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Attorneys for Defendants Construction Defect Investigative Services, Inc., and
Roger Price

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CHRIS ADAMS, an individual,

Plaintiff,

v.

CONSTRUCTION DEFECT
INVESTIGATIVE SERVICES, INC.; ROGER
PRICE, an individual; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 37-2022-00047156-CU-OE-NC

**STIPULATION RE: COURT
APPROVAL OF SETTLEMENT OF
PLAINTIFF'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES, DECLARATION OF
RODOLFO RUIZ-VELASCO IN
SUPPORT THEREOF; [PROPOSED]
ORDER**

I/C: Hon. Hon. Cynthia A. Freeland
Dept. N-27

Date of First Paper: November 21, 2022
Trial Date: October 4, 2024

[IMAGED FILE]

1 IT IS HEREBY STIPULATED by and between Plaintiff CHRIS ADAMS (“Plaintiff”)
2 on the one hand, and Defendants CONSTRUCTION DEFECT INVESTIGATIVE SERVICES,
3 INC. and ROGER PRICE (collectively, “Defendants”), on the other hand, (Plaintiff and
4 Defendants are referred to collectively as the “Parties”), by their respective attorneys of record,
5 with reference to the following facts:
6

7 1. WHEREAS, Plaintiff was previously employed by Defendants;

8 2. WHEREAS, on August 17, 2022, Plaintiff sent an administrative claim to the
9 California Labor & Workforce Development Agency (“LWDA”) that alleged certain Labor Code
10 violations pursuant to the Private Attorneys General Act of 2004 or “PAGA,” codified at Labor
11 Code sections 2698, et seq.;

12 3. WHEREAS, the Labor and Workforce Development Agency did not notify
13 Plaintiff that the agency intends to pursue said allegations within 65 days of the postmark date on
14 Plaintiff’s written notice per Labor Code section 2669.3(a)(2)(A);

15 4. WHEREAS, on November 21, 2022, Plaintiff commenced a lawsuit in the San
16 Diego County Superior Court, entitled Chris Adams, Plaintiff, vs. Construction Defect
17 Investigative Services, Inc., et al., Defendants, San Diego County Superior Court Case No. 37-
18 2022-00047156-OE-NC (the “Complaint” or the “Litigation”), in which Plaintiff made, among
19 other things, individual claims for wage and hour violations, and the representative PAGA claim,
20 where Plaintiff alleged that he was owed unpaid minimum and overtime compensation (wages),
21 premium pay for meal and rest periods, damages for records violations, business expenditure
22 reimbursements, and related damages arising out of his employment with Defendants;

23 5. WHEREAS, the Complaint generally seeks various damages and penalties in
24 connection with Plaintiff’s claims, including claims under PAGA;

25 6. WHEREAS, Defendants at all times disputed and denied, and continue to dispute
26 and deny that they ever were liable to Plaintiff, or any other person, for any of the claims
27 asserted in the Complaint, including the claims for civil penalties under PAGA;
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7. WHEREAS, the Parties entered into a confidential settlement agreement pursuant to which Plaintiff agreed to dismiss with prejudice all claims for civil penalties under PAGA in exchange for Defendants' payment of \$5,000.00;

8. WHEREAS, counsel for the Parties agree that the reasonable settlement value of Plaintiff's claims for civil penalties under PAGA, if any, is \$5,000, with 75% of that amount (\$3,750.00) made payable to the LWDA, and 25% of that amount (\$1,250.00) made payable to the aggrieved employees. This value is based on the Parties' negotiations, and considerations including: (1) Defendants' dispute that any penalties under PAGA are due; (2) the terms of the confidential settlement agreement of Plaintiff's claims under PAGA; (3) Plaintiff gave the LWDA the opportunity to investigate Plaintiff's claims and the LWDA declined to do so; and (4) an award of PAGA civil penalties is in the discretion of the Court;

9. WHEREAS, the aggrieved employees are defined in the Complaint as all nonexempt employees who worked for Defendant CONSTRUCTION DEFECT INVESTIGATIVE SERVICES, INC. from August 17, 2021 to the date this case is dismissed (the “PAGA Period”);

10. WHEREAS, the Parties have agreed that Defendants' counsel's office will distribute the PAGA civil penalties to the aggrieved employees in this case given the small number of aggrieved employees; and

11. WHEREAS, in order to satisfy the requirements of Labor Code section 2699(1)(2), which requires Court approval of any settlement for civil penalties sought pursuant to PAGA, the Parties have agreed that acceptable PAGA civil penalties in the present case total \$5,000.00, and the amount of \$3,750.00 (75% x \$5,000) shall be distributed to the LWDA by Plaintiff's counsel's office within 7 days of receipt of the payment from Defendants, and the amount of \$1,250.00 (25% x \$5,000) shall be distributed by Defendants' counsel's office to the aggrieved employees pro rata according to the amount of pay periods that they each worked during the PAGA Period.

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RUIZ-VELASCO LAW

DATED: April 23, 2024

By: 

RODOLFO RUIZ-VELASCO
Attorney for Plaintiff CHRIS ADAMS

TESTA & ASSOCIATES, LLP

DATED: April 23, 2024

By: 

JAMES A. TESTA
GREGORY J. TESTA
ANNE-MARIE TUBAO
Attorneys for Defendants CONSTRUCTION
DEFECT INVESTIGATIVE SERVICES, INC., et
al.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & BACKGROUND**

3 Mr. Chris Adams (“Plaintiff”) was employed with Defendants for over 22 years as a
4 construction worker and foreman. Defendants terminated Plaintiff’s employment in July of 2022.

5 Mr. Adams filed this lawsuit for damages making individual wage and hour claims.
6 Plaintiff, as a representative for the State of California, also claims civil penalties pursuant to
7 PAGA on behalf of the State of California and all current and former aggrieved employees of
8 Defendants in his seventh (7th) cause of action in his Complaint. The PAGA damage period is as
9 follows: August 17, 2021 to the date this case is dismissed (for purposes of calculation the date
10 of April 23, 2024 was used) for aggrieved employees who worked for Defendant
11 CONSTRUCTION DEFECT INVESTIGATIVE SERVICES, INC. (the “PAGA Period”).
12 Defendants employed on average 8 employees each pay period during the PAGA Period.

13 Plaintiff alleges multiple wage and hour Labor Code violations such as nonpayment of
14 minimum wages, overtime wages, meal and rest period premiums, inaccurate wage statements,
15 waiting time penalties, and failure to reimburse business expenditures. Defendants deny all
16 allegations.

17 This case represents the pinnacle of the goals of litigation: contentious arms’-length
18 negotiations, production of records, service of nine written discovery sets, a full-day mediation
19 with experienced mediator Hon. Timothy Casserly, Ret. from Judicate West, which revealed the
20 strengths and weaknesses of each side’s case, leading to early resolution of the dispute. In this
21 fashion, the parties avoid incurring additional attorneys’ fees and costs to reach a reasonable
22 settlement at the earliest opportunity. After a full-day mediation with Judge Casserly, the Parties
23 aggrieved to settle the PAGA claim for a gross settlement sum of \$5,000, of which 75% or
24 \$3,750 is to be distributed to the State LWDA and 25% or \$1,250 to the aggrieved employees.

25 Accordingly, Plaintiff respectfully requests that the Court approve this PAGA claim
26 settlement which provides benefits to both the State of California and to the aggrieved
27 employees.

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V. THE PROPOSED PAGA CIVIL PENALTIES ARE REASONABLE GIVEN THAT DEFENDANTS DISPUTE THE VIOLATIONS ALLEGED BY PLAINTIFF, DEFENDANTS HAVE COOPERATED WITH PLAINTIFF'S INVESTIGATION, AND THAT THE PARTIES WOULD LIKE TO COMPROMISE TO SAVE ON FEES AND COSTS THAT WOULD INCREASE SIGNIFICANTLY UPON FURTHER LITIGATION

“[The] Legislature's purpose in enacting the PAGA was to augment the limited enforcement capability of the Agency by empowering employees to enforce the Labor Code as representatives of the Agency.” *Iskanian*, supra, 59 Cal.4th at 383.

Labor Code section 2699 allows for a maximum penalty of one-hundred dollars (\$100) for the first pay period in which there was violation of applicable sections and two-hundred dollars (\$200) per pay check for each pay period thereafter pursuant to subsection (f)(2), “except those for which a civil penalty is specifically provided” pursuant to subsection (f).

In the instant action there were five main categories of violations claimed by Plaintiff: minimum wage violations, overtime wage violations, meal periods violations, rest period violations, and records violations.

Labor Code section 2699.3 requires that the representative employee(s) “give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” Labor Code section 2699.3(1)(A). Plaintiff gave said notice on August 17, 2022. See Decl. of Rodolfo Ruiz-Velasco, ¶2.

The Parties were able to compromise the claims reaching a global confidential settlement of the entire action, including the individual wage and hour claims and the PAGA Claim. A total of five thousand dollars (\$5,000.00) has been deemed and agreed by the Parties to be an appropriate allotted amount to settle the 7th cause of action for PAGA civil penalties. The Parties have agreed that Plaintiff’s counsel distribute 75% or three thousand seven hundred and fifty dollars (\$3,750.00) of the civil penalties to the California LWDA, and that Defendants’ counsel distribute 25% or one thousand two hundred fifty dollars (\$1,250) of the civil penalties to the

1 aggrieved employees who worked during the PAGA Period on a pro rata basis, depending on the
2 number of pay periods that they each worked during the PAGA Period.

3 Here, Defendants own and operate a construction and maintenance services company that
4 provides services to law firms, insurance companies, and other companies throughout southern
5 California. Plaintiff was employed by Defendants as a construction worker and foreman. Plaintiff
6 and the other employees were paid biweekly. Plaintiff claims that Defendants underpaid his
7 hours worked and earned. Specifically, that Defendants did not pay him for overtime hours
8 worked, particularly for travel time since he was required to drive the company vehicle and
9 transport materials, equipment, and other employees to and from the job sites, but was not paid
10 for this time. Plaintiff also claims that he and the other employees were not fully relieved of
11 duties during their meal and rest periods as they were not allowed nor able to because they would
12 not be able to finish their required work duties in time, and that Defendants failed to maintain
13 accurate time in and time out records which show all hours worked and which show meal
14 periods. Plaintiff also claims that he was paid in cash under the table or with a business check
15 without FICA withholdings for a majority of the time he was employed by Defendants, but was
16 not provided accurate wage statements, which is in violation of Labor Code Section 226.
17 Plaintiff claims that he was not reimbursed for business expenditures, including meal
18 reimbursements for out of town work, reimbursements for purchase of gas and personal vehicle
19 use, and for purchase of materials.

20 The total potential PAGA civil penalties Plaintiff calculated are at least \$280,000 for 8
21 employees for the PAGA Period from August 17, 2021 to April 23, 2024, calculated as 70 pay
22 periods (140 weeks, biweekly is $140/2 = 70$ biweekly pay periods) x 8 aggrieved employees x
23 \$100 x 5 violations = at least \$280,000 in potential PAGA civil penalties. (Ruiz-Velasco Decl.,
24 ¶6). Defendants deny all violations.

25 All of Plaintiffs' individual causes of action along with the PAGA cause of action were
26 resolved in a confidential settlement on or about April 18, 2024. Plaintiff does not object to the
27 \$5,000 total amount in PAGA civil penalties because (1) the Defendants cooperated with
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1 Plaintiff's investigation by complying with discovery and producing records, (2) the Defendants
2 dispute all of the claimed violations, (3) the Parties have decided to compromise to save on
3 attorneys' fees and costs because further litigating this case would significantly increase fees and
4 costs for the Parties making settlement less likely.

5 The PAGA Period was used as the time period in question to reflect the one-year statute
6 of limitations for penalties from the time of filing the written PAGA notice with the LWDA to
7 the time this case is dismissed (see above). Of the one five thousand dollars in civil penalties
8 (\$5,000), three thousand seven hundred and fifty dollars (\$3,750) or seventy-five percent (75%)
9 will be paid to the California Labor Workforce Development Agency ("LWDA") and one
10 thousand two hundred and fifty dollars (\$1,250) or twenty-five percent (25%) will be paid to the
11 eight aggrieved employees.

12 The Parties were able to reach a compromised confidential settlement after Defendants
13 produced records and discovery, the Parties each propounding 5 sets of written discovery and
14 responding to the discovery with multiple meet and confer correspondence required to resolve
15 discovery disputes, Plaintiff serving 2 deposition notices, a full-day mediation with experienced
16 mediator Hon. Timothy Casserly, Ret., plus multiple post-mediation communications with
17 Defendants' counsel directly required to finally settle all causes of action for the Plaintiff,
18 including his individual six causes of action as follows for (1) failure to pay wages, (2) failure to
19 timely furnish accurate itemized wage statements in violation of Labor Code section 226(a), (3)
20 unfair business practices, (4) waiting time penalties per Labor Code section 203, (5) meal and
21 rest period violations, (6) failure to reimburse business expenses, along with the representative
22 seventh cause of action for PAGA civil penalties.

23 VI. DEFINITION OF AGGRIEVED EMPLOYEES

24 The aggrieved employees are defined as:

25 Any and all nonexempt employees of Defendants who were employed during the PAGA
26 Period ("PAGA Aggrieved Employees"). There are approximately 8 individuals that compose
27 the PAGA Aggrieved Employees.

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1. I am an attorney licensed to practice law in the state of California and am the attorney of record for Plaintiff CHRIS ADAMS (“Plaintiff”) in the above referenced action.

3. On or about November 21, 2022 Plaintiff filed his Complaint in this case alleging individual claims for (1) failure to pay wages, (2) failure to timely furnish accurate itemized wage statements in violation of Labor Code section 226(a), (3) unfair business practices, (4) waiting time penalties per Labor Code section 203, (5) meal and rest period violations, and (6) failure to reimburse business expenses, (7) along with the representative seventh cause of action for PAGA civil penalties pursuant to Labor Code section 2698, et seq.

5. Plaintiff claims that Defendants did not pay Plaintiff and the other aggrieved employees for overtime hours worked, that they were not paid with a wage statement containing

1 all of the information required of Labor Code Section 226, that they were not relieved of duties
2 during meal and rest periods, and that they were not reimbursed for meals when they were
3 required to travel out of town and for some personal vehicle use and gas and materials purchases.
4 Defendants dispute the violations.

5
6 6. The total potential PAGA civil penalties Plaintiff calculated are at least \$280,000
7 for 8 employees for the PAGA Period from August 17, 2022 to April 23, 2024, calculated as 70
8 pay periods (140 weeks, biweekly is $140/2 = 70$ biweekly pay periods) x 8 aggrieved employees
9 x \$100 x 5 violations = at least \$280,000 in potential PAGA civil penalties.

10 7. Despite the above differences and disputes regarding the viability of said claims,
11 on or about April 18, 2024, the Parties were able to reach a compromised confidential settlement
12 after the Parties exchanged and produced written discovery and records, Plaintiff propounding 5
13 sets of discovery and serving 2 deposition notices, Defendants propounding 5 sets of discovery, a
14 full-day mediation with experienced mediator Hon. Timothy Casserly, Ret. from Judicate West,
15 plus multiple post-mediation communications required to finally settle all causes of action. Upon
16 Court approval of this settlement of the PAGA Claim, Plaintiff will request to dismiss this case
17 in its entirety with prejudice.

18
19 8. Of the five thousand dollars (\$5,000) in civil penalties agreed to by the Parties,
20 three thousand seven hundred and fifty dollars (\$3,750) or seventy-five percent (75%) will be
21 paid to the California LWDA and one thousand two hundred and fifty (\$1,250) or twenty-five
22 percent (25%) will be paid to the three aggrieved employees.

23
24 9. On or about April 23, 2024, I submitted a copy of this stipulation re: Court
25 approval of settlement of PAGA Claim, the memorandum of points and authorities, declaration
26 and order to the LWDA through their website <https://www.dir.ca.gov/Private-Attorneys-General->
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1 Act/Private-Attorneys-General-Act.html as required by the LWDA's procedure and Labor Code
2 section 2699(1)(2). See also the proof of service filed herewith.

3 I declare under penalty of perjury under the laws of the state of California that foregoing
4 is true and correct and based upon my personal knowledge.
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6 Dated: April 23, 2024

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8 Rodolfo Ruiz-Velasco, Esq.
9 Attorney for Plaintiff,
10 Chris Adams
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[PROPOSED] ORDER

GOOD CAUSE APPEARING, IT IS SO ORDERED.

1. The Parties’ agreement to settle any and all claims available under Labor Code sections 2698, et seq. (the Private Attorneys General Act or “PAGA”) pursuant to Plaintiff’s seventh (7th) cause of action in his Complaint for \$5,000.00 is approved by this Court.

2. The aggrieved employees are defined as all nonexempt employees who worked for Defendant CONSTRUCTION DEFECT INVESTIGATIVE SERVICES, INC. from August 17, 2021 to the date this case is dismissed (the “PAGA Period”).

3. The civil penalties amount of \$5,000.00 shall be distributed as follows: Plaintiff’s counsel shall distribute 75% of that amount (\$3,750.00) to the California Labor Workforce & Development Agency (“LWDA”), and Defendants’ counsel shall distribute 25% of that amount (\$1,250.00) to the aggrieved employees pro rata according to the number of pay periods that each employee worked during the PAGA Period.

IT IS SO ORDERED.

Dated: _____

Hon. Cynthia A. Freeland