Lilit Solmer (289727)
Thomas Solmer (291191)
SOLMER LAW CORPORATION
4000 Barranca Pkwy, Suite 250
Irvine, CA 92604
Tel.: (714) 794-8558
Fax: (818) 927-2179

Attorneys for Plaintiff
ALVARO CORTINA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER

ALVARO CORTINA, Plaintiff, vs. R & D METAL FABRICATORS INC., et al., Defendants.	Case No.: 30-2025-01452225-CU-WT-WJC *Assigned for all purposes to:* The Hon. Sheila Recio Dept. W08 **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT** Hearing: October 24, 2025 Time: 9:30 A.M. Res. ID: 74504906 Filed on: January 7, 2025 Trial date: Not set

TO THE HONORABLE COURT, AND ALL PARTIES BY THEIR COUNSEL OF RECORD:

Please take notice that on October 24, 2025 at 9:30 A.M., or as soon thereafter as may be heard, in Department W08 of the Superior Court of California for the County of Orange, West Justice Center, 8141 13th Street, Westminster, CA 92683, Plaintiff Alvaro Cortina will, and hereby does, move for an order approving the settlement reached by the parties of Plaintiff's claim under the Labor Code Private Attorneys General Act of 2004 ("PAGA settlement"). The motion is based on Labor Code 2699 *et seq.* and the files and records herein, including the PAGA settlement executed by the parties as attached, along with such further evidence and argument as the Court may permit upon hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

This is an action for violations of the Fair Employment and Housing Act and California Labor Code. Plaintiff asserted eleven causes of action for individual claims and one cause of action on behalf of himself and other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), seeking penalties under Labor Code section 2699 *et seq.* (*See* Complaint filed January 7, 2025.) PAGA requires the Court to review and approve any settlement of such a claim. (Lab. Code § 2699, subd. (*l*)(2).)

I. SUMMARY OF PAGA CLAIMS

Plaintiff made two essential allegations giving rise to his PAGA claims: (1) that Defendant rounded off the time worked by hourly non-exempt employees such that they were paid for a few minutes each day less than what they had actually worked, and (2) that Defendant was manipulating the clock used to signal the start and end of the lunch period, causing hourly non-exempt employees to be denied a full 30-minute meal period on many days. (Complaint, ¶¶ 11, 12, 66.) Plaintiff alleged that the rounding caused Defendant to violate Labor Code sections 204 (failure to pay wages due in each pay period), 226 (because the paystubs did not reflect the actual hours worked), 510 (because their hours were often rounded down from more than 8.0 to 8.0, denying overtime pay earned), and 1197 (for failure to pay minimum wage as to the unpaid hours). (*See* PAGA Notice, Declaration of Thomas Solmer, Ex. A.) The manipulation of the lunch bell system resulted in violations of Labor Code 226.7 and 512, as alleged. (*Id.*) As a result of the failure to pay wages, Plaintiff alleged, employees also suffered violations of Labor Code 203, to the extent any employees were separated from employment with Defendant without having been paid their full wages due. (*Id.*)

II. PROCEDURAL HISTORY AND SETTLEMENT

Plaintiff gave notice of alleged violations of the PAGA to Defendant and to the Department of Industrial Relations, Labor and Workforce Development Agency ("LWDA") on September 11, 2024. (Solmer Decl., Ex. A.) Plaintiff also advised Defendant of his potential individual claims. (Solmer Decl., ¶ 3.) The parties thereafter agreed to mediate all claims with attorney Lisa Klerman, a highly experienced California employment law mediator. (*Id.*) The mediation was scheduled for December 11, 2024. (*Id.*) The cost of the mediation was $11,000 per party. (*Id.*)

Prior to mediation, counsel for the parties met and conferred about the exchange of documents necessary to evaluate the claims. (Solmer Decl., ¶ 4.) Defendant agreed to produce comprehensive records of a 20% sampling of employees for the entire PAGA period (from September 11, 2023), including all paystubs and time records of those employees, as well as all applicable policies for the PAGA period. (*Id.*) Defendant produced these records on November 1, 2024, such that Plaintiff's counsel had ample time to review and analyze them in advance of mediation. (*Id.*) Plaintiff's counsel analyzed the records at length and in detail and determined that (1) the time clock system used by Defendant was capable of recording exact punch-in and -out times and did record these times; (2) the system nevertheless rounded time down consistently, with employees who clocked in a few minutes before the hour (which was typical) only being paid from the hour, and employees who clocked out a few minutes after the hour (also typical) being paid only through the last exact hour they worked; (3) the rounding errors occurred uniformly, on every pay period reviewed for every employee, and consistently reduced rather than added to paid employee time; and (4) there was no way to determine any additional information about the alleged meal period violations from the records because, as allowable when a bell system is used to signal lunch for all employees at the same time, employees did not clock out for or in from lunch. (*Id.*) The proposed settlement does not require, and explicitly disclaims, any admission of wrongdoing by Defendant. (Solmer Decl., Ex. B at ¶ 2.1.)

The mediation proceeded on December 11, 2024 for a full day but was not successful. (Solmer Decl., ¶ 5.) Plaintiff filed the Complaint on January 7, 2025. (*Id.*) After service of the Complaint, counsel for the parties resumed discussions with Ms. Klerman in an effort to resolve the matter. (*Id.*) With Ms. Klerman facilitating further negotiations, the parties reached a settlement on January 31, 2025. (*Id.*) The settlement agreement was jointly prepared and it was fully executed on February 21, 2025. (Solmer Decl., Ex. B.)

III. THE SETTLEMENT SHOULD BE APPROVED

Any proposed settlement of a PAGA action must be submitted to the Court for review and approval and, at the same time, submitted to the LWDA. (Lab. Code § 2699, subd. (*l*)(2).) The Court then "must scrutinize whether the plaintiff has adequately represented the state's interests, and hence the public interest." (*Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 693 [internal quotations omitted].)

Notably, the PAGA was amended effective October 1, 2024, to provide that its civil penalties were limited to 30% of the maximum (i.e., $30 per employee per pay period) if the employer "takes all reasonable steps to prospectively be in compliance with all provisions identified in the notice" within 60 days. (Lab. Code § 2699, subd. (h).) Defendant attested that prior to mediation (which was within 60 days of the PAGA notice), it had replaced its time and payroll system with one that does not allow rounding, paying employees for their actual exact time worked, and which records the actual times employees clock in and out for lunch. (Solmer Decl., ¶ 6.) This would address the violations alleged in the PAGA notice on a prospective basis such that those violations should not be recurring. (*Id.*)

The proposed gross PAGA settlement amount is $80,000.00. (Solmer Decl., Ex. B.) This covers 40 aggrieved employees who worked a total of 1,206 pay periods from September 11, 2023 through February 5, 2025. (*Id.* at ¶ 4.1.) Thus, on a gross basis, the settlement amounts to more than $66 per employee per pay period. If Plaintiff were able to prove a violation as to each and every employee on every pay period, the gross settlement would still total more than double the maximum penalty under section 2699 of $30 per employee per pay period. (Plaintiff, for his part, disputes that Defendant took all reasonable steps to correct the violations alleged in the notice because its employees were not paid their back wages within the 60 days. [Solmer Decl., ¶ 6.])

When civil penalties are collected under the PAGA, 65 percent of the penalty goes to the LWDA and 35 percent is distributed to aggrieved employees. (Lab. Code § 2699 subd. (m).) Here, after attorneys' fees and costs and administrator fees, under the settlement agreement there is $34,344.80 available for PAGA penalties. (Solmer Decl., Ex. B at ¶ 3.2.3.) Based on 1,206 pay periods, that equals nearly $28.50 per violation, or very near the full amount Plaintiff could seek to impose if Defendant prevails in the argument that its prospective compliance efforts were reasonable. The settlement amount is fair because the rounding violation is demonstrable on paper, and although it involves a short amount of unpaid time per day, it was pervasive throughout the PAGA liability period, so there should be a substantial penalty. At the same time, Defendant's actions to comply after receiving notice of the alleged violations should be taken into account such that Defendant has the benefit of the statutory mandate to reduce penalties for employers who prospectively comply.

Along with civil penalties, the plaintiff in a PAGA action is entitled to recover reasonable attorneys' fees and costs. (Lab. Code § 2699, subd. (k)(1).) Here, the fees and costs sought are provided by the settlement agreement while preserving a substantial penalty award, and the fee percentage is reasonable (35%). (Solmer Decl., Ex. B.) The fees and costs incurred were reasonable in light of the amount of work involved and the expertise required. (Solmer Decl., Ex. E [billing records].) Counsel recognized potential violations that affected a significant pool of employees and this action has proceeded exactly in the manner intended by the PAGA, to reasonably penalize an employer for noncompliance with the Labor Code while also incentivizing prospective compliance.

When determining a reasonable hourly rate, courts may consider factors such as the attorney’s skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.) Plaintiff's counsel have extensive experience and expertise in this area of law, they are generally very well-qualified, and they have successfully litigated many similar actions. (Solmer Decl., ¶¶ 13-14.) Plaintiff's counsel spent more than 59 hours to investigate, negotiate, litigate, and ultimately resolve this action, with at least six additional hours expected through its conclusion. (*Id.*, ¶ 15.) At a reasonable billing rate of $750 per hour, this would amount to $49,275.00 in attorneys' fees, without any multiplier as would typically be considered, since the matter was taken on contingency. (*Id.*) Therefore, the attorneys' fees sought of $28,000 are reasonable. Likewise, Plaintiff incurred $11,000 in costs for mediation, and given the difficulty of resolving the claims even with an experienced mediator, this cost was certainly necessary. (Solmer Decl., Ex. C.) Plaintiff incurred $655.20 in necessary filing and service fees. (Solmer Decl., Ex. D.) Finally, administrator fees of up to $6,000 are sought so that a third party may distribute the notices and checks for penalties to each of the aggrieved employees. (*See* Proposed Order, Exhibit 2.)

IV. CONCLUSION

The parties conducted fair arms-length negotiations over a period of time, facilitated by a mediator, in order to resolve Plaintiff's PAGA claims. All necessary information was exchanged to evaluate the claims, and consistent with the purposes of the PAGA, Defendant prospectively corrected the violations in response to the PAGA notice. The amount of the settlement is fair and reasonable, in aggregate and in the amounts allocated for penalties, fees, and costs. Plaintiff respectfully requests that the settlement be approved in accordance with its terms and the proposed order filed herewith.

Dated: March 5, 2025

SOLMER LAW CORPORATION

By: ______________________________

Thomas Solmer
Attorneys for Plaintiff
ALVARO CORTINA

PROOF OF SERVICE

I am a resident of the county of Orange. At the time of service, I was at least 18 years of age and not a party to this action. My business address is 4000 Barranca Parkway, Ste. 250, Irvine, CA 92604. On March 5, 2025, I served copies of the following documents:

- **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT**
- **DECLARATION OF THOMAS SOLMER IN SUPPORT OF MOTION FOR APPROVAL OF PAGA SETTLEMENT**
- **[PROPOSED] ORDER FOR APPROVAL OF PAGA SETTLEMENT**

I served the documents on the following persons at the addresses listed:

Shannon M. Jenkins (SJenkins@tldlaw.com)
Cami Foss (CFoss@tldlaw.com)
Yulisa Garcia (YGarcia@tldlaw.com)
Urvi Sakurikar (USakurikar@tldlaw.com)
TREDWAY LUMSDAINE & DOYLE LLP
2010 Main St. Suite 1000
Irvine, CA 92614
Attorneys for Defendant

☒ **By e-mail or electronic transmission.** I caused the documents to be sent via electronic mail on the date shown above to the e-mail address(es) listed above.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 5, 2025 at Irvine, CA.

By: ______________________
Thomas Solmer