasonable fee, the Court should mimic the marketplace for cases involving a significant contingent risk such as this one. Our legal system places unique reliance on private litigants to enforce substantive provisions of employment law through PAGA actions. Therefore, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that takes place in the legal marketplace.

28. There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to the bank with his or her fee while the attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him or her to a marketplace

contingent fee taking into account the risk and other factors of the undertaking. Otherwise, the contingent fee attorney receives nothing. In this case, PAGA Counsel subjected themselves to this contingent fee market risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement make the requested award appropriate. The contingent fee practices of PAGA Counsel do not accommodate the investment of unnecessary time in a case. This case was litigated on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking.

29. A number of difficult issues, the adverse resolution of any one of which could have doomed the successful prosecution of the action, were present here. Attorneys' fees in this case were not only contingent but risky, with a very real chance that PAGA Counsel would receive nothing at all for their efforts, having devoted time and advanced costs especially given the credibility of the Plaintiff due to the conflicting discovery and deposition testimony. PAGA Counsel has previously invested in cases which resulted in no recovery. Given the discretion of the Court, resolution was the best choice is this matter.

30. At the time this case was brought, the result was far from certain. A number of defenses asserted by Defendant presented serious threats to Plaintiff's claims and Plaintiff's ability to stand as a PAGA representative and created difficulties with complex legal issues for PAGA Counsel to overcome. Defendant asserted that the employment practices complied with all applicable Labor Laws. Before and during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded Plaintiff and the Aggrieved Employees an opportunity to take timely meal and rest breaks, and that employees like the Plaintiff chose not to take compliant breaks. Because Plaintiff's claims were largely based on the missed breaks, and because Defendant's policies were, on their face compliant, this presented a very real concern for Plaintiff and the Aggrieved Employees. Defendant argued the caselaw under PAGA grants the Court discretion to reduce or forego penalties for such "technical" violations. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Aggrieved Employees. Defendant further objected to Plaintiff's statutory compliance with PAGA requirements and filed a Demurrer as to Plaintiff's Ninth Cause of Action for civil penalties under PAGA which was scheduled to be heard by this

Department on June 10, 2026. While Plaintiff believes that this defense, and others, could be overcome, Defendant maintain these defenses have merit and therefore present a serious risk to recovery.

31. PAGA Counsel was required to advance all costs in this litigation. The financial burdens undertaken by PAGA Counsel in prosecution this action on behalf of the LWDA and Aggrieved Employees were very substantial. To date, PAGA Counsel has advanced more than $17,791.03 in costs which could not have been recovered if this case had been lost or the court reduced the penalties to zero, which was possible given the facts. These litigation expenses include the expenses reasonably incurred for filing fees, mediation fees, expert fees, postage, and litigation support vendors, all of which are costs normally billed to and paid by the client. Plaintiff and PAGA Counsel undertook the risk of liability for Plaintiff's costs had this case not succeeded, as well as other potential negative financial ramifications from having come forward to sue Defendant on behalf of the Aggrieved Employees. Accordingly, the contingent nature of the fee and financial burdens on PAGA Counsel support the requested award. PAGA Counsel's expenses are attached hereto as **Exhibit C**.

32. I reviewed my firm's lodestar in this matter and believe the charges are reasonable and were reasonably necessary to the conduct of the case. Between January 2025 and April 2026, PAGA Counsel has worked more than 72 hours prosecuting these claims with the attorneys' hourly fee rates for attorneys between $450 per hour and $550 per hour, resulting in current attorneys' fees exceeding $30,132.95. I expect our firm to incur additional time and costs including attending the hearing for this Motion, coordinating administration, finalizing the orders and judgment, monitoring completion of the Amended Settlement process, and any subsequent compliance hearings. I expect this additional work to result in at least $5,000 to $10,000 in additional lodestar, further exceeding the requested fees. The rates charged by my firm are in line with the prevailing rates of attorneys in the local legal community for similar work and, if this were a commercial matter, these are the charges that would be made and presented to the client. These hourly rates have been approved by Court's throughout California, including those in the Superior Court of California. A detailed

breakdown of the total fees and services performed by the firm on this case is attached hereto as **<u>Exhibit C</u>**.

33. Plaintiff and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. I have been practicing law in California since 2019. I founded Emran Law Firm in 2020 and have focused in the areas of business and labor employment law. Our law firm is headquartered with an office in San Francisco. Our firm represents employees across the state of California. My hourly rate is $550. I supervised other members of Emran Law's employment team who also worked on this case:

a. <u>Kaitlin Martinez</u> is an attorney licensed by the State of California (SBN 348006) who graduated from Golden Gate University Law School with honors. She has been a member of Emran Law since January 2023, has assisted wage and hour class actions, and now focuses on managing FEHA, PAGA and wage and hour cases. Her hourly rate is $450.

b. <u>Post Bars:</u> our law firm's post bar law clerk was with our firm after his graduation from UC Law San Francisco (Formerly UC Hastings) until May 2025. Their hourly rate was $225.00.

c. <u>Legal Assistant:</u> our law firm's legal assistant is billed at an hourly rate of $185.00.

34. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved Employees. I have extensive experience with wage and hour individual and representative litigation like this matter, and employment matters in general. I can, will and have adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved Employees throughout this action.

35. PAGA Counsel have extensively litigated similar labor law cases against other employers on behalf of aggrieved employees. Our Firm's attorneys and their supporting staff must be extremely familiar and knowledgeable with wage and hour laws, litigation practices, case law, policy, statutory construction, employer practices, employee needs, employee working conditions, and more. With our learned knowledge, we must strategize which cases to settle pre-litigation or post-litigation, which to mediate, and which cases to take to trial. It is this level of experience which

enabled the firms to undertake the instant matter and to successfully combat the resources of the defendant and their capable and experienced counsel. Our Firm strongly believes in the vigorous prosecution of our cases, including this case, for the best interest of our clients, and any aggrieved employees.

36. The requested fee award, agreed to by the parties as part of the Amended Settlement, should be approved. The requested fee award was bargained for during arms' length adversarial bargaining by counsel for each of the parties as part of the Amended Settlement.

37. This matter was undertaken by our Firm purely as a contingency fee case. In other words, our Firm will not receive any compensation unless there is a cash recovery. Plaintiff is not asked or required to pay Emran Law any money unless there is a recovery on his behalf.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge.

Date: June 1, 2026

Harris Emran

Harris Emran, Esq.