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Attorneys for Plaintiff FRANK BERNAL

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

FRANK BERNAL, an individual,

Plaintiff,

v.

WATKINS ENVIRONMENTAL, INC.;
PIERCE F. BARONE, an individual;
WILLIAM SZYMANSKI, an individual; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2023-00033831-CU-OE-CTL

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

I/C: Hon. Blaine K. Bowman
Dept.: C-74

Date of First Paper: August 8, 2023
Trial Date: Off calendar pending approval
of this stipulation

[IMAGED FILE]

IT IS HEREBY STIPULATED by and between Plaintiff FRANK BERNAL (“Plaintiff”) and Defendants WATKINS ENVIRONMENTAL, INC. (“WATKINS”), PIERCE F. BARONE, and WILLIAM SZYMANSKI (collectively, “Defendants”), on the other hand, (Plaintiff and

1 Defendants are referred to collectively as the “Parties”), by their respective attorneys of record,
2 with reference to the following facts:

3
4 1. WHEREAS, Plaintiff was previously employed by Defendants;

5 2. WHEREAS, on April 6, 2023, Plaintiff filed an administrative claim with the
6 California Labor & Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-
7 CM-946781-23) (the “PAGA Action” or “PAGA Claim”) and sent it to Defendants via certified
8 mail that alleged certain Labor Code violations pursuant to the Private Attorneys General Act of
9 2004 or “PAGA,” codified at Labor Code sections 2698, et seq.;

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

13 4. WHEREAS, on August 8, 2023, Plaintiff commenced a lawsuit in the San Diego
14 County Superior Court, entitled Frank Bernal, Plaintiff, vs. Watkins Environmental, Inc., et al.,
15 Defendants, San Diego County Superior Court Case No. 37-2023-00033831-OE-CTL (the
16 “Complaint” or the “Litigation”), in which Plaintiff made, among other things, individual claims
17 for wage and hour violations, sexual harassment and assault, and constructive wrongful
18 termination claims, and the representative PAGA claim, where Plaintiff alleged that he was owed
19 unpaid minimum wage compensation (wages), premium pay for meal and rest periods, damages
20 for records violations, business expenditure reimbursements, and related damages arising out of
21 his employment with Defendants;

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

24 6. WHEREAS, Defendants at all times disputed and denied, and continue to dispute
25 and deny that they ever were liable to Plaintiff, or any other person, for any of the claims
26 asserted in the Complaint, including the claims for civil penalties under PAGA;

27 7. WHEREAS, the Parties entered into a confidential settlement agreement pursuant
28 to which Plaintiff agreed to dismiss with prejudice all claims for civil penalties under PAGA in

exchange for Defendants' payment of \$25,000.00, which is calculated as \$20,000.00 in PAGA civil penalties, \$5,000 to the PAGA administrator;

8. WHEREAS, counsel for the Parties agree that the reasonable settlement value of Plaintiff's claims for civil penalties under PAGA, if any, is \$20,000, with 75% of that amount (\$15,000) made payable to the LWDA, and 25% of that amount (\$5,000) 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 as all nonexempt employees who worked for Defendant WATKINS from April 6, 2022 to the date this case is dismissed (the "PAGA Period");

10. WHEREAS, the Parties have agreed on claims administrator Phoenix Settlement Administrators ("Phoenix") to distribute PAGA civil penalties in this case; 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 \$20,000, and the amount of \$15,000 (75% x \$20,000) shall be distributed to the LWDA by Phoenix, and the amount of \$5,000 (25% x \$20,000) shall be distributed by Phoenix to the aggrieved employees pro rata according to the amount of pay periods that they each worked during the PAGA Period.

RUIZ-VELASCO LAW

DATED: April 7, 2025

By:


RODOLFO RUIZ-VELASCO
Attorney for Plaintiff FRANK BERNAL

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FINCH, THORNTON & BAIRD, LLP

DATED: April 8, 2025

By: 
CHAD T. WISHCHUCK
MARLENE C. NOWLIN
Attorneys for Defendants WATKINS
ENVIRONMENTAL, INC. et al.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & BACKGROUND**

3 Mr. Frank Bernal (“Plaintiff”) was employed with Defendants in April of 2021 as a
4 laborer in demolition and lead and asbestos removal. Plaintiff’s employment ended on or about
5 March 26, 2022. Defendants perform demolition and lead and asbestos removal for commercial
6 and government clients in southern California.

7 Plaintiff filed this action for damages making individual wage and hour, sexual
8 harassment and assault, and wrongful constructive termination claims. Plaintiff, as a
9 representative for the State of California, also claims for civil penalties pursuant to PAGA on
10 behalf of the State of California and all current and former aggrieved employees of Defendants.
11 The PAGA damage period is as follows: April 6, 2022 to the date this case is dismissed (for
12 purposes of calculation the date of April 1, 2025 was used) for nonexempt aggrieved employees
13 who worked for Defendant WATKINS (the “PAGA Period”). Defendant WATKINS employed
14 on average 60 employees each pay period during the PAGA Period.

15 Plaintiff alleges multiple wage and hour Labor Code violations such as nonpayment of
16 minimum wages, overtime wages, meal and rest period premiums, inaccurate wage statements,
17 waiting time penalties, and failure to reimburse business expenditures. Plaintiff also alleges that
18 Defendant Szymanski sexually harassed and assaulted him on multiple occasions and that he was
19 forced to resign because Defendants failed to discipline Szymanski or at least change him to a
20 different shift so that he would not have to work with Szymanski even though Plaintiff
21 complained to Defendants about the harassment and assault multiple times. Defendants deny all
22 allegations.

23 This case represents the pinnacle of the goals of litigation: contentious arms’-length
24 negotiations, some initial depositions, production of records, exchanging written discovery, a
25 half-day mediation with experienced mediator Hon. Justice Judith Haller from the Superior
26 Court, plus several pre-mediation and follow-up sessions with Justice Haller, which revealed the
27 strengths and weaknesses of each side’s case, leading to a global resolution of all disputes, both
28 the individual claims and the representative PAGA action. In this fashion, the Parties avoid

1 incurring additional attorneys' fees and costs to reach a reasonable settlement at the earliest
2 opportunity.

3 The details of the PAGA claim settlement are a gross settlement sum of \$25,000,
4 allocated as follows: \$20,000 in civil penalties plus \$5,000.00 in PAGA settlement administrator
5 fees. This results in a net gain of \$20,000 for the State of California and the aggrieved
6 employees.

7 Accordingly, Plaintiff respectfully requests that the Court approve this PAGA claim
8 settlement which provides substantial benefits to both the State of California and to the aggrieved
9 employees.

10 **II. PROCEDURAL HISTORY**

11 On April 6, 2023, Plaintiff notified the Labor and Workforce Development Agency
12 ("LWDA") regarding his Labor Code claims pursuant to PAGA and filed and served his PAGA
13 Action (LWDA Case No. LWDA-CM-946781-23) (the "PAGA Action" or "PAGA Claim").
14 Plaintiff thereafter filed his complaint on August 8, 2023 with his individual claims and the
15 PAGA Action.

16 The Parties made productive resolution discussions after performing initial discovery and
17 attending a Court-ordered mediation with experienced mediator Hon. Justice Judith Haller, with
18 several pre-mediation and post-mediation communications with Justice Haller's assistance. The
19 Parties attended a half-day mediation Justice Haller, where it was not resolved but the Parties
20 made some significant advances in negotiations and in exchange of information.

21 After several post mediation calls and communications through Justice Haller and
22 between counsel, and after careful consideration of the information produced, the Parties agreed
23 to a settlement of the case in full, including the individual and PAGA claims This case will be
24 dismissed in its entirety upon the Court approving the settlement of the PAGA claim.

25 **III. PAGA CLAIMS CANNOT BE SETTLED WITHOUT COURT** 26 **APPROVAL**

27 Pursuant to Labor Code Section 2699(1)(2): "The superior court shall review and approve
28 any settlement of any civil action filed pursuant to this part."

1 **IV. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA**
2 **PENALTIES THAT ARE BINDING**

3 Pursuant to Labor Code Section 2699(e) the Court has discretion as it pertains to the
4 amount of the penalty and “may award a lesser amount than the maximum civil penalty amount
5 specified by this part, based on the facts and circumstances of the particular case” because “to do
6 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

7 **V. THE PROPOSED PAGA CIVIL PENALTIES SETTLEMENT IS MORE**
8 **THAN REASONABLE GIVEN THAT DEFENDANTS DISPUTE THE VIOLATIONS**
9 **ALLEGED BY PLAINTIFF, INCLUDING A POTENTIAL STATUTE OF**
10 **LIMITATIONS DEFENSE ARGUMENT, DEFENDANTS HAVE MADE CORRECTIVE**
11 **MEASURES, AND THAT THE PARTIES WOULD LIKE TO COMPROMISE TO SAVE**
12 **ON FEES AND COSTS THAT WOULD INCREASE SIGNIFICANTLY UPON**
13 **FURTHER LITIGATION**

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

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

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

23 Labor Code section 2699.3 requires that the representative employee(s) “give written
24 notice by online filing with the Labor and Workforce Development Agency and by certified mail
25 to the employer of the specific provisions of this code alleged to have been violated, including
26 the facts and theories to support the alleged violation.” Labor Code section 2699.3(1)(A).
27 Plaintiff gave said notice on April 6, 2023, and the LWDA did not respond. See Decl. of Ruiz-
28 Velasco, ¶2.

1 The Parties were able to compromise the claims reaching a global confidential settlement
2 of the entire action, including the individual sexual harassment and assault, constructive
3 termination, and wage and hour claims and the PAGA Action. A total of twenty five thousand
4 dollars (\$25,000.00) has been deemed and agreed by the Parties to be an appropriate allotted
5 amount to settle the 8th cause of action for PAGA civil penalties. This gross settlement amount
6 for the PAGA Action is divided as follows as agreed by the Parties: twenty thousand dollars
7 (\$20,000.00) in civil penalties, plus \$5,000 for settlement administrator fees for distribution of
8 the PAGA civil penalties. The Parties have decided to hire Phoenix Settlement Administrators as
9 the PAGA civil penalties administrator to distribute the PAGA civil penalties to the California
10 LWDA and to the aggrieved employees who worked during the PAGA Period.

11 Here, Defendants own and operate WATKINS, a demolition and asbestos and lead
12 removal company that performs services for commercial and government clients in Southern
13 California. Plaintiff was employed by Defendants as a laborer. Plaintiff claims that Defendants
14 underpaid his and other employees' hours worked and earned. Specifically, that Defendants
15 required him and other employees to arrive at the warehouse to undertake duties such as to load
16 equipment and materials onto the vehicles, and to receive the daily assignments and instructions
17 from the supervisor, then to transport the equipment to the jobsites and unload them there, and
18 then after they were done at the jobsite, to load everything back on the vehicles, transport them
19 back to the warehouse, and unload them for maintenance, however, that Defendants did not pay
20 his travel time, did not provide requisite meal and rest periods, and did not reimburse for use of
21 personal vehicle and cellular phone service. As a consequence of the above violations, the pay
22 records produced are inaccurate in violation of Labor Code Section 226. Defendants also failed
23 to timely provide Plaintiff with a copy of his records in violation of Labor Code 226 and 1198.5.
24 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 March 12, 2025. Plaintiff does not object to the
27 \$25,000 total amount allocated to the PAGA Action because (1) Plaintiff's investigation showed
28 that many of the violations have stopped after the Department of Labor (DOL) collected

1 penalties and some of the damages owed to the employees, (2) the Defendants dispute all of the
2 claimed violations, including a statute of limitations argument regarding the PAGA Action, (3)
3 after this case was filed, the Defendants have made additional corrective measures and stopped
4 the violations, and (4) the Parties have decided to compromise to save on attorneys' fees and
5 costs because further litigating this case would significantly increase fees and costs for the
6 Parties making settlement less likely.

7 The PAGA Period was used as the time period in question to reflect the one-year statute
8 of limitations for penalties from the time of filing the written PAGA notice with the LWDA to
9 the time this case is dismissed (see above). Of the twenty thousand dollars (\$20,000.00)
10 apportioned for PAGA civil penalties, fifteen thousand dollars (\$15,000.00) or seventy-five
11 percent (75%) will be paid to the California Labor Workforce Development Agency ("LWDA")
12 and five thousand dollars (\$5,000.00) or twenty-five percent (25%) will be paid to the aggrieved
13 employees.

14 The Parties were able to reach a compromised confidential settlement after Defendants
15 initial written discovery and depositions, a half-day mediation with experienced mediator Hon.
16 Justice Judith Haller, plus multiple pre and post-mediation communications and calls through
17 Justice Haller and with Defendants' counsel directly required to finally settle all causes of action
18 for the Plaintiff, including his individual ten causes of action as follows for (1) failure to pay
19 wages, (2) failure to timely furnish accurate itemized wage statements in violation of Labor Code
20 section 226(a), (3) unfair business practices, (4) waiting time penalties per Labor Code section
21 203, (5) meal and rest period violations, (6) failure to reimburse business expenses, (7) failure to
22 timely provide copy of personnel file and payroll records and failure to maintain accurate time
23 records, (9) sexual harassment, hostile environment, and constructive termination in violation of
24 FEHA, (10) wrongful constructive termination in violation of public policy, and (11) sexual
25 assault and battery, along with the representative eighth (8th) cause of action for PAGA civil
26 penalties.

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I, Rodolfo Ruiz-Velasco, declare as follows:

2. On or about April 6, 2023, on behalf of Plaintiff, I sent Defendants WATKINS ENVIRONMENTAL, INC. and PIERCE F. BARONE (collectively, “Defendants”) via certified mail a written notice of Plaintiff’s intent to bring a claim for PAGA civil penalties, and filed it with the California Labor Workforce Development Agency (“LWDA”) via online submission through their website (A true and correct copy of the written notice for the PAGA claim is attached to the Second Amended Complaint in this action, see Docket No. 65, Exhibit 1). The LWDA provided Case No. LWDA-CM-946781-23 for the PAGA Action. The LWDA did not respond within the requisite 65 days.

3. On or about April 5, 2023 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, (6) failure to reimburse business expenses, (7) failure to timely provide copy of personnel file and payroll records and failure to maintain accurate time records, (9) sexual harassment, hostile environment, and constructive termination in violation of FEHA, (10) wrongful constructive termination in violation of public policy, and (11) sexual assault and battery, along with the representative eighth (8th) cause of action for PAGA civil penalties pursuant to Labor Code section 2698, et seq. Defendants dispute the claims and violations.

///

1 4. Despite the above differences and disputes regarding the viability of said claims,
2 on or about March 12, 2025, the Parties were able to reach a compromised confidential
3 settlement after the Parties exchanged initial written discovery and documents, took initial
4 depositions, and after a half-day mediation with experienced Court mediator Hon. Justice Judith
5 Haller, plus multiple pre and post-mediation communications and calls through Justice Haller
6 and with Defendants' counsel directly required to finally settle all causes of action. Upon Court
7 approval of this settlement, Plaintiff will request to dismiss this case in its entirety.

9 5. \$25,000 has been agreed to settle the PAGA claim, where this gross amount is
10 allocated as follows: \$20,000 in civil penalties plus \$5,000 for civil penalties settlement
11 administrator fees. This results in a net gain of \$20,000 for the State of California and the
12 aggrieved employees.

14 6. Of the twenty thousand dollars (20,000), fifteen thousand dollars (\$15,000) or
15 seventy-five percent (75%) will be paid to the California Labor Workforce Development Agency
16 ("LWDA") and five thousand dollars (\$5,000) or twenty-five percent (25%) will be paid to the
17 three aggrieved employees.

18 I declare under penalty of perjury under the laws of the state of California that foregoing
19 is true and correct and based upon my personal knowledge.

20 Dated: April 7, 2025

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23 _____
24 Rodolfo Ruiz-Velasco, Esq.
25 Attorney for Plaintiff,
26 Frank Bernal
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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”) (LWDA Case No. LWDA-CM-946781-23) pursuant to Plaintiff’s eighth (8th) cause of action in his Complaint for \$25,000.00, which is calculated as \$20,000.00 in PAGA civil penalties, and \$5,000.00 in PAGA civil penalties settlement administrator distribution costs, is approved by this Court.

2. The aggrieved employees are defined as all nonexempt employees who worked for Defendant WATKINS ENVIRONMENTAL, INC. from April 6, 2022 to the date this case is dismissed with prejudice (the “PAGA Period”).

3. The civil penalties amount of \$20,000.00, shall be distributed by settlement claims administrator Phoenix Settlement Administrators with 75% of that amount (\$15,000.00) made payable to the California Labor Workforce & Development Agency (“LWDA”), and 25% of that amount (\$5,000.00) made payable 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. Blaine K. Bowman

1 *Bernal v. Watkins Environmental, Inc., et al.*
2 *Superior Court Case No. 37-2023-00033831-CU-OE-CTL*

3 **PROOF OF SERVICE**

4 I am employed in the County of San Diego, State of California. I am over eighteen years
5 of age and not a party to this action; my business address is 600 W. Broadway Suite 700, San
6 Diego, California, 92101.

7 On **April 22, 2025**, I served a true copy of the foregoing document(s):

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

12 on all interested parties in this action as follows:

13 California Labor Workforce Development 14 Agency 455 Golden Gate Ave, 9th Floor 15 San Francisco, CA 94102 16 (by online submission only at https:// www.dir.ca.gov/Private-Attorneys-General- Act/Private-Attorneys-General-Act.html	California Labor Workforce Development Agency (LWDA)
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17 ☒ **Online submission:** I submitted the above-documents online via the website above.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Executed on **April 22, 2025**.

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22 Rodolfo Ruiz-Velasco
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