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7 Attorneys for Plaintiff, SAMUEL MISITA

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

11 SAMUEL MISITA, an Individual,
12
13 Plaintiff,

14 v.

15 COASTAL TRANSPORT CO., INC., a
16 corporation, and DOES 1-25, inclusive,
17
18 Defendants.

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

DECLARATION OF ANTHONY S.
KHOURY IN SUPPORT OF JOINT
MOTION FOR APPROVAL OF
PAGA SETTLEMENT

[Ex Parte Application and [Proposed]
Order Filed Concurrently Herewith]

Date: December 14, 2017
Time: 8:30 a.m.
Department: 73

Complaint Filed: September 7, 2016

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DECLARATION OF ANTHONY S. KHOURY

I, Anthony S. Khoury, declare:

1. I am an attorney duly licensed to practice before all courts of the State of California and serve Of Counsel to the law firm of Levine & Blit LLP, attorneys of record for Plaintiff Samuel Misita in this action. The facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

2. On September 7, 2016, Plaintiff Samuel Misita ("Misita") filed this wage and hour action concerning Plaintiff's employment with Defendant Coastal Transport Co., Inc. ("Coastal"). In his Complaint, Plaintiff asserted claims for: (1) failure to pay minimum wage, (2) wage statement violations, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay wages at separation, (6) failure to provide personnel file, (7) PAGA violations, and (8) unfair business practices in violation of California Business and Professions Code § 17200, *et seq.* Plaintiff sought special, general and punitive damages, restitution, disgorgement of profits, injunctive relief, statutory penalties, liquidated damages, attorneys' fees pursuant to California Labor Code §§ 218.5, 1194, and 2699(g), interest and costs.

3. On or about December 6, 2017, Plaintiff Misita and Defendant Coastal entered into a Confidential Settlement Agreement and General Release of All Claims (the "Agreement"). Among other terms, that are confidential, the Agreement provides for settlement of the Private Attorneys General Act ("PAGA") claim set forth by Plaintiff in his Complaint. Per the Agreement, Defendant will make a payment of \$600.00 as settlement of the PAGA penalties associated with Plaintiff's PAGA claim--\$450.00 (or 75%, as required by Labor Code § 2699(i)) will be made payable to the Labor and Workforce Development Agency ("LWDA"), and \$150.00 (or 25%) will be made payable to Plaintiff Misita.

4. Under Labor Code § 2699(1)(2), the parties are required to seek and obtain Court approval for settlement of any PAGA claim, and the parties' settlement of all of the claims filed by

1 Plaintiff in this action cannot be fully consummated until the Court approves the PAGA settlement.
2 Accordingly, the parties are jointly seeking the Court's approval of the PAGA settlement. On
3 December 14, 2017, I e-mailed Defendant Coastal's counsel, Chad D. Bernard and asked for his
4 consent to file the Motion for Approval of PAGA Settlement as a joint motion, and he granted my
5 request. I had previously spoken with Mr. Bernard on December 12, 2017 by telephone, prior to
6 seeking approval of the PAGA settlement on an *ex parte* basis, and Mr. Bernard had indicated then
7 that Defendant Coastal did not oppose the Application for *ex parte* approval of the PAGA
8 settlement. In other words, the parties are in full agreement on jointly seeking approval of the PAGA
9 settlement.
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11 5. Settlement of the PAGA claim is contingent upon this Court's approval, and the
12 parties' settlement cannot be fully consummated until the Court's approval is obtained. If the Court
13 does not grant approval, the parties' settlement cannot be effectuated, and Plaintiff Misita would
14 potentially be precluded from obtaining the relief to which he is entitled. Moreover, the parties'
15 litigation efforts could be severely prejudiced by the passage of time since the parties' tentative
16 agreement to settle this action back on or about October 5, 2017. It is not only in the parties' best
17 interests, respectively, but also in the public's best interest, and in the Court's best interests in terms
18 of justice and judicial economy, for the Court to grant approval of this PAGA settlement.
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20 6. I believe that the proposed resolution of the alleged PAGA penalties is more than
21 fair and reasonable because: 1) a near identical PAGA claim was made in the *Walter Scott and Sean*
22 *Timothy v. Coastal Transport Co., Inc.* class action, San Diego Superior Court Case No. 37-2016-
23 00020248-CU-OE-CTL, and said claim covered nearly the same exact one-year statute of
24 limitations period (PAGA notices in both actions were filed in early May 2016), and the class action
25 settlement in that action included settlement of the PAGA claim with a corresponding payment made
26 to the LWDA on behalf of all aggrieved employees of Defendant Coastal, 2) as a result of the
27 overlapping PAGA claims, Defendant's exposure to PAGA penalties in this case would have been
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1 extremely limited, had the matter proceeded to trial, and 3) the PAGA settlement amount is
2 proportionate given Plaintiff's wage and hour claims as an individual aggrieved employee.

3 7. Under Labor Code § 2699(1)(2), the parties are also required to submit the PAGA
4 settlement to the LWDA. On December 15, 2017, I mailed and electronically submitted a letter to
5 the LWDA notifying the agency of the PAGA settlement. A true and correct copy of the letter I sent
6 by mail, and also submitted electronically directly to the LWDA, is attached hereto as **Exhibit A**.

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8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct, and that I executed this declaration on December 15, 2017 in Beverly Hills,
10 California.

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Anthony S. Khoury

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 **DECLARATION OF ANTHONY S. KHOURY IN SUPPORT OF 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

EXHIBIT “A”



Anthony S. Khoury
Of Counsel
akhoury@levineblit.com
(310) 281-0100

December 14, 2017

Sent Via U.S. Mail & Transmitted Electronically

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: **Samuel Misita v. Coastal Transport Co., Inc.**
(San Diego County Superior Court Case No. 37-2016-00031058-CU-OE-CTL)

To PAGA Administrator:

Pursuant to Labor Code § 2699(l)(2), I am submitting to the Labor and Workforce Development Agency ("LWDA") the proposed Private Attorneys General Act ("PAGA") settlement in the above-entitled matter, pending before the San Diego County Superior Court. The proposed PAGA settlement is being submitted to the Court for approval on December 15, 2017, and the motion for approval will be heard on January 12, 2017 at 8:30 a.m. before Judge Joel R. Wohlfeil in Department C73.

The terms of the PAGA settlement are as follows: Defendant Coastal Transport Co., Inc. ("Coastal") will make a payment of \$600.00 as settlement of the PAGA penalties associated with Plaintiff Samuel Misita's PAGA claim--\$450.00 (or 75%, as required by Labor Code § 2699(i)) will be made payable to the LWDA, and \$150.00 (or 25%) will be made payable to Plaintiff Samuel Misita.

The PAGA claim made by Plaintiff Samuel Misita, and submitted to the LWDA on or about May 2, 2016, alleged violations of Labor Code §§ 201-203, 226, 510, 512, 1194, 1197, and 1197.1.

Please let me know if you have any questions or require any further information or documentation.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Khoury', written over a horizontal line.

Anthony S. Khoury, Of Counsel

Levine & Blit LLP

Attorneys for Plaintiff Samuel Misita

cc: Chad D. Bernard, Esq.