

1 Anthony S. Khoury, Of Counsel (State Bar No. 236326)
2 **LEVINE & BLIT LLP**
3 8383 Wilshire Blvd., Suite 945
4 Beverly Hills, California 90211
5 Telephone: (310) 281-0100
6 Facsimile: (310) 281-0140

7 Attorneys for Plaintiff, SAMUEL MISITA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO (CENTRAL DISTRICT)**

10 SAMUEL MISITA, an Individual,
11 Plaintiff,

12 v.

13 COASTAL TRANSPORT CO., INC., a
14 corporation, and DOES 1-25, inclusive,
15 Defendants.

Case No.: **37-2016-00031058-CU-OE-CTL**
*Assigned to the Honorable Joel R.
Wohlfeil*

**PLAINTIFF SAMUEL MISITA'S
NOTICE OF JOINT MOTION AND
JOINT MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

*[Declaration of Anthony S. Khoury and
[Proposed] Order Filed Concurrently
Herewith]*

Date: January 12, 2018
Time: 8:30 a.m.
Department: 73

Complaint Filed: September 7, 2016

18
19 **PLEASE TAKE NOTICE** that at 8:30am on January 12, 2018, or as soon thereafter as
20 the matter may be heard, in Department 73 of the above-entitled court, located at 330 W.
21 Broadway, in San Diego, California 92101, Plaintiff SAMUEL MISITA, jointly with Defendant
22 COASTAL TRANSPORT CO., INC., will, and hereby does, move this Court for approval of the
23 parties' PAGA settlement.

24 This joint Motion is made on the grounds that: (1) the parties have reached a settlement in
25 this action that includes payment for Plaintiff's Private Attorneys General Act ("PAGA") claim
26 under Labor Code § 2698, *et seq.*, (2) the parties are required to seek and obtain Court approval for
27 settlement of any such claim pursuant to Labor Code § 2699(1)(2), (3) the parties are making this

1 Motion jointly, (4) the parties' PAGA settlement is fair and appropriate, and (5) parties' settlement
2 in this action is contingent on the Court granting this Motion.

3 This motion is based on the attached Memorandum of Points and Authorities, the
4 Declaration of Anthony S. Khoury, and upon such further oral argument and written evidence as
5 may be submitted at the hearing of the application. The parties also ask the Court to take judicial
6 notice of the *Walter Scott and Sean Timothy v. Coastal Transport Co., Inc.* class action, San Diego
7 Superior Court Case No. 37-2016-00020248-CU-OE-CTL, pursuant to Evidence Code § 452(d).

8
9 DATED: December 15, 2017

LEVINE & BLIT LLP

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11 By:



12 Anthony S. Khoury, Of Counsel
13 Attorneys for Plaintiff SAMUEL MISITA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 On September 7, 2016, Plaintiff Samuel Misita ("Misita") filed this wage and hour action
4 concerning Plaintiff's employment with Defendant Coastal Transport Co., Inc. ("Coastal"). In his
5 Complaint, Plaintiff asserted claims for: (1) failure to pay minimum wage, (2) wage statement
6 violations, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely
7 pay wages at separation, (6) failure to provide personnel file, (7) PAGA violations, and (8) unfair
8 business practices in violation of California Business and Professions Code § 17200, *et seq.*
9 *Declaration of Anthony S. Khoury*, ("Khoury Decl.") at ¶ 2. On or about December 6, 2017, Plaintiff
10 Misita and Defendant Coastal entered into a Confidential Settlement Agreement and General
11 Release of All Claims (the "Agreement"). *Id.* at ¶ 3. Among other terms, that are confidential, the
12 Agreement provides for settlement of the Private Attorneys General Act ("PAGA") claim set forth
13 by Plaintiff in the Complaint he filed on September 7, 2016. Per the Agreement, Defendant will
14 make a payment of \$600.00 as settlement of the PAGA penalties associated with Plaintiff's PAGA
15 claim--\$450.00 (or 75%, as required by Labor Code § 2699(i)) will be made payable to the Labor
16 and Workforce Development Agency ("LWDA"), and \$150.00 (or 25%) will be made payable to
17 Plaintiff Misita. *Id.*

18 Under Labor Code § 2699(l)(2), the parties are required to seek and obtain Court approval
19 for settlement of any PAGA claim, and the parties' settlement of all of the claims filed by Plaintiff
20 in this action cannot be fully consummated until the Court approves the PAGA settlement.
21 Accordingly, the parties are making this motion jointly to the Court for approval of the PAGA
22 settlement. *Khoury Decl.*, at ¶ 4, 5.

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1 **II. THE COURT SHOULD, AND IS AUTHORIZED TO, APPROVE THE PAGA**
2 **SETTLEMENT IN THIS CASE**

3 PAGA permits an aggrieved employee to sue an employer for civil penalties associated with
4 the employer's alleged violation of various California Labor Code provisions. *See* Labor Code §
5 2698, *et seq.* Under PAGA, of the amount paid to settle a claim for PAGA penalties, 75% is payable
6 to the LWDA, and 25% is payable to the aggrieved employee. *See* Labor Code § 2699(i). Under
7 Labor Code § 2699(1)(2), the parties are required to seek and obtain Court approval for settlement
8 of any PAGA claim.

9 Per the Agreement in this case, Defendant Coastal will make a payment of \$600.00 as
10 settlement of the PAGA penalties associated with Plaintiff's PAGA claim--\$450.00 (or 75%) will
11 be made payable to the LWDA, and \$150.00 (or 25%) will be made payable to Plaintiff Misita.
12 *Khoury Decl.*, at ¶ 3. The proposed resolution of the alleged PAGA penalties is more than fair and
13 reasonable because: 1) a near identical PAGA claim was made in the *Walter Scott and Sean Timothy*
14 *v. Coastal Transport Co., Inc.* class action, San Diego Superior Court Case No. 37-2016-00020248-
15 CU-OE-CTL, and said claim covered nearly the same exact one-year statute of limitations period
16 (PAGA notices in both actions were filed in early May 2016), and the class action settlement in that
17 action included settlement of the PAGA claim with a corresponding payment made to the LWDA
18 on behalf of all aggrieved employees of Defendant Coastal, 2) as a result of the overlapping PAGA
19 claims, Defendant's exposure to PAGA penalties in this case would have been extremely limited,
20 had the matter proceeded to trial, and 3) the PAGA settlement amount is proportionate given
21 Plaintiff's wage and hour claims as an individual aggrieved employee. *Khoury Decl.*, at ¶ 6.

22 Furthermore, a trial court does not abuse its discretion in approving the settlement of a case
23 involving PAGA claims even when the settlement allocates none of the settlement payment to
24 PAGA claims. *See Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 589 ("*Nordstrom*").
25 In *Nordstrom*, the court of appeal held that the trial court did not abuse its discretion in approving a
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1 class action settlement that released the PAGA claims without any money paid to the LWDA for
2 those claims. Here, even though the LWDA is already receiving a significant amount of money on
3 behalf of all of the same aggrieved employees of Defendant Coastal for nearly the same exact statute
4 of limitations period as part of the *Walter Scott and Sean Timothy v. Coastal Transport Co., Inc.*
5 class action, the parties here are still allocating a portion of their settlement to Plaintiff Misita's
6 PAGA claim and making a corresponding payment to the LWDA. Accordingly, the Court should
7 approve this PAGA settlement.
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10 **VI. CONCLUSION**

11 In light of the foregoing facts and authorities, and the matters set forth in the Declaration of
12 Anthony S. Khoury, filed concurrently herewith, the parties hereby respectfully request that this
13 Court issue an order granting approval of the PAGA settlement.
14

15 DATED: December 15, 2017

LEVINE & BLIT LLP

17 By:

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19 _____
20 Anthony S. Khoury, Of Counsel
21 Attorneys for Plaintiff SAMUEL MISITA
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 8383 Wilshire Blvd., Suite 945, Beverly Hills, CA 90211.

On December 15, 2017, I served the foregoing document described as **PLAINTIFF SAMUEL MISITA'S NOTICE OF JOINT MOTION AND JOINT MOTION FOR APPROVAL OF PAGA SETTLEMENT** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

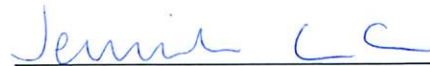
Chad D. Bernard, Esq.
John P. Nordlund, Esq.
JACKSON LEWIS P.C.
225 Broadway, Suite 2000
San Diego, CA 92101

☒ **BY OVERNIGHT MAIL (GOLDEN STATE OVERNIGHT):** I caused such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the pending action and served on the party making service.

☐ **BY U.S. MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 15, 2017 at Beverly Hills, California.



Jennifer Iacono