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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

HONG GE, an Individual;	)	CASE NO. 20STCV32496
	)	
Plaintiff,	)	Assigned to the Hon. Kristin S.
	)	Escalante, Judge Presiding, Dept. 24
v.	)	
	)	NOTICE OF MOTION AND
LONGYUAN FORWARDING, INC. dba	)	(UNOPPOSED) MOTION FOR ORDER
AMERICAN NEW LOGISTICS SERVICE,	)	APPROVING SETTLEMENT OF PAGA
a California Corporation; QINXIANG HOU,	)	CLAIMS; MEMORANDUM OF
an Individual; MENG LIN, an Individual;	)	POINTS AND AUTHORITIES IN
VINCENT LU, an Individual; YONG LU,	)	SUPPORT THEREOF
an Individual; and DOES 1 through 25,	)	
Inclusive,	)	[Proposed Order Filed Concurrently
	)	Herewith]
Defendants.	)	
	)	Date: August 24, 2022
	)	Time: 8:30 a.m.
	)	Dept.: 24
	)	Reservation ID: 002221018490
	)	
	)	Complaint Filed: August 25, 2020
	)	Trial Date: October 31, 2022

**TO THE COURT, DEFENDANTS, AND THEIR RESPECTIVE ATTORNEYS OF
RECORD:**

PLEASE TAKE NOTICE that on August 24, 2022 at 8:30 a.m. in department 24 of the above-entitled Court located at 111 N. Hill Street, Los Angeles, CA 90012, Plaintiff Hong Ge ("Plaintiff") will move the Court for an order approving settlement of Plaintiff's penalty claims

1 under the Labor Code Private Attorney General Act (i.e., *Labor Code* section 2698 et. seq. or
2 PAGA).

3 The basis for this Motion is that the parties have reached and fully executed a settlement
4 of the 17th cause of action seeking PAGA penalties. Pursuant to the statute, settlement of PAGA
5 claims requires court approval. *Labor Code* § 2699(1). Thus, the parties seek Court approval of
6 the PAGA aspect of the settlement so that the matter may be dismissed entirely pursuant to the
7 settlement of the parties.

8 This Motion is based upon the Memorandum of Points and Authorities, Declaration of
9 Jual F. Reyes in support thereof, the attached exhibits, and the (Proposed) Order on file herein,
10 and upon any and all oral and documentary evidence, as may be presented at the hearing on this
11 Motion.

12
13 Dated: July 27, 2022

LAW OFFICES OF JUAL F. REYES
A PROFESSIONAL LAW CORPORATION

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16 By: _____

JUAL F. REYES, ESQ.

Attorney for Plaintiff HONG GE
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff submits this Memorandum of Points and Authorities in support of this Motion for Approval of PAGA Settlement reached between the Parties. For the reasons explained below, the settlement of this action is fair, reasonable, adequate, and in the best interests of the state of California and the aggrieved employees. Thus, Plaintiff respectfully request that the Court grant approval of the PAGA Settlement.

A. The Litigation.

On November 10, 2021, Plaintiff filed her Second Amended Complaint (“SAC”) for damages against Defendants. The SAC alleges eighteen (18) causes of action for sexual harassment, sex/gender discrimination, violation of the Ralph Act, violation of the Bane Act, Sexual Harassment in violation of the Unruh Civil Rights Act, Gender Violence, Retaliation for Complaints of Harassment and Discrimination, Wrongful Termination in violation of Public Policy, Negligent Supervision and Retention, Failure to Prevent Discrimination and Harassment, Sexual Battery, Battery, Failure to Pay Overtime, Failure to Provide Accurate Itemized Wage Statements, Waiting Time Penalties, Violation of *Business and Professions Code* § 17200, and Violation of *Labor Code* § 2698 (“PAGA”), and Intentional Infliction of Emotional Distress. Declaration of Jua F. Reyes (“Reyes Dec.”), ¶ 3.

In essence, Plaintiff alleges that on June 23, 2020, Plaintiff began her employment as a garment packer/shipper at Defendant Longyuan Forwarding’s import and shipping business. Beginning on June 29, 2020, Plaintiff alleges that her supervisor and manager, Defendant Meng Lin (“Lin”), began sending Plaintiff unwanted text messages demanding a sexual relationship. On June 30, 2020, Plaintiff further alleges that Defendant Meng Lin sexually assaulted her by groping her breast without her consent. As a result of Plaintiff putting Defendant Meng Lin on notice that she did not want a romantic or sexual relationship, Plaintiff alleges that he retaliated against her by threatening to terminate her employment and take other adverse action against her

1 with respect to the terms of her employment. On July 10, 2020, Plaintiff claims that she visited
2 Longyuan Forwarding's workplace and reported Defendant Meng Lin's conduct to her manager,
3 Chuck Ye. In response, Plaintiff contends that Mr. Ye advised Plaintiff that Defendant Lin was
4 in charge of her schedule and that he would not accommodate her request. Ultimately, Plaintiff
5 alleges that Defendants refused to take any action and terminated her employment on July 12,
6 2020 in order to retaliate against her based upon her reports of severe and pervasive sexual
7 harassment. Defendants deny all allegations as related to the claims of sexual harassment,
8 claimed damages, and fully reserve all of their rights to assert various defenses should the Court
9 deny this Motion.

10 Plaintiff also claims that Defendants violated the PAGA on the grounds that Defendants
11 misclassified her and all other garment packer/shipper's working at Defendant's warehouse as
12 independent contractors, failed to provide accurate wage statements, failed to pay all wages
13 owed during each pay period, failed to pay each employee twice per month, failed to provide
14 meal periods, failed to provide rest periods, failed to pay overtime wages, and other violations
15 with respect to Plaintiff and the aggrieved employees.

16 Through heavy litigation and discovery, Plaintiff's counsel has diligently pursued an
17 investigation of the PAGA aggrieved employees' claims, including: (1) extensive review and
18 analysis of relevant documents, including but not limited to, documents demonstrating
19 Defendants' wage compensation policies and procedures; (2) detailed examination and analysis
20 of information relating to compensation, and meal and rest break practices; (3) review and
21 analysis of the timekeeping and payroll records of Plaintiff and other PAGA aggrieved
22 employees; (4) review of relevant data regarding the size of the PAGA group; (5) detailed
23 examination of data related to Defendants' PAGA exposure; and (6) research with respect to the
24 applicable law and the potential defenses thereto. Reyes Dec., ¶ 4.

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1 **B. The Parties Reached A Settlement On July 7, 2022, Including, Payment of**
2 **\$40,000.00 For PAGA Penalties.**

3 On July 7, 2022, the parties participated in a full day of private paid mediation which
4 was mediated by well-respected mediator Kim Deck of Judicate West. Reyes Dec., ¶ 5. Prior
5 to mediation, Plaintiff served two (2) rounds of written discovery, took the deposition of
6 Defendant's Chief Financial Officer, Yong Lu aka, Vincent Lu, filed two (2) motions to compel
7 discovery, served a Belaire-West Notice, and Defendants produced voluminous responses to
8 discovery, including, but not limited to, over 1000 documents which contained timesheets,
9 wage statements, employee manuals, and written policies and procedures. Reyes Dec, ¶ 6. As
10 a result of the exchange of information, spending years analyzing all discovery exchanged, and
11 a full-day of mediation, the parties reached a resolution of the above PAGA claims on July 7,
12 2022. Reyes Dec, ¶ 7. The terms of settlement of the PAGA claims are as follows: 1)
13 \$40,000.00 for payment of PAGA penalties as follows: 1) a check in the sum of \$2,500.00
14 made payable to the Claims Administrator to administer payment of the PAGA penalties; 2) a
15 check in the sum of \$28,125.00 (75% of penalties) to the Labor and Workforce Development
16 Agency to resolve the PAGA claims; and 3) the Aggrieved Employees will be paid the
17 remaining \$9,375.00 (25% of penalties). Reyes Dec., ¶ 8; also see Settlement Agreement
18 attached hereto as Exhibit 1.
19

20 Based on information provided by Defendants, there are only 20 Aggrieved Employees.
21 Reyes Dec. ¶ 9. On average, the Aggrieved Employees worked only 2 months for Defendant
22 during the summer of 2020. Reyes Dec., ¶ 10. Also, each Aggrieved Employee earned \$15.00
23 per hour and the average penalty amount will be over \$400.00 which is payment of wages for
24 26.6 hours or at least 3 days of work. Reyes Dec., ¶ 10. The terms of settlement were submitted
25 to the LWDA on July 27, 2022. Reyes Dec., ¶ 11.

26 *Labor Code* § 2699.5 provides the specific Labor Code violations that aggrieved
27 employees may enforce under PAGA. Reyes Dec., ¶ 12. Based upon the violation of various
28 Labor Code sections, Plaintiff alleges that the Aggrieved Employees are entitled to the following

PAGA penalties as a result of Defendants' Labor Code violations:

Labor Code Section	Description of Penalty	Amount of Penalty	#of Pay periods	Amount of Penalty
201	Waiting Time	100/200	20	\$3,900
203	Waiting Time	100/200	20	\$3,900
204	Illegal Deductions	100/200	42	\$8,300
210	Add-on Penalty to Sec. 204	100/200	42	\$8,300
226.3	Add-on Penalty to 226(a)	250/1000	43	\$42,250
226.7	Rest Period Violation	100/200	42	\$8,300
226.8	Misclassification as Independent Contractor	25,000	20	\$500,000
510	Overtime	100/200	42	\$8,300
512	Meal Periods	100/200	42	\$8,300
558	Under paid wages Add-On	50/100	42	\$4,150
1174	Failure to Keep Accurate Records	100/200	42	\$8,300
1174.5	One Time Penalty for Failure to Keep Accurate Records	500	20	\$10,000
1199	Catch-All	100/200	42	\$8,300
			Total:	\$622,300

(Ex: *Labor Code* § 226.3: $42 \times \$1000 - \$750 = \$42,250$; *Labor Code* § 226.7: $\$200 \times 42 - \$100 = \$8,300$; *Labor Code* § 226.8: $\$25,000 \times 20 = \$500,000$; *Labor Code* § 558: $42 \times \$100 - \$50 = \$4,150$; *Labor Code* § 1174.5: $\$500 \times 20 = \$10,000$.) Reyes Dec., ¶ 13.

C. Plaintiff's Core Claims Are Claims For Sexual Harassment And Wrongful Termination.

In essence, Plaintiff alleges that she was employed by Defendants as a packer/shipper and was terminated on or about July 12, 2020 as a result of reporting severe sexual harassment.

Reyes Dec., ¶ 14. Plaintiff further alleges that she suffered the harassment at the hands of Defendants' supervisor, Defendant Meng Lin. Reyes Dec., ¶ 15. Plaintiff produced dozens of text messages during discovery showing Defendant Meng Lin's demands to Plaintiff, including,

1 but not limited to, the following: demands that Plaintiff engage in sex with him; demands that
2 Plaintiff accept money for sex; demands by Meng Lin that he come to Plaintiff's house for sex;
3 Meng Lin mocking Plaintiff as an old woman for refusing to have sex with him; Meng Lin
4 becoming angry at Plaintiff because she refused to have sex with him; and Meng Lin threatening
5 to fire Plaintiff like he fired another female employee as a result of her refusal to become a sex
6 slave. Reyes Dec., ¶ 16. On or about June 30, 2020, Plaintiff contends that Defendant Meng Lin
7 lured her into a private space and sexually assaulted her by groping her breast. Reyes Dec., 17.

8 Ultimately, Plaintiff claims that she reported the above sexual harassment to Defendants'
9 warehouse manager, Chuck Ye, on July 10, 2020. Reyes Dec., ¶ 18. However, Plaintiff
10 contends that Defendants refused to investigate the harassment and terminated her position on or
11 about July 12, 2020. Reyes Dec., ¶ 18.

12 **D. Plaintiff Alleges Substantial Lost Wages, Emotional Distress, And Punitive Damages**
13 **Based Upon Numerous Causes Of Action In The SAC.**

14 The SAC alleges at least 12 causes of action which provide for a combination of lost
15 wages, emotional distress damages, and punitive damages, including, Sexual Harassment,
16 Sex/Gender Discrimination, Violation of the Ralph Act, Violation of the Bane Act, Sexual
17 Harassment in Violation of the Unruh Civil Rights Act, Gender Violence, Retaliation for
18 Complaints of Sexual Harassment, Wrongful Termination in Violation of Public Policy,
19 Negligent Supervision, Hiring, and Retention, Failure to Prevent Sexual Harassment, Sexual
20 Battery, Battery, and Intentional Infliction of Emotional Distress. Reyes Dec., ¶ 19.

21 During Plaintiff's employment with Defendants, she alleges that she was a full-time
22 employee earning \$15.00 per hour at the time of her termination. Reyes Dec., ¶ 20. Plaintiff
23 was unemployed from July 12, 2020 until June of 2021. Reyes Dec., ¶ 20. Therefore, Plaintiff
24 claims that her total lost wages to date are \$31,680.00, including 10 % interest (\$600.00 per
25 week x 48 weeks). Reyes Dec., ¶ 20.

26 Additionally, as a result of the alleged unlawful termination referenced above, Plaintiff
27 contends that she has become emotionally distraught and has suffered psychological injury,
28 depression, anxiety, tension, nightmares, loss of appetite, and stress, all of which could entitle

her to a substantial award of general damages. Reyes Dec., ¶ 21. In essence, Plaintiff claims that she was sexually battered by her alleged supervisor, Defendant Meng Lin, including suffering sexual assault by being groped in her breast area, Defendants did nothing to prevent sexual harassment, and terminated her position on or about July 12, 2020. Reyes Dec., ¶ 22. Finally, Plaintiff claims that she is entitled to punitive damages on the grounds that her termination was ratified by Defendants' Managing Agent and Chief Financial Officer, Yong Lu aka, Vincent Lu. Reyes Dec., ¶ 23. Defendants deny the above allegations of sexual harassment and Plaintiff's claimed damages, but would be forced to defend these claims at trial. Reyes Dec., ¶ 24. In light of the aforementioned, Plaintiff estimates that she would be awarded over \$30,000.00 in past wages as well as \$10 million dollars for emotional distress and punitive damages if entirely successful at trial. Reyes Dec., ¶ 25.

E. Plaintiff's Counsel Had To Consider Defendants' Arguments That The Maximum Penalties Would Be Unjust, Arbitrary, Oppressive, Or Confiscatory.

Plaintiff's counsel believed that Defendants could persuasively argue that in accordance with the PAGA (*Labor Code* § 2699(e)(1) and (e)(2)), the Court in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Reyes Dec., ¶ 26. Plaintiff's counsel anticipated, at trial, counsel for Defendants could make a potentially persuasive argument that the Court should exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA on the basis that (1) Defendants did not act knowingly or intentionally; (2) any errors in payment were not intentional and only the result of oversight or mistake; (3) until this lawsuit was filed, no employees had complained; (4) none of Defendants' employees suffered significant actual damage as a result of the conduct that forms the basis for Plaintiff's allegations. Reyes Dec., ¶ 27. All of which, Defendants would argue, should mitigate in favor of reducing or waiving any PAGA penalties. Reyes Dec., ¶ 28. While Plaintiff's counsel disagrees that this analysis is legally correct or persuasive, he had to

1 consider the foregoing facts and arguments and how they might impact any judgment ultimately
2 awarded to the PAGA Members if the Court were persuaded by them. Reyes Dec., ¶ 29. In light
3 of these arguments and the potential risks, Plaintiff's counsel determined that the Settlement was
4 fair and reasonable. Reyes Dec., ¶ 30.

5 **F. Plaintiff's Counsel Weighed The Viability of the Underlying Wage And Hour Claims**
6 **Supporting PAGA Penalties.**

7 Additionally, Plaintiff's counsel had to analyze the viability of the allegations related to
8 failure to pay overtime wages due, failure to provide meal periods, and failure to provide rest
9 break claims. Reyes Dec., ¶ 31. Defendants deny the allegations and assert that Plaintiff, and all
10 Aggrieved Employees, were paid for all hours worked and in fact were paid more than what they
11 earned during the scope of their employment. Reyes Dec., ¶ 32. Also, Defendants argue that the
12 PAGA Members were not entitled to overtime because they demanded to be classified as
13 independent contractors, set their own schedules, were not supervised by Defendants, and likely
14 carried on their own independent business which provided similar services. Reyes Dec., ¶ 33.
15 Moreover, Defendants alleged that the PAGA Members were provided meal periods and rest
16 breaks throughout their employment with Defendants. Reyes Dec, ¶ 34. In this regard,
17 Defendants claimed that the PAGA Members were in charge of their own scheduling and,
18 therefore, free to schedule their own meal periods and rest breaks. Reyes Dec, ¶ 34. In fact,
19 Defendants allege that the PAGA Members were paid wages for the time they spent taking meal
20 periods and rest periods. As a result of the aforementioned, Defendants claim that the PAGA
21 Members are not entitled to waiting time penalties, were paid all wages due, and provided all
22 meal periods/rest breaks. Reyes Dec, ¶ 35.

23 Further, Plaintiff's counsel had to analyze the viability of the allegations related to *Labor*
24 *Code* 226(a)(8). Reyes Dec, ¶ 36. Defendants deny the allegation that they failed to include on
25 employees' wage statements the address of the legal entity that is the employer in violation of
26 *Labor Code* § 226(a)(8) and argued that they can prove that the address was in fact included on
27 all wage statements. Reyes Dec., ¶ 37. The main argument that Plaintiff's counsel had to
28 consider is Defendants' argument that the Aggrieved Employees were properly classified as

independent contracts and, thus, were actually paid all wages due. Reyes Dec., ¶ 38. Therefore, any claim that the wage statements were inaccurate or incomplete are without merit. *Id.*

G. Plaintiff Had To Consider The Court Issuing Lower Penalty Amounts Or Striking Penalties Altogether.

PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty for each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for each subsequent pay period in which a violation occurs. (*Labor Code* § 2699, subd. (f)(2).) Reyes Dec., ¶ 39. In *Amaral*, however, the court held, “Until the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties [and will be assessed only the ‘initial’ violation rate].” *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209. Reyes Dec., ¶ 40. While Plaintiff’s counsel disagrees with the above analysis, this language could be read as indicating that until the Labor Commissioner or a court informs an employer that it has violated the Labor Code, the employer can only be assessed the “initial” violation rate. Reyes Dec., ¶ 41.

Additionally, the penalty for violation of *Labor Code* § 226(a) is contained in the *Labor Code* § 226.3 civil penalty. Reyes Dec., ¶ 42. Section 226.3 provides for a penalty of \$250 for “initial” violations and \$1,000 for “subsequent” violations. Reyes Dec., ¶ 42. In *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, the court held that the applicable PAGA civil penalty for *Labor Code* § 226(a) violations is the \$250/\$1,000 civil penalty in *Labor Code* § 226.3. Reyes Dec., ¶ 43. On the one hand, potential penalties can be significant (\$250 for “initial” violations and \$1,000 for “subsequent” violations), but this Court may also have discretion to deny PAGA penalties outright. (See *Lab. Code* § 226.3 [providing that the Labor Commissioner “may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.”].) Reyes Dec., ¶ 44.

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H. Plaintiff's Is Not Seeking an Enhancement, Nor Is She Seeking Reimbursement for Attorney's Fees And Costs Allowed Under Labor Code § 2699(g)(1).

First, Plaintiff is not seeking an enhancement payment despite representing the Aggrieved Employees and providing vital information related to Defendants' payroll policies. Reyes Dec., ¶ 45. Second, Plaintiff took and defended two (2) depositions, attended one (1) private paid mediation, attended numerous hearings, opposed two (2) demurrers and two (2) motions to strike, filed two (2) motions to compel, drafted (2) sets of discovery to each Defendant, responded to Defendants written discovery, drafted a Belaire-West notice and hired an administrator to distribute a Belaire West Notice, and analyzed over 1000 pages of documents produced by Defendants throughout the litigation. Reyes Dec., ¶ 46. Consequently, Plaintiff's costs of litigation exceed \$15,000.00. *Id.* Finally, *Labor Code* § 2699(g)(1), allows Plaintiff's counsel to seek attorney's fees in connection with the 17th cause of action for PAGA penalties. Reyes Dec., ¶ 47. In fact, Plaintiff's counsel has spent 263.4 hours litigating this case at \$700.00 per hour. Reyes Dec., ¶ 48. As such, Plaintiff's counsel is entitled to \$184,380.00. in attorney's fees, plus a multiplier of 2.0. *Id.* However, Plaintiff's is not seeking attorney's fees and costs as allowed under § 2699(g)(1) in order to increase the amount of penalties distributed to the Aggrieved Employees. *Id.*

I. Plaintiff's Counsel Is Experienced In Litigating Wage and Hour Actions, PAGA Claims, Complex Class Actions, and Employment Lawsuits.

Plaintiff is represented by Jual F. Reyes of the Law Offices of Jual F. Reyes, APLC. As detailed in the attached declaration of Mr. Reyes has been practicing for over 17 years and he has substantial experience in litigating wage and hour individual claims, complex PAGA actions, complex Class Actions, and wrongful termination claims. Most recently, on March 10, 2021, Plaintiff's counsel obtained Court approval of a wage and hour class action located in Riverside Superior Court, Case No. RIC1905547, wherein his request for attorney's fees was granted in the amount of \$747.00 per hour. Reyes Dec., ¶¶ 49-50.

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1 **J. Plaintiff's Counsel Obtained Competitive Bids And The Claims Administrator Rust**
2 **Consulting Inc. Is Highly Experienced In Claims Administration.**

3 Plaintiff obtained three bids from Rust Consulting, Inc., CPT Group, and Simpluris.
4 Reyes Dec., ¶ 51. Based upon Rust Consulting, Inc. coming in with the lowest bid of \$2,500.00,
5 and due to its vast claim's administration experience, Plaintiff's counsel selected Rust
6 Consulting, Inc. as the claim's administrator. Reyes Dec., ¶ 51.

7 **II. ARGUMENT**

8 **A. The Court Should Approve The Proposed Settlement of the PAGA Portion of The**
9 **Case.**

10 PAGA permits an aggrieved employee to sue an employer for civil penalties associated
11 with the employer's alleged violation of various California Labor Code provisions. *Labor Code*
12 § 2699(a). Pursuant to the statute, of the amount paid to settle a claim for PAGA penalties,
13 twenty-five percent (25%) is payable to the aggrieved employees and seventy-five percent (75%)
14 is payable to the California Labor and Workforce Development Agency ("LWDA"). *Labor*
15 *Code* §2699(i). Under *Labor Code* section 2699(l), "[t]he Superior Court shall review and
16 approve any penalties sought" as part of the resolution of a case that involved PAGA claims."
17 *Labor Code* § 2699(l).

18 **B. The Court Should Approve the Proposed Settlement of the PAGA Penalties As The**
19 **Proposed Payment To The LWDA Is More Than Reasonable Under the**
20 **Circumstances.**

21 The terms of settlement, including the settlement of the PAGA penalties are as follows:
22 The agreement provides that \$40,000.00 be allocated to potential PAGA penalties such that
23 payment will be made as follows: 1) a check in the sum of \$2,500.00 made payable to the
24 Claims Administrator to administrate payment of the PAGA penalties; 2) a check in the sum of
25 \$28,125.00 (75% of penalties) to the Labor and Workforce Development Agency to resolve the
26 PAGA claims; and (3) the Aggrieved Employees will be paid the remaining \$9,375.00 (25% of
27 penalties). Reyes Dec., ¶ 8.

1 A California law provides some general guidance concerning judicial approval of any
2 settlement. Public policy generally favors settlement. *Neary v. Regents of University of*
3 *California* (1992) 3 Cal.4th 273, 277. The trial Court does not abuse its discretion in approving
4 of a case involving PAGA claims even when the settlement allocates none of the settlement
5 payment to PAGA claims. *Nordstrom Commission Cases* (2010) 186 Cal. App. 4th 576, 589.
6 PAGA settlements may be substantially discounted given that plaintiffs face the risks of courts
7 exercising their discretion to award PAGA penalties below the statutory maximum even where a
8 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
9 CV-02198-EMC) 2016 WL 5907869, at *8-9). See also, *In re Tac Bell Wage and Hour Actions*,
10 No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48555 (E.D. Cal. April 8, 2016) (awarding no
11 civil penalties pursuant to PAGA notwithstanding a jury verdict in favor of plaintiff as to liability
12 for underpaid meal premiums for short or missed meal periods).

13 The proposed resolution of the alleged PAGA remedies is more than fair and reasonable
14 given the facts that:

15 1. The Aggrieved Employees are being adequately compensated. In fact, the
16 average Aggrieved Employee only worked two months and was paid \$15.00 per hour, but said
17 Aggrieved Employees will receive penalties which equate to 26.6 hours of pay for at least three
18 (3) work days.

19 2. Plaintiff's Core Claims for Sexual Harassment and Wrongful Termination and
20 Retaliation entitle her to lost wages, emotional distress damages, and punitive damages. Plaintiff
21 contends that she was subject to dozens of text messages from her harasser, Defendant Meng
22 Lin, which contain numerous demands for sex, including the following examples: 1) demands
23 that Plaintiff have sex with Meng Lin; 2) demands that Plaintiff engage in sex with Meng Lin for
24 money; 3) demands that Defendant Meng Lin visit Plaintiff's home to have sex; 4) violent text
25 messages wherein Defendant Meng Lin becomes angry at Plaintiff because she would not accept
26 money for sex; and 5) Defendants refusal to place Plaintiff on the work schedule after
27 complaining about sexual harassment which effectively terminated her position. Reyes Dec., ¶
28 14-18. Plaintiff alleges that she has become emotionally distraught and has suffered

1 psychological injury, depression, anxiety, tension, nightmares, loss of appetite, and stress, all of
2 which could entitle her to a substantial award of general damages. Reyes Dec., ¶ 19-24. In light
3 of the aforementioned, Plaintiff estimates that she would be awarded over \$30,000.00 in past
4 wages as well as \$10 million dollars for emotional distress and punitive damages if entirely
5 successful at trial. Reyes Dec., ¶ 25. These amounts do not account for attorney's fees which
6 could substantially increase the recovery.

7 3. Plaintiff believed that Defendants may persuasively argue that in accordance with
8 the PAGA (*Labor Code* § 2699(e)(1) and (e)(2)), the Court in a PAGA action has the same
9 discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as
10 complete discretion to "award a lesser amount than the maximum civil penalty amount specified
11 [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would
12 result in an award that is unjust, arbitrary and oppressive, or confiscatory." Reyes Dec., ¶¶ 26-
13 30.

14 4. Additionally, Plaintiff's counsel had to analyze the viability of the allegations
15 related to failure to pay overtime wages due, failure to provide meal periods, and failure to
16 provide rest break claims. Defendants argue that the PAGA Members were not entitled to
17 overtime because they demanded to be classified as independent contractors, set their own
18 schedules, were not supervised by Defendants, and likely carried on their own independent
19 business which provided similar services. Reyes Dec., ¶ 32-33. Moreover, Defendants alleged
20 that the PAGA Members were in charge of their own schedules and, therefore, free to schedule
21 their own meal periods and rest breaks. Reyes Dec., ¶ 34. Further, with respect to
22 accurate/itemized wage statements, Defendants contend that the Aggrieved Employees were
23 properly classified as independent contractors and paid all wages due. Reyes Dec., ¶ 36-38.
24 Therefore, any claim that the wage statements were inaccurate or incomplete are without merit.
25 *Id.*

26 5. Plaintiff's counsel had to consider the Court potentially issuing lower penalty
27 amounts or striking penalties altogether. PAGA's plain language indicates that an employer will
28 be assessed a lower, "initial" penalty for each initial pay period in which a violation occurs, and

1 a higher, “subsequent” penalty for each subsequent pay period in which a violation occurs. (Lab.
2 Code, § 2699, subd. (f)(2).) In *Amaral*, however, the court held, “Until the employer has been
3 notified that it is violating a Labor Code provision (whether or not the commissioner or court
4 chooses to impose penalties), the employer cannot be presumed to be aware that its continuing
5 underpayment of employees is a ‘violation’ subject to penalties [and will be assessed only the
6 ‘initial’ violation rate].” *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.
7 While Plaintiff’s counsel disagrees with the above analysis, this language could be read as
8 indicating that until the Labor Commissioner or a Court informs an employer that it has violated
9 the Labor Code, the employer can only be assessed the “initial” violation rate. *Reyes Dec.*, ¶¶
10 39-41.

11 6. The penalty for violation of *Labor Code* § 226(a) is contained in the *Labor Code* §
12 226.3 civil penalty. Section 226.3 provide for a penalty of \$250 for “initial” violations and
13 \$1,000 for “subsequent” violations. In *Raines v. Coastal Pacific Food Distributors, Inc.* (2018)
14 23 Cal.App.5th 667, the court held that the applicable PAGA civil penalty for Labor Code
15 section 226(a) violations is the \$250/\$1,000 civil penalty in *Labor Code* § 226.3. On the one
16 hand, potential penalties can be significant (\$250 for “initial” violations and \$1,000 for
17 “subsequent” violations), but this Court may also have discretion to deny PAGA penalties
18 outright. (See *Lab. Code* § 226.3 [providing that the Labor Commissioner “may decide not to
19 penalize an employer for a first violation when that violation was due to a clerical error or
20 inadvertent mistake.”].) *Reyes Dec.*, ¶¶ 42-44.

21 7. Plaintiff is not seeking an enhancement amount for Plaintiff, nor is Plaintiff’s
22 counsel seeking reimbursement for attorney’s fees and costs allowed under *Labor Code* §
23 2699(g)(1) which are approximately \$184,380.00. *Reyes Dec.*, ¶¶ 45-48.

24 8. Plaintiff is represented by Jua F. Reyes of the Law Offices of Jua F. Reyes,
25 APLC. As detailed in the attached declaration, Mr. Reyes has been practicing for over 17 years
26 and he has substantial experience in litigating wage and hour claims, complex PAGA actions,
27 complex Class Actions, and wrongful termination claims. *Reyes Dec.*, ¶¶ 49-50.
28

9. Plaintiff obtained three bids from Rust Consulting, Inc., CPT Group, and Simpluris. Based upon Rust Consulting, Inc. coming in with the lowest bid of \$2,500.00, and due to its vast claim's administration experience, Plaintiff's counsel selected Rust Consulting, Inc. as the claim's administrator. Reyes Dec., ¶ 51.

Here, the parties have allocated a substantial sum – combined Forty Thousand Dollars (\$40,000.00) as payment for PAGA penalties to resolve the PAGA claims. Under the circumstances of the case, this is a more than fair and reasonable allocation. Thus, the parties request that the Court approve this aspect of the settlement.

III. CONCLUSION

Accordingly, the parties respectfully request that the Court approve the settlement of the PAGA claims as set forth herein, and such other relief that this Court deems appropriate.

Dated: July 27, 2022

LAW OFFICES OF JUAN F. REYES, APLC

By:

JUAL ☒ YES, ESQ.

Attorney for Plaintiff HONG GE

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I, JUAL F. REYES, declare:

1. I am an attorney at law licensed to practice before all of the Courts of the State of California and attorney of record herein for Plaintiff Hong Ge ("Plaintiff"). I submit this declaration in support of Plaintiff's Motion For Order Approving Settlement Of PAGA Claims.

2. The facts set forth herein are personally known to me and, if called as a witness, I could and would competently testify thereto under oath.

3. On November 10, 2021, Plaintiff filed her Second Amended Complaint (“SAC”) for damages against Defendants. The SAC alleges eighteen (18) causes of action for sexual harassment, sex/gender discrimination, violation of the Ralph Act, violation of the Bane Act, Sexual Harassment in violation of the Unruh Civil Rights Act, Gender Violence, Retaliation for Complaints of Harassment and Discrimination, Wrongful Termination in violation of Public Policy, Negligent Supervision and Retention, Failure to Prevent Discrimination and Harassment, Sexual Battery, Battery, Failure to Pay Overtime, Failure to Provide Accurate Itemized Wage Statements, Waiting Time Penalties, Violation of *Business and Professions Code* § 17200, and Violation of *Labor Code* § 2698 (“PAGA”), and Intentional Infliction of Emotional Distress.

4. Through heavy litigation and discovery, I have diligently pursued an investigation of the PAGA aggrieved employees' claims, including: (1) extensive review and analysis of relevant documents, including but not limited to, documents demonstrating Defendants' wage compensation policies and procedures; (2) detailed examination and analysis of information relating to compensation, and meal and rest break practices; (3) review and analysis of the timekeeping and payroll records of Plaintiff and other PAGA aggrieved employees; (4) review of relevant data regarding the size of the PAGA group; (5) detailed examination of data related to Defendants' PAGA exposure; and (6) research with respect to the applicable law and the potential defenses thereto.

5. On July 7, 2022, the parties participated in a full day of private paid mediation which was mediated by well-respected mediator Kim Deck of Judicate West.

1 6. Prior to mediation, Plaintiff served two (2) rounds of written discovery on
2 Defendants, took the deposition of Defendant's Chief Financial Officer, Yong Lu aka, Vincent
3 Lu, filed two (2) motions to compel discovery, served a Belaire-West Notice, and Defendants
4 produced voluminous responses to discovery, including, but not limited to, over 1000 documents
5 which contained timesheets, wage statements, employee manuals, and written policies and
6 procedures.

7 7. As a result of the exchange of information, spending years analyzing all discovery
8 exchanged, and a full-day of mediation, the parties reached a resolution of the above PAGA
9 claims on July 7, 2022.

10 8. The terms of settlement are as follows: 1) \$40,000.00 for payment of PAGA
11 penalties as follows: 1) a check in the sum of \$2,500.00 made payable to the Claims
12 Administrator to administer payment of the PAGA penalties; 2) a check in the sum of
13 \$28,125.00 (75% of penalties) to the Labor and Workforce Development Agency to resolve the
14 PAGA claims; and 3) the Aggrieved Employees will be paid the remaining \$9,375.00 (25% of
15 penalties). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

16 9. Based on information provided by Defendants, there are only 20 Aggrieved
17 Employees.

18 10. On average, the Aggrieved Employees worked only 2 months for Defendant
19 during the summer of 2020. Also, each Aggrieved Employee earned \$15.00 per hour and the
20 average penalty amount will be over \$400.00 which is payment of wages for 26.6 hours or at
21 least 3 days of work.

22 11. The terms of settlement were submitted to the LWDA on July 27, 2022.

23 12. *Labor Code* § 2699.5 provides the specific Labor Code violations that aggrieved
24 employees may enforce under

25 13. Based upon the violation of various Labor Code sections, Plaintiff alleges that the
26 Aggrieved Employees are entitled to the following PAGA penalties as a result of Defendants'
27 Labor Code violations:
28

Labor Code Section	Description of Penalty	Amount of Penalty	#of Pay periods	Amount of Penalty
201	Waiting Time	100/200	20	\$3,900
203	Waiting Time	100/200	20	\$3,900
204	Illegal Deductions	100/200	42	\$8,300
210	Add-on Penalty to Sec. 204	100/200	42	\$8,300
226.3	Add-on Penalty to 226(a)	250/1000	43	\$42,250
226.7	Rest Period Violation	100/200	42	\$8,300
226.8	Misclassification as Independent Contractor	25,000	20	\$500,000
510	Overtime	100/200	42	\$8,300
512	Meal Periods	100/200	42	\$8,300
558	Under paid wages Add-On	50/100	42	\$4,150
1174	Failure to Keep Accurate Records	100/200	42	\$8,300
1174.5	One Time Penalty for Failure to Keep Accurate Records	500	20	\$10,000
1199	Catch-All	100/200	42	\$8,300
			Total:	\$622,300

(Ex: *Labor Code* § 226.3: 42 x \$1000 – \$750 = \$42,250; *Labor Code* § 226.7: \$200 x 42 – \$100 = \$8,300; *Labor Code* § 226.8: \$25,000 x 20 = \$500,000; *Labor Code* § 558: 42 x \$100 – \$50 = \$4,150; *Labor Code* § 1174.5: \$500 x 20 = \$10,000.)

14. In essence, Plaintiff alleges that she was employed by Defendants as a packer/shipper and was terminated on or about July 12, 2020 as a result of reporting severe sexual harassment.

15. Plaintiff further alleges that she suffered the harassment at the hands of Defendants' supervisor, Defendant Meng Lin.

16. Plaintiff produced dozens of text messages during discovery showing Defendant Meng Lin's demands to Plaintiff, including, but not limited to, the following: demands that Plaintiff engage in sex with him; demands that Plaintiff accept money for sex; demands by Meng Lin that he come to Plaintiff's house for sex; Meng Lin mocking Plaintiff as an old woman for

1 refusing to have sex with him; Meng Lin becoming angry at Plaintiff because she refused to have
2 sex with him; and Meng Lin threatening to fire Plaintiff like he fired another female employee as
3 a result of her refusal to become a sex slave.

4 17. On or about June 30, 2020, Plaintiff contends that Defendant Meng Lin lured her
5 into a private space and sexually assaulted her by groping her breast.

6 18. Ultimately, Plaintiff claims that she reported the above sexual harassment to
7 Defendants' warehouse manager, Chuck Ye, on July 10, 2020. However, Plaintiff contends that
8 Defendants refused to investigate the harassment and terminated her position on or about July
9 12, 2020.

10 19. The SAC alleges at least 12 causes of action which provide for a combination of
11 lost wages, emotional distress damages, and punitive damages, including, Sexual Harassment,
12 Sex/Gender Discrimination, Violation of the Ralph Act, Violation of the Bane Act, Sexual
13 Harassment in Violation of the Unruh Civil Rights Act, Gender Violence, Retaliation for
14 Complaints of Sexual Harassment, Wrongful Termination in Violation of Public Policy,
15 Negligent Supervision, Hiring, and Retention, Failure to Prevent Sexual Harassment, Sexual
16 Battery, Battery, and Intentional Infliction of Emotional Distress.

17 20. During Plaintiff's employment with Defendants, she alleges that she was a full-
18 time employee earning \$15.00 per hour at the time of her termination. Plaintiff was unemployed
19 from July 12, 2020 until June of 2021. Therefore, Plaintiff claims that her total lost wages to
20 date are \$31,680.00, including 10 % interest (\$600.00 per week x 48 weeks).

21 21. Additionally, as a result of the alleged unlawful termination referenced above,
22 Plaintiff contends that she has become emotionally distraught and has suffered psychological
23 injury, depression, anxiety, tension, nightmares, loss of appetite, and stress, all of which could
24 entitle her to a substantial award of general damages.

25 22. In essence, Plaintiff claims that she was sexually battered by her supervisor,
26 Defendant Meng Lin, including suffering sexual assault by being groped in her breast area,
27 Defendants did nothing to prevent sexual harassment, and terminated her position on or about
28 July 12, 2020.

1 23. Finally, Plaintiff claims that she is entitled to punitive damages on the grounds
2 that her termination was ratified by Defendants' Managing Agent and Chief Financial Officer,
3 Yong Lu aka, Vincent Lu.

4 24. Defendants deny the above allegations of sexual harassment and Plaintiff's
5 claimed damages, but would be forced to defend these claims at trial.

6 25. In light of the aforementioned, Plaintiff estimates that she would be awarded over
7 \$30,000.00 in past wages as well as \$10 million dollars for emotional distress and punitive
8 damages if entirely successful at trial.

9 26. I believed that Defendants' could persuasively argue that in accordance with the
10 PAGA (*Labor Code* § 2699(e)(1) and (e)(2)), the Court in a PAGA action has the same
11 discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as
12 complete discretion to "award a lesser amount than the maximum civil penalty amount specified
13 [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would
14 result in an award that is unjust, arbitrary and oppressive, or confiscatory."

15 27. I also anticipated, at trial, counsel for Defendants could make a potentially
16 persuasive argument that the Court should exercise its discretion under PAGA to significantly
17 reduce or altogether waive any penalties under PAGA on the basis that (1) Defendants did not
18 act knowingly or intentionally; (2) any errors in payment were not intentional and only the result
19 of oversight or mistake; (3) until this lawsuit was filed, no employees had complained; (4) none
20 of Defendants' employees suffered significant actual damage as a result of the conduct that
21 forms the basis for Plaintiff's allegations.

22 28. All of which, Defendants would argue, should mitigate in favor of reducing or
23 waiving any PAGA penalties.

24 29. While I disagreed that this analysis is legally correct or persuasive, I had to
25 consider the foregoing facts and arguments and how they might impact any judgment ultimately
26 awarded to the PAGA Members if the Court were persuaded by them.

27 30. In light of these arguments and the potential risks, I determined that the Settlement
28 was fair and reasonable.

1 31. Additionally, I had to analyze the viability of the allegations related to failure to
2 pay overtime wages due, failure to provide meal periods, and failure to provide rest break claims.

3 32. Defendants deny the allegations and assert that Plaintiff, and all Aggrieved
4 Employees, were paid for all hours worked and in fact were paid more than what they earned
5 during the scope of their employment.

6 33. Also, Defendants argue that the PAGA Members were not entitled to overtime
7 because they demanded to be classified as independent contractors, set their own schedules, were
8 not supervised by Defendants, and likely carried on their own independent business which
9 provided similar services.

10 34. Moreover, Defendants alleged that the PAGA Members were provided meal
11 periods and rest breaks throughout their employment with Defendants. In this regard,
12 Defendants claimed that the PAGA Members were in charge of their own scheduling and,
13 therefore, free to schedule their own meal periods and rest breaks.

14 35. In fact, Defendants allege that the PAGA Members were paid wages for the time
15 they spent taking meal periods and rest periods. As a result of the aforementioned, Defendants
16 claim that the PAGA Members are not entitled to waiting time penalties, were paid all wages
17 due, and provided all meal periods/rest breaks.

18 36. Further, I had to analyze the viability of the allegations related to *Labor Code*
19 226(a)(8).

20 37. Defendants deny the allegation that they failed to include on employees' wage
21 statements the address of the legal entity that is the employer in violation of *Labor Code* §
22 226(a)(8) and argued that they can prove that the address was in fact included on all wage
23 statements.

24 38. The main argument that I had to consider is Defendants' argument that the
25 Aggrieved Employees were properly classified as independent contracts and, thus, were actually
26 paid all wages due. Therefore, any claim that the wage statements were inaccurate or incomplete
27 are without merit.

1 39. PAGA’s plain language indicates that an employer will be assessed a lower,
2 “initial” penalty for each initial pay period in which a violation occurs, and a higher,
3 “subsequent” penalty for each subsequent pay period in which a violation occurs. (*Labor Code* §
4 2699, subd. (f)(2).)

5 40. In *Amaral*, however, the court held, “Until the employer has been notified that it is
6 violating a Labor Code provision (whether or not the commissioner or court chooses to impose
7 penalties), the employer cannot be presumed to be aware that its continuing underpayment of
8 employees is a ‘violation’ subject to penalties [and will be assessed only the ‘initial’ violation
9 rate].” *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.

10 41. While I disagree with the above analysis, this language could be read as indicating
11 that until the Labor Commissioner or a court informs an employer that it has violated the Labor
12 Code, the employer can only be assessed the “initial” violation rate.

13 42. Additionally, the penalty for violation of *Labor Code* § 226(a) is contained in the
14 *Labor Code* § 226.3 civil penalty. Section 226.3 provides for a penalty of \$250 for “initial”
15 violations and \$1,000 for “subsequent” violations.

16 43. In *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667,
17 the court held that the applicable PAGA civil penalty for *Labor Code* § 226(a) violations is the
18 \$250/\$1,000 civil penalty in *Labor Code* § 226.3.

19 44. On the one hand, potential penalties can be significant (\$250 for “initial”
20 violations and \$1,000 for “subsequent” violations), but this Court may also have discretion to
21 deny PAGA penalties outright. (See *Lab. Code* § 226.3 [providing that the Labor Commissioner
22 “may decide not to penalize an employer for a first violation when that violation was due to a
23 clerical error or inadvertent mistake.”].)

24 45. First, Plaintiff is not seeking an enhancement payment despite representing the
25 Aggrieved Employees and providing vital information related to Defendants’ payroll policies.

26 46. Second, Plaintiff took and defended two (2) depositions, attended one (1) private
27 paid mediation, attended numerous hearings, opposed two (2) demurrers and two (2) motions to
28 strike, filed two (2) motions to compel, drafted (2) sets of discovery to each Defendant,

1 responded to Defendants written discovery, drafted a Belaire-West notice and hired an
2 administrator to distribute a Belaire West Notice, and analyzed over 1000 pages of documents
3 produced by Defendants throughout the litigation. Consequently, Plaintiff's costs of litigation
4 exceed \$15,000.00.

5 47. Finally, *Labor Code* § 2699(g)(1), allows me to seek attorney's fees in connection
6 with the 17th cause of action for PAGA penalties.

7 48. In fact, I have spent 263.4 hours litigating this case at \$700.00 per hour. As such,
8 I am entitled to over \$184,380.00. in attorney's fees, plus a multiplier of 2.0. *Id.* However,
9 Plaintiff is not seeking attorney's fees and costs as allowed under § 2699(g)(1) in order to
10 increase the amount of penalties distributed to the Aggrieved Employees.

11 49. I have practiced civil litigation for 17 years. During that time, I have devoted
12 about 90% of my practice to labor and employment law (including wage & hour cases). I have
13 litigated hundreds of wage and hour cases and claims for wrongful termination. Also, I have
14 litigated and obtained Court approval of PAGA penalties in complex PAGA actions and Class
15 Actions. Most recently, on March 10, 2021, I obtained Court approval of a wage and hour class
16 action located in Riverside Superior Court, Case No. RIC1905547, wherein my request for
17 attorney's fees was granted in the amount of \$747.00 per hour.

18 50. I was named by Super Lawyers in 2016 – 2017, 2019 – 2020, 2020 - 2021, and
19 2021 - 2022. I am a member of the California Employment Lawyers Association and the
20 Consumer Attorneys' Association of Los Angeles. I am also a Labor and Employment Section
21 member with the State Bar of California.

22 51. Plaintiff obtained three bids from Rust Consulting, Inc., CPT Group, and
23 Simpluris. Based upon Rust Consulting, Inc. coming in with the lowest bid of \$2,500.00, and
24 due to its vast claim's administration experience, I selected Rust Consulting, Inc. as the claim's
25 administrator.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and this declaration is executed on this 27 day of July, 2022
3 at Glendale, California.

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EXHIBIT 1

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereinafter referred to as "Agreement") is made and entered into by and between Plaintiff HONG GE (hereinafter referred to as "Plaintiff") on the one hand and Defendants Longyuan Forwarding, Inc. ("Longyuan"), Qinxian Hou ("Hou"), and Yong Lu aka, Vincent Lu ("Lu") (collectively "Defendants") (collectively both sides shall be referred to as the "Parties").

I. DEFINITIONS

1. **"Action"** means the matter entitled *Hong Ge v. Longyuan Forwarding, Inc., et al.*, filed as Los Angeles Superior Court Case No. 20STCV32496.
2. **"Aggrieved Employees"** means all independent contractors that worked for Defendants within the state of California who worked one or more pay periods from August 19, 2019 to the date of settlement approval by the Court.
3. **"Claims Administrator"** shall refer to Rust Consulting, Inc.
4. **"Court"** means the Superior Court of California for the County of Los Angeles.
5. **"Effective Date"** will be the date the Court has signed the order approving PAGA penalties thereon.
6. **"Employee's Counsel"** means Jua F. Reyes, Esq. of the Law Offices of Jua F. Reyes, 100 N. Brand Blvd. Suite 200, Glendale, CA 91203.
7. **"LWDA"** means the California Labor and Workforce Development Agency.
8. **"PAGA Covered Period"** shall mean the period from August 19, 2019 to the date of settlement approval by the Court.
9. **"PAGA Released Claims"** means all claims for civil penalties under Labor Code § 2698 et seq., which were asserted in Plaintiff's August 19, 2020 and May 17, 2021 LWDA letters and Plaintiff's operative Complaint filed in Case No. 20STCV32496, including; failure to pay timely pay wages and/or final wages to aggrieved employees in violation of Labor Code sections 201, 202, and 203, 204, 210, 558, 558.1, and 2698 et seq.; failure to provide meal periods to aggrieved employees in violation of Labor Code sections 218.5, 218.6, 512(a), 226.7, 558, 558.1, and 2698 et seq.; failure to provide rest periods to aggrieved employees in violation of Labor Code sections 218.5, 218.6, 512(a), 226.7, 558, 558.1, and 2698 et seq.; failure to maintain required records in violation of Labor Code sections 226, 1174, 1174.5 and 2698 et seq.; violation of Labor Code section 1199; failure to payment for all premium overtime wages in violation of Labor Code sections 510, 558, and 558.1; failure to provide itemized wage

SETTLEMENT AGREEMENT AND GENERAL RELEASE

statements to aggrieved employees in violation of Labor Code sections 226(a), 226.3, 558, 558.1, and 2698 *et seq.*; and misclassification of employment in violation of Labor Code sections 226.8, 558, 558.1, 2753, and 2698 *et seq.*

II. RECITALS

A. WHEREAS, Plaintiff filed a civil action entitled *Hong Ge v. Longyuan Forwarding, Inc. et al.*, filed as Los Angeles County Superior Court Case No. 20STCV32496.

B. WHEREAS, Defendants deny all of the allegations set forth in the Action filed by Plaintiff;

C. WHEREAS, Plaintiff and Defendants desire to settle fully and settle finally all differences between them concerning the PAGA Released Claims; and

D. WHEREAS, this Settlement Agreement and Release does not include any individual claims brought by Plaintiff and said claims are subject to a separate Settlement Agreement.

NOW THEREFORE, in consideration of the promises herein contained, it is agreed as follows:

The above-mentioned recitals are hereby incorporated into, and made a part of, this Agreement.

III. TERMS OF SETTLEMENT

1. **Settlement Payment:** As consideration for the promises made herein, Defendants agree to pay the gross sum of Forty Thousand Dollars and No Cents (\$40,000.00), not as wages, without deduction for State or Federal taxes (hereinafter referred to as the "Settlement Amount.") within seven (7) days from the Court's approval of PAGA penalties. The Claims Administrator shall be paid Two-Thousand Five Hundred Dollars (\$2,500.00) for its costs and expenses incurred in order to distribute apportioned penalty checks to each of the Aggrieved Employees of a pro rata basis ("Claims Administrator Cost"). The remaining balance of Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) shall constitute PAGA penalties and be payable pursuant to the schedule set forth in paragraphs 3 and 4 below. The payments shall be made as follows:

(a) Pending Court approval, the Parties have allocated Thirty-Seven Thousand Five-Hundred Dollars (\$37,500.00) of the Gross Settlement Amount

SETTLEMENT AGREEMENT AND GENERAL RELEASE

towards PAGA penalties. California Labor Code section 2699(i) requires that any settlement under this section shall be distributed as follows: 75% to the LWDA for enforcement of labor laws and education of employers and 25% to aggrieved employees.

(b) Payment of Twenty-Eight Thousand One Hundred Twenty-Five Dollars (\$28,125.00) to the LWDA and the remaining Nine Thousand Three Hundred Seventy-Five Dollars (\$9,375.00.) will be paid to the aggrieved employees on a pro-rata basis.

(c) Because the PAGA payment is in the nature of a statutory penalty, as provided for in Labor Code section 2699(i), these payments shall not be subject to withholding, but are subject to indemnification as set forth in this Agreement. Counsel for Plaintiff shall prepare a Motion seeking approval of the settlement agreement as to the PAGA claim which will not be opposed by Defendants. If the court declines to approve the PAGA settlement, the parties shall work together in good faith to address the court's concerns. Payment of the entire Settlement Amount shall be contingent upon court approval of the settlement as to the PAGA claim.

2. **Failure To Negotiate Check:** The portion of the Settlement Amount payable to the Aggrieved Employees shall remain valid and negotiable for One Hundred Twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, Plaintiff's counsel will ensure that uncashed funds shall be forwarded the State of California's State Controller Unclaimed Property Fund with identification of the amount of unclaimed funds attributable to each Aggrieved Employee.

3. **PAGA Settlement:** The Parties agree that the Court must approve the settlement of the PAGA portion of the Action. Upon the Party's execution of this Agreement, counsel for the Plaintiff shall file a Motion with the Court, requesting the approval of the PAGA settlement. Plaintiff's counsel will inform the Court that the Parties have reached a settlement and that at that time, no other employees of any Defendants were represented or involved in this Action other than the aggrieved employees. Plaintiff shall advise the Court that Plaintiff is settling and dismissing all of Plaintiff's claims with prejudice after all payments are made and that the Request for Dismissal will be filed upon payment of the final installment payment. The Parties agree that if the Court does not approve the PAGA settlement, upon notice of such disapproval, the Parties shall cooperate to resolve the issues identified by the Court, if any, in order to obtain Court Approval of the PAGA Settlement.

(a) Plaintiff will file a Motion for Approval of Payment of PAGA penalties and seek an Order from the Court approving the payment of PAGA penalties as described in this

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Agreement at the earliest possible date. Defendants will not oppose the Motion and will file a Notice of Non-Opposition. The Parties agree to use their best efforts to expedite preparation and submission of the Settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared of filed, shall take all steps that may be requested by the Court related to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement. If a noticed motion is required by the Court, Plaintiff agrees to schedule a hearing with the Court for this purpose, at which time the Parties will jointly appear by counsel of record.

(b) Moreover, the Parties expressly agree that, in compliance with Labor Code §2699(1)(2), Plaintiff, through her counsel, shall submit a copy of Motion to Approve Payment of PAGA penalties to the California Labor and Workforce Development Agency at the same time that the joint stipulation and/or motion are filed with the Court for approval. Additionally, the Parties expressly agree that in compliance with Labor Code §2699(1)(3), Plaintiff, through her counsel, shall submit a copy of the Court's Order Granting Approval of the PAGA Portion of Settlement to the California Labor and Workforce Development Agency within seven calendar days after entry of said order.

4. Administering The Settlement:

(a) Within seven (7) calendar days after the Effective Date, Defendants will compile a PAGA Aggrieved Employees list containing each Aggrieved Employee's: (1) name; (2) last known home address and telephone number; (3) number of pay periods as a PAGA Aggrieved Employee during the PAGA Covered Period; and (4) social security number. Defendants shall provide the Claims Administrator with the PAGA Aggrieved Employee list within seven (7) calendar days from the Effective Date.

(b) Within seven (7) calendar days from the Effective Date, Defendants shall provide the Claims Administrator with the settlement amount allocated as PAGA penalties and the Claims Administrator Cost in the amount of Forty Thousand Dollars (\$40,000.00) via bank wire.

(c) Within ten (10) calendar days after the Court signs the Order approving PAGA penalties, the Claims Administrator shall run all the addresses of PAGA Aggrieved Employees through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

(d) Within ten (10) calendar days from receipt of the total amount of Forty-Thousand Dollars (\$40,000.00) allocated as PAGA penalties, the Claims Administrator shall release payments in the following manner:

SETTLEMENT AGREEMENT AND GENERAL RELEASE

(1) payment in the amount of Two-Thousand Five Hundred Dollars (\$2,500.00) payable to Rust Consulting, Inc. for administration costs;

(2) payment in the amount of Twenty-Eight Thousand One Hundred Twenty-Five Dollars (\$28,125.00) made payable to the California LWDA; and

(3) payment in the amount of Nine Thousand Three Hundred Seventy-Five Dollars (\$9,375.00) payable to the Aggrieved Employees as PAGA penalties on a pro-rata basis. The pro-rata penalty amounts shall be calculated by multiplying the ratio of (a) the number of Eligible Pay Periods worked by that employee to (b) the total number of Eligible Pay Periods worked by all employees included in the Aggrieved Employees.

(e) Once the total PAGA Penalties have been provided to the Claims Administrator, the Claims Administrator will mail the PAGA penalties checks to the Aggrieved Employees. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Claims Administrator. It will be conclusively presumed that an Aggrieved Employee's PAGA penalties check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Claims Administrator.

5. **Filing of Notice of Settlement and Request for Dismissal with Prejudice of the entire Action:** Within ten (10) calendar days of execution of the Agreement by the parties, Plaintiff shall file with the court a Notice of Settlement of the Action. After Court approval of the PAGA penalties, Plaintiff may dismiss the Action without prejudice. Subsequently, within ten (10) business days of full payment of the settlement amount set forth in paragraph 1, Plaintiff shall file with the court a Request for Dismissal with Prejudice as to the PAGA Released Claims and the 17th Cause of Action for Violation of Labor Code § 2698 et seq. Plaintiff shall provide a conformed copy of the Request for Dismissal with Prejudice to Defendants' counsel.

6. **Agreement Admissible To Prove Breach:** This Agreement may be used in evidence in an action alleging a breach of this Agreement. The Parties expressly agree to waive the provisions of California Evidence Code §1152 to the extent necessary to render this Agreement admissible in a proceeding to enforce the provisions hereof.

7. **Release By Aggrieved Employees:** Upon the approval by the Court of this Settlement, each Aggrieved Employee (including Plaintiff), shall, for the Covered Period, fully release and forever discharge Defendants and their present and former parent companies, subsidiaries, divisions, related or affiliated companies, owners, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns ("Releasees") from the PAGA

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Released Claims.

8. **Matter Stayed Pending Court Approval:** The Parties agree that upon full execution of this Settlement, the matter is stayed in its entirety save for any filings and motion work necessary to attain court approval of the Settlement and the present October 2022 Trial Date shall be vacated pursuant to the filing of a Notice of Conditional Settlement with the Court within 10 calendar days from the date this Agreement is signed. Should the Court not grant approval of the Motion for Approval of PAGA penalties after reasonable efforts to obtain approval, the stay will be lifted ten (10) calendar days thereafter and the parties will be restored to their positions prior to the Settlement and this Settlement shall be null and void and the case shall then be reset for a new trial date.

9. **Attorney's fees:** As further mutual consideration of the promises set forth herein, Plaintiff and Defendants agree that as a result of this settlement there is no prevailing party, and that all parties in connection with this settlement will bear their own costs and attorneys' fees incurred in connection with the dispute which is the subject of this Agreement, with the exception of attorney fees and costs for collection efforts and breach of this agreement as set forth in paragraph 18 of this Agreement.

10. **Entire Agreement:** This Agreement constitutes the complete and entire Agreement between the parties pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions of their Agreement. Any and all prior agreements, representations, negotiations, and understandings between the parties, oral or written, express or implied, are hereby superseded and merged herein.

11. **Modification:** This Agreement may be amended, changed, or modified only by a written document signed by all parties hereto. No waiver of this Agreement or of any of the promises, obligations, terms, or conditions hereof shall be valid unless it is written and signed by the party against whom the waiver is to be enforced.

12. **No Assignment:** The Parties represent that they have not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any Claim, chose in action, right of action, or any right of any kind whatsoever, or any portion thereof or interest therein. If any party's Claim should be made or instituted against the other party, or any of them, because of any such purported assignment, the Parties agree to indemnify and hold harmless the other party, including necessary expenses of investigation, attorneys' fees and costs.

13. **Choice of law:** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State. The Parties have cooperated in the preparation of this Agreement, and hence, the language

SETTLEMENT AGREEMENT AND GENERAL RELEASE

of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties, by virtue of the identity, interest or affiliation of its preparer.

14. **Drafting:** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

15. **Cooperation:** The Parties further agree to execute any and all further documents, deliver all signatures, and to perform any and all further acts reasonably necessary or useful in carrying out the provisions and purposes of this Agreement.

16. **Severability:** Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.

17. **Singular/Plural Usage:** As used in this Agreement, the singular or plural number shall be deemed to include the other whenever the content so indicates or requires.

18. **Court To Take Jurisdiction Under C.C.P. 664.6:** The parties agree that this Agreement is subject to the provisions of Code of Civil Procedure section 664.6. In any action or other proceeding to enforce rights hereunder, the prevailing party shall receive an award of costs and expenses related to such proceeding, including attorneys' fees.

19. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures obtained via PDF, Electronic Signature, and/or Facsimile shall be deemed valid as if they were inked originals.

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SETTLEMENT AGREEMENT AND GENERAL RELEASE

20. **No Reliance:** The Parties represent and acknowledge that in executing this Agreement that they did not rely and have not relied upon any representation or statement made by any of the Released Parties or by any of the Released Parties' agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

PLAINTIFF

DATED: _____

By: _____
Plaintiff Hong Ge

DEFENDANTS

DATED: 7/20/22

By: [Signature]
Yong Lu aka, Vincent Lu on behalf of
Longyuan Forwarding, Inc.

DATED: 7/20/22

By: [Signature]
Yong Lu aka, Vincent Lu

DATED: 7/20/22

By: [Signature]
Qinxiang Hou

SETTLEMENT AGREEMENT AND GENERAL RELEASE

20. **No Reliance:** The Parties represent and acknowledge that in executing this Agreement that they did not rely and have not relied upon any representation or statement made by any of the Released Parties or by any of the Released Parties' agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

PLAINTIFF

DATED: 07/18/2022 _____

By: Hong Ge
Plaintiff Hong Ge

DEFENDANTS

DATED: _____

By: _____
Yong Lu aka, Vincent Lu on behalf of
Longyuan Forwarding, Inc.

DATED: _____

By: _____
Yong Lu aka, Vincent Lu

DATED: _____

By: _____
Qinxiang Hou

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with the Law Offices of Jual F. Reyes and my business address is 100 N. Brand Blvd, Suite 532, Glendale, California 91203.

On **July 27, 2022**, I served the foregoing document entitled **NOTICE OF MOTION AND (UNOPPOSED) MOTION FOR ORDER APPROVING SETTLEMENT OF PAGA CLAIMS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**, on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

David S. Lin, Esq.
Law Offices of David S. Lin
80 S. Lake Ave., Suite 512
Pasadena, CA 91101
dsl.dlinlaw@yahoo.com

☐ **[by MAIL]** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Glendale, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SERVICE]** I caused to be delivered by electronically mailing the document(s) listed above to the e-mail address(es) set forth above, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure Section 1010.6, OR in accordance with Emergency Rule of Court 12(b)(1) during the COVID-19 crisis by electronically mailing the document(s) listed above to the e-mail address(es) set forth as stated on the attached service list.

☒ **STATE** - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 27, 2022**, at Glendale, California.

Jual F. Reyes

Print Name

By:

Signature



Journal Technologies Court Portal

Make a Reservation

HONG GE vs LONGYUAN FORWARDING, INC. DBA AMERICAN NEW LOGISTICS SERVICE, et al.

Case Number: 20STCV32496 Case Type: Civil Unlimited Category: Wrongful Termination
Date Filed: 2020-08-25 Location: Stanley Mosk Courthouse - Department 24

Reservation

Case Name:

HONG GE vs LONGYUAN FORWARDING, INC. DBA
AMERICAN NEW LOGISTICS SERVICE, et al.

Case Number:

20STCV32496

Type:

Motion for Order (Approving PAGA Penalties)

Status:

RESERVED

Filing Party:

Hong Ge (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 24

Date/Time:

08/24/2022 8:30 AM

Number of Motions:

1

Reservation ID:

002221018490

Confirmation Code:

CR-KF6YZIQC6U5VTJJK

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

Visa

Account Number:

XXXX7523

Authorization:

04054G

[Print Receipt](#)

[+ Reserve Another Hearing](#)

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