

**\*\* E-filed October 26, 2011 \*\***

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6  
7 UNITED STATES FEDERAL COURT  
8 NOTHERN DISTRICT OF CALIFORNIA  
9 SAN JOSE DIVISION  
10

11 EDWIN MARTINEZ, ROGER LINDOLFO,  
WILMER RUIZ, GABRIEL FRANCO,  
12 OSCAR RODRIGUEZ, CARLOS AVILA,  
GUSTAVO MEJIA and AMADO MARTINEZ,

13 Plaintiffs,

14 vs.

15 ANTIQUE & SALVAGE LIQUIDATORS,  
16 INC. dba ASSET SERVICES AND  
LIQUIDATORS aka ASL RECYCLING aka  
17 ASL, AMI SOUTHERN CALIFORNIA, INC.,  
AMERICAN METAL AND IRON, INC.,  
18 DIMOND METALS, INC., BIG H  
ENTERPRISES, INC., HOWARD MISLE and  
19 DOES 1-10

20 Defendants

Case No.: C09-997 HRL  
STIPULATION FOR APPROVAL OF  
SETTLEMENT  
**(AS MODIFIED BY THE COURT)**

21 Plaintiffs, EDWIN MARTINEZ, ROGER LINDOLFO, WILMER RUIZ, GABRIEL  
22 FRANCO, OSCAR RODRIGUEZ, CARLOS AVILA, GUSTAVO MEJIA and AMADO  
23 MARTINEZ, and Defendants ANTIQUE & SALVAGE LIQUIDATORS, INC. (ASL) and  
24  
25

1 HOWARD MISLE<sup>1</sup>, through their respective counsel, hereby stipulate for the approval by this  
2 Court of the settlement pursuant to California Labor Code § 26999 (l) as follows:

3 1. On March 6, 2009, Plaintiffs first filed their original Complaint against Defendant  
4 Antique & Salvage Liquidators, Inc. (ASL) to recover unpaid wages for violation of state and  
5 federal overtime law under California Labor Code § 510 and the Fair Labor Standards Act, 29  
6 U.S.C. § 207 (first and second causes of action); failure to provide meal and rest periods in  
7 violation of California Labor Code § 226.7 (third cause of action); failure to pay wages due and  
8 waiting time penalties in violation of California Labor Code § 203 (fourth cause of action);  
9 violation of California Business and Professions Code § 17200 (fifth cause of action); failure to  
10 provide proper pay statements in violation of California Labor Code § 226 (sixth cause of  
11 action).

12 2. On February 11, 2010, Plaintiffs filed their First Amended Complaint (FAC),  
13 alleging an additional claims for civil penalties under California Labor Code § 558 pursuant to  
14 California Labor Code Private Attorney General's Act, § 2699, *et seq.* (PAGA)<sup>2</sup>.

15 3. On February 8, 2011, this Court entered a ruling that all PAGA civil penalties  
16 have only one year statute of limitations, and the PAGA claims dated back to March 6, 2009.  
(Dkt. No. 70).

17 4. On December 18, 2008, the Plaintiffs were laid off from ASL, and ASL stopped  
18 doing business shortly thereafter.

19 5. On March 29, 2011, parties reach a Settlement Agreement as follows:

- 20 a. Individual Defendant Howard Misle will pay total \$32,500 to 8 Plaintiffs  
21 and Plaintiffs' counsel, of which each Plaintiff will receive \$1,000, and  
22 Plaintiffs' counsel will receive \$24,500.

23  
24 <sup>1</sup> All other Defendants, AMI SOUTHERN CALIFORNIA, INC., AMERICAN METAL AND  
25 IRON, INC., DIMOND METALS, INC., BIG H ENTERPRISES, INC. ,have been previously  
dismissed.

<sup>2</sup> On March 29, 2010, Plaintiffs subsequently filed a Second Amended Complaint, correcting  
certain omissions and errors in FAC.

1           b.       In addition, parties stipulate to a judgment against ASL for amounts to be  
2           paid to 8 Plaintiffs, respectively: (i) \$17,427 for Oscar Peralta; (ii) \$14,671.50  
3           for Wilmer Ruiz; (iii) \$18,553.50 for Carlos Avila; (iv) \$15,436.01 Amado  
4           Martinez; (v) \$18,553.50 for Gabriel Franco; (vi) \$14,671.50 for Edwin O.  
5           Martinez; (vii) \$15,395.50 for Roger Lindolfo; (viii) \$18,553.50 for  
6           Gustavo Mejia.

7           6.       This settlement extinguishes all claims for civil penalties under PAGA by  
8           any employee, whether a party to this action or not, but would not bar any employee of  
9           ASL who is not a party to this case from bringing any valid individual claims under the  
10          Labor Code for wages and any statutory claims.

11          7.       A copy of the Settlement Agreement is attached hereto as Exhibit A; and  
12          form of the Stipulated Judgment as Exhibit B.

13          8.       Pursuant to PAGA, California Labor Code § 26999 (l), parties are required to  
14          seek approval of the dismissal of PAGA claims in this settlement. According to the terms of the  
15          Settlement Agreement, although this Settlement would dismiss the wage portion of the civil  
16          penalties under Labor Code § 558, absent employees' right to pursue their unpaid wages are  
17          preserved have not been compromised. Therefore the Settlement Agreement would only  
18          extinguish penalties against ASL the recovery of which is not realistic as ASL has gone out of  
19          business since December 2008. While the individual Defendant Misle's liability for penalty  
20          portion of claims under Labor Code § 558 was not decided by the Court (see Dkt. No. 80), there  
21          is substantial uncertainty as to whether Plaintiffs will be able to meet their burden to establish  
22          that under § 558 Misle's involvement in the operations of ASL can be characterized as one that,  
23          while acting on behalf of ASL, had "violated" or having "caused to be violated" Labor Code  
24          giving rise to the claims as alleged in this case. As such, parties believe that the dismissal of the  
25          PAGA claims for civil penalties is a reasonable compromise.

1           9.       The Court is authorized to approve a settlement where , like here, no monetary  
2 amount is required for PAGA civil penalties claims. See Nordstrom Commission Case, 186  
3 Cal.App.4th 576, at 589 (2010) (*when an otherwise reasonable and fair settlement is reached*  
4 *that disposes of claims for civil penalties under PAGA, parties are not required to allocate any*  
5 *portion of the proposed Settlement for PAGA penalties*).

6           10.       Therefore, parties request that the Court approve the Settlement Agreement as  
7 attached hereto as Exhibit A; and enter the Stipulated Judgment against ASL as attached hereto  
8 as Exhibit B.

9           11.       Parties agree this Court should retain its jurisdiction over this matter for the  
10 purpose of enforcing the Settlement Agreement: **for a period of six months following the entry of judgment.**  
11

12 Dated: May 24, 2011

By: /s/ Adam Wang  
Adam Wang  
Attorney for Plaintiffs

14 Dated: May 24, 2011

By: /s/ Elizabeth Pappy  
Elizabeth Pappy  
Attorney for Defendants

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**~~PROPOSED~~ ORDER**

21           Pursuant to parties' stipulation, having considered the terms of the Settlement  
22 Agreement, this Court finds the Settlement Agreement disposing PAGA claims is fair and  
23 reasonable.

24           THEREFORE, the Settlement Agreement disposing PAGA penalty claims is hereby  
25 APPROVED.

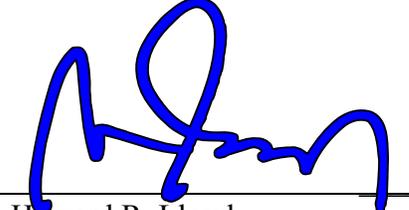
1 A Judgment will be entered against ANTIQUE & SALVAGE LIQUIDATORS, INC. as  
2 stipulated by parties.

3 This Court will retain jurisdiction for the purpose of enforcing the Settlement Agreement.

4 IT IS SO ORDERED.

5  
6 Dated: October 26, 2011

By: \_\_\_\_\_



Howard R. Lloyd  
United States Magistrate Judge

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**C09-00997 HRL Notice will be electronically mailed to:**

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