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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By B. Montijo ,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

MARCO ATEMPA, an individual,

Plaintiff,

v.

PINO'S FOODS LLC; GIUSEPPE PINO
BOTTALICO, an individual; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: 37-2023-00035964-CU-OE-CTL

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

Hon. Joel R. Wohlfeil
Dept.: C-73

Complaint filed: August 21, 2023
Trial Date: N/A

[IMAGED FILE]

IT IS HEREBY STIPULATED by and between Plaintiff MARCO ATEMPA
("Plaintiff") and Defendants PINO'S FOODS LLC and GIUSEPPE PINO BOTTALICO
(collectively, "Defendants"), on the other hand, (Plaintiff and Defendants are referred to

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

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

2.! WHEREAS, on June 14, 2023, Plaintiff sent an administrative claim to the California Labor & Workforce Development Agency (“LWDA”) and to Defendants with case no. LWDA-CM-961800-23 that alleged certain Labor Code violations pursuant to the Private Attorneys General Act of 2004 or “PAGA,” codified at Labor Code sections 2698, et seq.;

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

4.! WHEREAS, on August 21, 2023, Plaintiff commenced a lawsuit in the San Diego County Superior Court, entitled Marco Atempa, Plaintiff, vs. Pino’s Foods LLC, et al., Defendants, San Diego County Superior Court Case No. 37-2023-00035964-OE-CTL (the “Complaint” or the “Litigation”), in which Plaintiff made, among other things, individual claims for wage and hour violations, and the representative PAGA claim, where Plaintiff alleged that he was owed unpaid minimum and overtime compensation (wages), premium pay for meal and rest periods, damages for records violations, and related damages arising out of his employment with Defendants;

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

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

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;

/././

8.1. 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) Defendants have agreed to pay the Plaintiff for his owed wages and premium wages; (3) Defendants claim they have financial inability to pay more in civil penalties and claim to have health issues; (4) Plaintiff gave the LWDA the opportunity to investigate Plaintiff's claims and the LWDA declined to do so; and (5) an award of PAGA civil penalties is in the discretion of the Court;

9.1 WHEREAS, the aggrieved employees are defined as all nonexempt employees who worked for Defendant PINO’S FOODS LLC from June 14, 2022 to the date this case is dismissed (the “PAGA Period”);

10.1 WHEREAS, the Parties have agreed that Defendants will distribute the PAGA civil penalties to the aggrieved employees in this case given the small amount of aggrieved employees and shall provide a copy of the notice of settlement of PAGA action to them that conforms to the notice attached hereto as Exhibit A; 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 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: September 12, 2024

By:

RODOLFO RUIZ-VELASCO
Attorney for Plaintiff MARCO ATEMPA

DEFENDANTS

DATED: September 12, 2024

By: Giuseppe Pino Bottalico
PINO'S FOODS LLC
By: Giuseppe Pino Bottalico
CEO of Pino's Foods LLC

DATED: September 12, 2024

By: Giuseppe Pino Bottalico
GIUSEPPE PINO BOTTALICO

so ordered and adjudged

9-16-24 
Judge of the Court

EXHIBIT A

Atempa v. Pino's Foods LLC, et al.
San Diego Superior Court Case No. 37-2023-00035964-CU-OE-CTL

NOTICE TO AGGRIEVED EMPLOYEES

This notice relates to the settlement of a lawsuit pursuant to the Private Attorneys General Act of 2004 ("PAGA"). A PAGA action is an action for civil penalties in which the State of California receives 75% of the civil penalties collected, and aggrieved employees receive the remaining 25% of the civil penalties collected.

Marco Atempa ("Plaintiff"), former employee of Pino's Foods LLC dba Veneto's Italian Restaurant ("Pino's"), and its owners and officer Giuseppe Pino Bottalico (all collectively, "Defendants"), filed lawsuit against Defendants in San Diego Superior Court, Case No. 37-2023-00035964-CU-OE-CTL (the "Action"). Plaintiff brought this lawsuit as a representative action under the PAGA, on behalf of the State of California and certain other current and former non-exempt (hourly) employees who were employed by Pino's at any time from June 14, 2022 to September 12, 2024.

Plaintiff alleges that Defendants failed to comply with the California Labor Code governing wages, meal and rest periods, accurate itemized wage statements, and timely payment of wages following separation of employment. Defendants deny the claims in the Action and assert that no civil penalties are due to Plaintiff, the State of California, or other allegedly "aggrieved employees." The Court has made no determination on the merits of the Action, but the parties have decided to resolve this case through settlement, with the approval of the Court.

You have received this notice because Defendants' records indicate that you were among the employees whom Plaintiff alleges were potentially aggrieved by one or more of the practices about which he complains (i.e., you are or were a non-exempt or hourly employee who was employed by Defendant Pino's in California during the time periods stated above). The Parties have agreed that a portion of the settlement proceeds would be distributed to the allegedly aggrieved employees, including you, after certain portions of the penalties collected are paid to the State of California according to California law.

The enclosed check represents your portion of the settlement payment, which is based on your share of the total settlement proceeds that the parties have agreed to be paid to the allegedly aggrieved employees. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the Parties, or the Court. This settlement releases claims for civil penalties under the PAGA relating to wages, meal breaks, rest breaks, accurate itemized wage statements, and timely payment of wages. Your individual rights are unaffected.

The Court has approved civil penalties pursuant to PAGA in the amount of \$5,000.00, and payment to the Labor Workforce Development Agency in an amount equal to 75% of that portion of the settlement allocated to civil penalties. The remaining amount of \$1,250.00 is being paid to hourly

employees who were employed by Defendant Business Entities in California at any time during the time periods stated above, proportionally based on the number of pay periods the employee worked compared to the number of pay periods worked by all hourly employees who were employed by Defendant Pino's during the time periods stated above.

You have been credited with [MERGED] pay periods for purposes of calculating your individual portion of the civil penalties settlement payment.

You are encouraged to deposit your check promptly. Any checks that remain uncashed six months from the date of this notice shall be void and the unclaimed funds shall be distributed to the California State Controller's office as unclaimed property.

If you have questions about this notice, please contact the Parties' counsel at:

Giuseppe Pino Bottalico
Pino's Foods LLC
608 N Hwy
Oceanside, CA 92054

Defendants

Rodolfo Ruiz-Velasco, Esq.
RUIZ-VELASCO LAW
600 W. Broadway Suite 700
San Diego, CA 92101
(619) 800-5293

Attorneys for Plaintiff

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE.

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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 PINO'S FOODS LLC from June 14, 2022 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 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. Joel R. Wohlfeil

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & BACKGROUND**

3 Mr. Marco Atempa (“Plaintiff”) was employed with Defendants as a cook at an Italian
4 restaurant named Venetos Italian Restaurant which is owned and operated by Pino’s Foods LLC
5 and its sole owner and officer Giuseppe Pino Bottalico. Mr. Atempa filed this lawsuit for
6 damages making individual wage and hour claims. Plaintiff, as a representative for the State of
7 California, also claims for civil penalties pursuant to PAGA on behalf of the State of California
8 and all current and former aggrieved employees of Defendants in his seventh (7th) cause of action
9 in his Complaint. The PAGA damage period is as follows: June 14, 2022 to the date this case is
10 dismissed (for purposes of calculation the date of September 12, 2024 was used) for aggrieved
11 employees who worked for Defendant PINO’S FOODS LLC (the “PAGA Period”). Defendants
12 employed on average 12 employees each pay period during the PAGA Period.

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

16 This case represents the pinnacle of the goals of litigation: contentious arms’-length
17 negotiations, production of records, service of written discovery, extensive meet and confer and
18 supplemental responses after filing discovery motions, which revealed the strengths and
19 weaknesses of each side’s case, leading to resolution of the dispute. In this fashion, the parties
20 avoid incurring additional attorneys’ fees and costs to reach a reasonable settlement at the
21 earliest opportunity. The Parties agreed to settle the case in full, including Plaintiff’s individual
22 claims, Defendants agreed to take remedial measures and pay all owed wages to the Plaintiff and
23 to stop violations, and the Parties agreed to settle the PAGA claim for a gross settlement sum of
24 \$5,000, of which 75% or \$3,750 is to be distributed to the State LWDA and 25% or \$1,250 to the
25 aggrieved employees.

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

1 **II. PROCEDURAL HISTORY**

2 On June 14, 2023, Plaintiff notified the Labor and Workforce Development Agency
3 ("LWDA") regarding his Labor Code claims pursuant to PAGA and filed and served his PAGA
4 Action (LWDA Case No. LWDA-CM-9619800-23) (the "PAGA Action" or "PAGA Claim") (A
5 true and correct copy of the PAGA notice is attached as Exhibit 1 to the Complaint in this case,
6 ROA Docket No. 1, Exhibit 1). The LWDA did not respond, so Plaintiff thereafter filed his
7 complaint on August 21, 2023 with his individual claims and the PAGA Claim, which is found
8 in his seventh (7th) cause of action in his Complaint (ROA Docket No. 1).

9 The Parties settled the case in full after propounding written discovery, meeting and
10 conferring and submitting supplemental responses, filing motions to compel further responses,
11 serving deposition notices, and producing documents regarding the Plaintiff and the other
12 aggrieved employees. After multiple negotiations between the Parties' counsel, the Parties
13 resolved this case in full, including the seventh cause of action regarding the PAGA Claim.

14 The Parties now respectfully present this Stipulation and Order for the Court's Approval
15 of Settlement of the PAGA Claim. The Parties will dismiss this entire lawsuit with prejudice
16 after approval by the Court of this PAGA claim settlement.

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

18 **APPROVAL**

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

21 **IV. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA**

22 **PENALTIES THAT ARE BINDING**

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

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V. THE PROPOSED PAGA CIVIL PENALTIES ARE REASONABLE GIVEN THAT DEFENDANTS HAVE COOPERATED WITH PLAINTIFF'S INVESTIGATION, HAVE TAKEN REMEDIAL MEASURES REGARDING THE VIOLATIONS, THAT DEFENDANTS CLAIM THEY HAVE FINANCIAL TROUBLES AND ILLNESS, 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 four main categories of violations claimed by Plaintiff: 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 June 14, 2023. 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 distribute 25% or one thousand two hundred fifty dollars (\$1,250) of the civil penalties to the aggrieved employees who worked during the PAGA Period on a pro rata basis,

1 depending on the number of pay periods that each aggrieved employee worked during the PAGA
2 Period.

3 Here, Defendants own and operate a restaurant in San Diego County named Venetos
4 Italian Restaurant. Plaintiff was employed by Defendants as a cook. Plaintiff and the other
5 employees were paid biweekly. Plaintiff claims that Defendants underpaid him and the other
6 aggrieved employees' hours worked and earned. Specifically, that Defendants did not pay him
7 and other aggrieved employees for overtime hours worked at the overtime rate of pay, but were
8 instead paid at the regular rate of pay for overtime hours worked in cash under the table. These
9 overtime violations are found on the face of the pay and time records that Defendants finally
10 produced to Plaintiff. After review of the PAGA employees' records, Plaintiff found that 3 out of
11 the 12 employees were not paid at the overtime rate of pay for overtime hours worked during
12 each pay period of the PAGA period.

13 Plaintiff also claims that he and the other employees were often not fully relieved of
14 duties during their meal and rest periods as they were not allowed nor able to particularly when
15 the restaurant was busy because they would not be able to finish their required work duties
16 completing orders in time or serving customers who came into the restaurant. The meal period
17 violations also appear on the records produced by Defendants. After review of the records
18 produced, Plaintiff found that 9 out of the 12 employees' records showed meal period violations.

19 The above violations caused the employees' wage statements to be inaccurate because
20 they do not show all of the overtime hours worked, and all of the overtime and meal period
21 premium wages earned.

22 The total potential PAGA civil penalties Plaintiff calculated are at least \$177,000 for 3
23 employees regarding all 4 violation categories, and for 6 employees regarding 3 out of the 4
24 violation categories for the PAGA Period from June 14, 2024 to September 12, 2024, calculated
25 as 59 pay periods (118 weeks, biweekly is $118/2 = 59$ biweekly pay periods) x 3 aggrieved
26 employees x \$100 x 4 violations + 59 biweekly pay periods x 6 aggrieved employees x \$100 x 3
27 violations = at least \$177,000 in potential PAGA civil penalties. (Ruiz-Velasco Decl., ¶¶ 6-7).

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1 Defendants have agreed to pay Plaintiff the owed overtime wages and meal and rest
2 period premium wages found in the records they produced to Plaintiff as part of the remedial
3 measures according to this settlement with Plaintiff. Defendants claim that their business is going
4 through financial troubles, including lowered profits given the rise in minimum wages, and that
5 Mr. Bottalico has serious illness to his kidneys that has disabled him.

6 All of Plaintiffs' individual causes of action along with the PAGA cause of action were
7 resolved in a confidential settlement on or about August 28, 2024. Plaintiff does not object to
8 the \$5,000 total amount in PAGA civil penalties because (1) the Defendants cooperated with
9 Plaintiff's investigation by complying with discovery and producing records, (2) the Defendants
10 have taken remedial measures in agreeing to pay the owed wages and premium wages to
11 Plaintiff, (3) Defendants claim that they are undergoing financial troubles and serious illness to
12 the sole owner and officer Mr. Bottalico, and (4) the Parties have decided to compromise to save
13 on attorneys' fees and costs because further litigating this case would significantly increase fees
14 and costs for the Parties making settlement less likely.

15 The PAGA Period was used as the time period in question to reflect the one-year statute
16 of limitations for penalties from the time of filing the written PAGA notice with the LWDA to
17 the time this case is dismissed (see above). Of the one five thousand dollars in civil penalties
18 (\$5,000), three thousand seven hundred and fifty dollars (\$3,750) or seventy-five percent (75%)
19 will be paid to the California Labor Workforce Development Agency ("LWDA") and one
20 thousand two hundred and fifty dollars (\$1,250) or twenty-five percent (25%) will be paid to the
21 three aggrieved employees.

22 The Parties were able to reach a compromised confidential settlement after Defendants
23 produced records and discovery, the Parties propounding at least 5 sets of written discovery and
24 responding to the discovery with multiple meet and confer correspondence and discovery
25 motions filed required to resolve the discovery disputes, after serving deposition notices, and
26 after multiple settlement communications with Defendants' counsel directly required to finally
27 settle all causes of action for the Plaintiff, including his individual six causes of action as follows
28 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 produce employee file and records, along with the representative seventh cause of action for PAGA civil penalties.

VI. DEFINITION OF AGGRIEVED EMPLOYEES

The aggrieved employees are defined as: Any and all nonexempt employees of Defendants who were employed during the PAGA Period ("PAGA Aggrieved Employees"). There are approximately 20 individuals that compose the PAGA Aggrieved Employees.

VII. SCOPE OF RELEASE

The release agreed to by the Parties is as follows:

PAGA Release. Upon approval by the court of the settlement of all PAGA claims in the Action and dismissal of the entire action with prejudice, the PAGA claims against Defendants that were pled in the operative complaint or reasonably could have been pled based on the claims and factual allegations in the operative complaint, and which arose during the period June 14, 2022 through the date of dismissal of the entire Action with prejudice, shall be deemed released

VIII. THIS STIPULATION AND ORDER, AND THE ATTACHED MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION PAPERS WERE SUBMITTED TO THE LWDA

On or about September 12, 2024, Plaintiff's counsel submitted this Stipulation Re: Court Approval of Settlement of PAGA Claim and Order and the attached memorandum of points and authorities and declaration papers to the LWDA on the LWDA's website as required by Labor Code section 2699(l)(2). See Ruiz-Velasco Decl., ¶10. See also the proof of service filed herewith.

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Dated: September 12, 2024

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1 **DECLARATION OF RODOLFO RUIZ-VELASCO IN SUPPORT**

2 I, Rodolfo Ruiz-Velasco, declare as follows:

3 1. I am an attorney licensed to practice law in the state of California and am the
4 attorney of record for Plaintiff MARCO ATEMPA ("Plaintiff") in the above referenced action.

5 2. On or about June 14, 2023, on behalf of Plaintiff, I sent Defendants PINO'S
6 FOODS LLC and GIUSEPPE PINO BOTALICO (collectively, "Defendants") via certified mail
7 a written notice of Plaintiff's intent to bring a claim for PAGA civil penalties, and filed it with
8 the California Labor Workforce Development Agency ("LWDA") via online submission through
9 their website (A true and correct copy of the written notice for the PAGA claim is attached to the
10 Complaint in this action, see ROA Docket No. 1, Exhibit 1). The LWDA provided Case No.
11 LWDA-CM-961800-23 for the PAGA Action. The LWDA did not respond within the requisite
12 65 days.
13

14 3. On or about August 21, 2023 Plaintiff filed his Complaint in this case alleging
15 individual claims for (1) failure to pay wages, (2) failure to furnish accurate itemized wage
16 statements in violation of Labor Code section 226(a), (3) unfair business practices, (4) waiting
17 time penalties per Labor Code section 203, (5) meal and rest period violations, and (6) failure to
18 produce employee file and records upon written request, (7) along with the representative
19 seventh cause of action for PAGA civil penalties pursuant to Labor Code section 2698, et seq.
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21 4. Plaintiff served at least 5 sets of written discovery, and served deposition notices.
22 The Parties produced and exchanged hundreds of pages of documents, including the wage
23 records and time records of the aggrieved employees. Defendants also produced financial
24 documents which they claim show that Defendants' business is undergoing financial troubles,
25 and Defendants claim that Defendant Mr. Bottalico is suffering from serious illness related to his
26 kidney that has caused him disability.
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1 5. Plaintiff claims that Defendants did not pay Plaintiff and other aggrieved
2 employees at the overtime rate of pay for overtime hours worked, but instead were paid at the
3 regular rate of pay in cash under the table for overtime hours worked, that they were not paid
4 with a wage statement containing all of the information required of Labor Code Section 226, that
5 they were not fully relieved of duties during meal and rest periods, and that Defendants failed to
6 timely produce Plaintiff's employee file and records in response to his written request.
7 Defendants dispute the violations.
8

9 6. I personally reviewed the pay and time records that Defendants produced to my
10 office regarding Plaintiff and for the aggrieved employees who worked for Defendants during
11 the PAGA Period, and found that Defendants owed three aggrieved employees, including
12 Plaintiff, overtime wages, since the overtime hours worked per the produced time records were
13 not found in the produced wage statements, but instead Plaintiff claims that they were paid in
14 cash under the table at the regular rate of pay. I also found that meal period violations regarding
15 9 aggrieved employees, including Plaintiff, on the time records that Defendants produced to us,
16 but that Defendants were not paying meal and rest period premium wages for meal and rest
17 period violations. Defendants have agreed to pay the claimed overtime and meal and rest
18 premium wages to Plaintiff and to stop the violations. Therefore, given Defendants' cooperation
19 and remedial measures, Defendants' claimed financial troubles and health issues mentioned
20 above, and the Parties' desire to settle this matter in full before spending further fees and costs to
21 litigate and try the case, Plaintiff accepted the settlement offer of \$5,000 in PAGA civil penalties.
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23 7. The total potential PAGA civil penalties Plaintiff calculated are at least \$177,000
24 for 3 employees regarding all 4 violation categories, and for 6 employees regarding 3 out of the 4
25 violation categories for the PAGA Period from June 14, 2024 to September 12, 2024, calculated
26 as: 59 pay periods (118 weeks, biweekly is $118/2 = 59$ biweekly pay periods) x 3 aggrieved
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1 employees x \$100 x 4 violations + 59 biweekly pay periods x 6 aggrieved employees x \$100 x 3
2 violations = at least \$177,000 in potential PAGA civil penalties.

3 8. Despite the above differences and disputes regarding the viability of said claims,
4 on or about August 28, 2024, the Parties were able to reach a compromised confidential
5 settlement after the Parties exchanged and produced written discovery and records, Plaintiff
6 propounding at least 5 sets of discovery and serving deposition notices, and after filing multiple
7 discovery motions, plus after multiple settlement communications required to finally settle all
8 causes of action. Upon Court approval of this settlement of the PAGA Claim, Plaintiff will
9 request to dismiss this case in its entirety with prejudice.
10

11 9. Of the five thousand dollars (\$5,000) in civil penalties agreed to by the Parties,
12 three thousand seven hundred and fifty dollars (\$3,750) or seventy-five percent (75%) will be
13 paid to the California LWDA and one thousand two hundred and fifty (\$1,250) or twenty-five
14 percent (25%) will be paid to the three aggrieved employees by Defendants.
15

16 10. On or about September 12, 2024, I submitted a copy of this stipulation re: Court
17 approval of settlement of PAGA Claim, the memorandum of points and authorities, declaration
18 and order to the LWDA through their website [https://www.dir.ca.gov/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
19 [Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) as required by the LWDA's procedure and Labor Code
20 section 2699(1)(2). See also the proof of service filed herewith.
21

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

24 Dated: September 12, 2024

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26 
27 Rodolfo Ruiz-Velasco, Esq.
28 Attorney for Plaintiff,
Marco Atempa

1 *Atempa v. Pino's Foods LLC, et al.*
2 *Superior Court Case No. 37-2023-00035964-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 **September 12, 2024**, I served a true copy of the foregoing document(s):

8 Stipulation re: Court Approval of Settlement of Plaintiff's Private Attorneys Act of 2004
9 ("PAGA") Claim; [Proposed] Order; Memorandum of Points and Authorities; Declaration of
10 Rodolfo Ruiz-Velasco in Support Thereof

11 on all interested parties in this action as follows:

12 Giuseppe Pino Botttalico 13 Pino's Foods LLC 14 608 N Coast Hwy 15 Oceanside, CA 92054 (via US Mail only)	Defendants PINO'S FOODS LLC and GIUSEPPE PINO BOTTALICO
16 California Labor Workforce Development 17 Agency 18 455 Golden Gate Ave, 9th Floor 19 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)

20
21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed on **September 12, 2024** at San Diego, California.

23
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25 Rodolfo Ruiz-Velasco
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