

Rodolfo Ruiz-Velasco, Esq. (SBN 265364)
RUIZ-VELASCO LAW FIRM
600 W. Broadway Suite 700
San Diego, CA 92101
(619) 800-5293
rudu@rrv-law.com

Attorneys for Plaintiff FRANK BERNAL

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

FRANK BERNAL, an individual,	)	CASE NO.: 37-2023-00033831-CU-OE-CTL
	)	
Plaintiff,	)	STIPULATION RE: COURT
	)	APPROVAL OF SETTLEMENT OF
v.	)	PLAINTIFF'S PRIVATE ATTORNEYS
	)	GENERAL ACT ("PAGA") CLAIM;
WATKINS ENVIRONMENTAL, INC.;	)	[PROPOSED] ORDER;
PIERCE F. BARONE, an individual;	)	MEMORANDUM OF POINTS AND
WILLIAM SZYMANSKI, an individual; and	)	AUTHORITIES AND DECLARATION
DOES 1 through 50, inclusive,	)	OF RODOLFO RUIZ-VELASCO IN
	)	SUPPORT THEREOF
Defendants.	)	

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]

1 IT IS HEREBY STIPULATED by and between Plaintiff FRANK BERNAL (“Plaintiff”)
2 and Defendants WATKINS ENVIRONMENTAL, INC. (“WATKINS”), PIERCE F. BARONE,
3 and WILLIAM SZYMANSKI (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 April 6, 2023, Plaintiff filed an administrative claim with the
9 California Labor & Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-
10 CM-946781-23) (the “PAGA Action” or “PAGA Claim”) and sent it to Defendants via certified
11 mail that alleged certain Labor Code violations pursuant to the Private Attorneys General Act of
12 2004 or “PAGA,” codified at Labor Code sections 2698, et seq.;

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

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

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

27 6. WHEREAS, Defendants at all times disputed and denied, and continue to dispute
28 and deny that they ever were liable to Plaintiff, or any other person, for any of the claims

1 asserted in the Complaint, including the claims for civil penalties under PAGA;

2 7. WHEREAS, the Parties entered into a confidential settlement agreement pursuant
3 to which Plaintiff agreed to dismiss with prejudice all claims for civil penalties under PAGA in
4 exchange for Defendants' payment of \$25,000.00, which is calculated as \$20,000.00 in PAGA
5 civil penalties, \$5,000 to the PAGA administrator;

6 8. WHEREAS, counsel for the Parties agree that the reasonable settlement value of
7 Plaintiff's claims for civil penalties under PAGA, if any, is \$20,000, with 75% of that amount
8 (\$15,000) made payable to the LWDA, and 25% of that amount (\$5,000) made payable to the
9 aggrieved employees. This value is based on the Parties' negotiations, and considerations
10 including: (1) Defendants' dispute that any penalties under PAGA are due; (2) the terms of the
11 confidential settlement agreement of Plaintiff's claims under PAGA; (3) Plaintiff gave the
12 LWDA the opportunity to investigate Plaintiff's claims and the LWDA declined to do so; and (4)
13 an award of PAGA civil penalties is in the discretion of the Court;

14 9. WHEREAS, the payment of Plaintiff's attorneys' fees and costs is not part of the
15 settlement consideration regarding the PAGA Claim settlement, but is part of the confidential
16 settlement of Plaintiff's individual claims;

17 10. WHEREAS, the aggrieved employees are defined as all nonexempt employees
18 who worked for Defendant WATKINS from April 6, 2022 to the date this case is dismissed (the
19 "PAGA Period");

20 11. WHEREAS, the Parties have agreed on claims administrator Phoenix Settlement
21 Administrators ("Phoenix") to distribute PAGA civil penalties in this case; and

22 12. WHEREAS, in order to satisfy the requirements of Labor Code section
23 2699(1)(2), which requires Court approval of any settlement for civil penalties sought pursuant to
24 PAGA, the Parties have agreed that acceptable PAGA civil penalties in the present case total
25 \$20,000, and the amount of \$15,000 (75% x \$20,000) shall be distributed to the LWDA by
26 Phoenix, and the amount of \$5,000 (25% x \$20,000) shall be distributed by Phoenix to the
27 aggrieved employees pro rata according to the amount of pay periods that they each worked
28 during the PAGA Period.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RUIZ-VELASCO LAW

DATED: May 6, 2025

By: 

RODOLFO RUIZ-VELASCO
Attorney for Plaintiff FRANK BERNAL

FINCH, THORNTON & BAIRD, LLP

DATED: May 6, 2025

By: 

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

1 **[PROPOSED] ORDER**

2 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

3 1. The Parties' agreement to settle any and all claims available under Labor Code
4 sections 2698, et seq. (the Private Attorneys General Act or "PAGA") (LWDA Case No.
5 LWDA-CM-946781-23) pursuant to Plaintiff's eighth (8th) cause of action in his Complaint for
6 \$25,000.00, which is calculated as \$20,000.00 in PAGA civil penalties, and \$5,000.00 in PAGA
7 civil penalties settlement administrator distribution costs, is approved by this Court.

8
9 2. The aggrieved employees are defined as all nonexempt employees who worked
10 for Defendant WATKINS ENVIRONMENTAL, INC. from April 6, 2022 to the date this case is
11 dismissed with prejudice (the "PAGA Period").

12 3. The civil penalties amount of \$20,000.00, shall be distributed by settlement
13 claims administrator Phoenix Settlement Administrators with 75% of that amount (\$15,000.00)
14 made payable to the California Labor Workforce & Development Agency ("LWDA"), and 25%
15 of that amount (\$5,000.00) made payable to the aggrieved employees pro rata according to the
16 number of pay periods that each employee worked during the PAGA Period.

17
18 **IT IS SO ORDERED.**

19 Dated: _____

20 _____
Hon. Blaine K. Bowman

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. Other than the payment of the PAGA settlement administrator's costs, the payment
7 of Plaintiff's attorneys' fees and costs is not part of the settlement consideration regarding the
8 PAGA Claim settlement, but is part of the confidential settlement of Plaintiff's individual claims.
9 Ruiz-Velasco Decl., ¶7.

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

13 II. PROCEDURAL HISTORY

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

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

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

28 ///

1 **III. PAGA CLAIMS CANNOT BE SETTLED WITHOUT COURT**

2 **APPROVAL**

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

5 **IV. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA**
6 **PENALTIES THAT ARE BINDING**

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

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

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

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

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

27 Labor Code section 2699.3 requires that the representative employee(s) “give written
28 notice by online filing with the Labor and Workforce Development Agency and by certified mail

1 to the employer of the specific provisions of this code alleged to have been violated, including
2 the facts and theories to support the alleged violation.” Labor Code section 2699.3(1)(A).
3 Plaintiff gave said notice on April 6, 2023, and the LWDA did not respond. See Decl. of Ruiz-
4 Velasco, ¶2.

5 The Parties were able to compromise the claims reaching a global confidential settlement
6 of the entire action, including the individual sexual harassment and assault, constructive
7 termination, and wage and hour claims and the PAGA Action. A total of twenty five thousand
8 dollars (\$25,000.00) has been deemed and agreed by the Parties to be an appropriate allotted
9 amount to settle the 8th cause of action for PAGA civil penalties. This gross settlement amount
10 for the PAGA Action is divided as follows as agreed by the Parties: twenty thousand dollars
11 (\$20,000.00) in civil penalties, plus \$5,000 for settlement administrator fees for distribution of
12 the PAGA civil penalties. The Parties have decided to hire Phoenix Settlement Administrators as
13 the PAGA civil penalties administrator to distribute the PAGA civil penalties to the California
14 LWDA and to the aggrieved employees who worked during the PAGA Period.

15 Here, Defendants own and operate WATKINS, a demolition and asbestos and lead
16 removal company that performs services for commercial and government clients in Southern
17 California. Plaintiff was employed by Defendants as a laborer. Plaintiff claims that Defendants
18 underpaid his and other employees’ hours worked and earned. Specifically, that Defendants
19 required him and other employees to arrive at the warehouse to undertake duties such as to load
20 equipment and materials onto the vehicles, and to receive the daily assignments and instructions
21 from the supervisor, then to transport the equipment to the jobsites and unload them there, and
22 then after they were done at the jobsite, to load everything back on the vehicles, transport them
23 back to the warehouse, and unload them for maintenance, however, that Defendants did not pay
24 his travel time, did not provide requisite meal and rest periods, and did not reimburse for use of
25 personal vehicle and cellular phone service. As a consequence of the above violations, the pay
26 records produced are inaccurate in violation of Labor Code Section 226. Defendants also failed
27 to timely provide Plaintiff with a copy of his records in violation of Labor Code 226 and 1198.5.
28 Defendants deny all violations.

1 All of Plaintiff's individual causes of action along with the PAGA cause of action were
2 resolved in a confidential settlement on or about March 12, 2025. Plaintiff does not object to the
3 \$25,000 total amount allocated to the PAGA Action because (1) Plaintiff's investigation showed
4 that many of the violations have stopped after the Department of Labor (DOL) collected
5 penalties and some of the damages owed to the employees, (2) the Defendants dispute all of the
6 claimed violations, including a statute of limitations argument regarding the PAGA Action, (3)
7 after this case was filed, the Defendants have made additional corrective measures and stopped
8 the violations, and (4) the Parties have decided to compromise to save on attorneys' fees and
9 costs because further litigating this case would significantly increase fees and costs for the
10 Parties making settlement less likely.

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

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

1 assault and battery, along with the representative eighth (8th) cause of action for PAGA civil
2 penalties.

3 **VI. DEFINITION OF AGGRIEVED EMPLOYEES**

4 The aggrieved employees are defined as:

5 Any and all nonexempt employees of Defendants who were employed during the PAGA
6 Period (“PAGA Aggrieved Employees”). There are approximately 60 individuals employed per
7 pay period during the PAGA Period that compose the PAGA Aggrieved Employees.

8 **VII. SCOPE OF RELEASE**

9 The release contained in the Settlement Agreement is as follows:

10 “**PAGA Release.** Upon approval by the court of the settlement of all PAGA claims in the
11 Action and dismissal of the entire action with prejudice, the PAGA claims against the
12 Released Parties that were pled in the operative complaint or reasonably could have been
13 pled based on the claims and factual allegations in the operative complaint, and which
arose during the period April 6, 2022 through the date of dismissal of the entire Action
with prejudice, shall be deemed released.”

14 Settlement Agreement, §8.

15 **VIII. CONCLUSION**

16 Based upon the totality of the facts and circumstances, Plaintiff respectfully requests the
17 Court that the PAGA Action settlement of \$25,000, with allocations of \$20,000 towards PAGA
18 civil penalties, plus \$5,000 for PAGA civil penalties settlement administrator distribution fees,
19 be judicially approved pursuant to Labor Code section 2699 and be imposed on Defendants.
20

21 Dated: May 6, 2025

22
23 
24 Rodolfo Ruiz-Velasco, Esq.,
Attorneys for Plaintiff,
Frank Bernal

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.

///

///

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

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

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

7. Other than the payment of the PAGA settlement administrator's costs, the payment of Plaintiff's attorneys' fees and costs is not part of the settlement consideration regarding the PAGA Claim settlement, but is part of the confidential settlement of Plaintiff's individual claims.

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

Dated: May 6, 2025

Rodolfo Ruiz-Velasco, Esq.
Attorney for Plaintiff,
Frank Bernal

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 **May 6, 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; [PROPOSED] ORDER;
10 MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF RODOLFO
11 RUIZ-VELASCO IN SUPPORT THEREOF

12 on all interested parties in this action as follows:

13 Chad T. Wishchuk 14 Marlene C. Nowlin 15 FINCH, THORNTON & BAIRD, LLP 16 4747 Executive Drive, Suite 700 17 San Diego, CA 92121-3107 18 cwishchuk@ftblaw.com 19 mnowlin@ftblaw.com 20 ameraz@ftblaw.com 21 jdawson@ftblaw.com	22 Attorneys for 23 Defendants WATKINS 24 ENVIRONMENTAL, 25 INC., PIERCE F. 26 BARONE, and 27 WILLIAM 28 SZYMANSKI
California Labor Workforce Development Agency 455 Golden Gate Ave, 9th Floor San Francisco, CA 94102 (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)

22 ☒ **E-service/E-mail service:** I e-served/e-mailed the above-documents to the e-mail(s) of
23 counsel above pursuant to agreement between counsel.

24 ☒ **Online submission:** I submitted the above-documents online via the website above.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed on **May 6, 2025**.

27
28 
Rodolfo Ruiz-Velasco