

1 Ramin R. Younessi, Esq. (SBN 175020)
 2 Samvel Geshgian, Esq. (SBN 300470)
 3 Eduardo Balderas, Esq. (SBN 322589)
LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION
 4 3435 Wilshire Boulevard, Suite 2200
 Los Angeles, California 90010
 Telephone: (213) 480-6200
 Facsimile: (213) 480-6201

5 Attorneys for Plaintiff,
 6 JAVIER DOMINGUEZ

7 Landon Schwob, Esq.
JACKSON LEWIS P.C.
 8 725 South Figueroa Street, Suite 2500
 Los Angeles, California 90017-5408
 Telephone: (213) 689-0404
 Facsimile: (213) 689-0430
 9 Jaclyn.Floryan@jacksonlewis.com
 10 Ariel.Brotman@jacksonlewis.com

11 Attorneys for Defendants
 12 VALMONT INDUSTRIES, INC.,
 VALMONT COATINGS, INC. and VALMONT COATING

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16 JAVIER DOMINGUEZ, an individual,
 17
 18 Plaintiff,
 19
 20 v.

21 VALMONT INDUSTRIES, INC., a Delaware
 corporation; VALMONT COATINGS, INC.,
 22 an entity of unknown form; VALMONT
 COATING, an entity of unknown form; and
 23 DOES 1 through 20, inclusive,
 24 Defendants.

Case No.: 20STCV45517

*Assigned for all purposes to the Honorable Judge
 Gregory Keosian, Department 61*

**STIPULATION REQUESTING APPROVAL
 OF PRIVATE ATTORNEY GENERAL ACT
 SETTLEMENT (LABOR CODE § 2698 ET
 SEQ.); ~~PROPOSED~~ ORDER**

*[Filed concurrently with declaration from Samvel
 Geshgian, Counsel of Record for Plaintiff]*

Action filed: November 30, 2020
 Trial Date: February 14, 2023

25 Pursuant to California Labor Code § 2699(1), Plaintiff Javier Dominguez ("Plaintiff" herein) and
 26 Defendants Valmont Industries, Inc., Valmont Coatings, Inc. and Valmont Coating (collectively
 27 "Defendants" herein) jointly request that this Court approve the settlement of Plaintiff's claim under the
 28 Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("**PAGA**"). In support of their request,

1 Plaintiff and Defendants (collectively, “the Parties”) stipulate and agree, as follows:

2 **PROCEDURAL BACKGROUND**

3 1. On September 25, 2020, Plaintiff served a letter to the LWDA and Defendants (“September
4 2020 Letter”), in accordance with the requirements of Labor Code section 2699.3(a), to notify the LWDA
5 of alleged violations of the California Labor Code by Defendants, as Plaintiff’s joint employer, arising
6 from Plaintiff’s work as a truck driver for Defendants. The December 2020 Letter alleged that Defendants
7 had violated California Labor Code by failing to pay Plaintiff and other aggrieved employees all wages
8 owed, failing to provide uninterrupted meal and rest periods (Labor Code section 226.7 and 512), and
9 failing to provide accurate wage statements (Labor Code sections 226, et seq.), and that Defendants were
10 subject to penalties (Labor Code sections 201, 203, 1194). The December 2020 Letter also indicated that
11 Plaintiff intended to pursue a representative civil action under the PAGA against Defendants. The LWDA
12 declined to investigate the alleged violations, permitting Plaintiff to initiate a PAGA action in superior
13 court. (Geshgian Decl. ¶ 4)

14
15 2. On November 30, 2020, Plaintiff filed his Complaint against Defendants in the Superior
16 Court of the State of California, County of Los Angeles, Case No. 20STCV45517. Plaintiff filed his
17 Complaint against Defendants alleging the following causes of action: Discrimination in Violation Of
18 Gov’t Code §§12940 et seq. (First Cause of Action); Retaliation in Violation Of Gov’t Code §§12940 et
19 seq. (Second Cause of Action); Failure To Prevent Discrimination, and Retaliation in Violation of Gov’t
20 Code §12940(K), (Third Cause Of Action); Failure To Provide Reasonable Accommodations in Violation
21 of Gov’t Code §§12940 et seq. (Fourth Cause Of Action); Failure To Engage in a Good Faith Interactive
22 Process in Violation of Gov’t Code §§12940 et seq. (Fifth Cause of Action); For Declaratory Judgement
23 (Sixth Cause of Action); Wrongful Termination in Violation of Public Policy (Seventh Cause of Action);
24 Failure to Pay Wages (Labor Code §§201, 1194) (Eighth Cause of Action); Failure to Provide Meal and
25 Rest Periods (Labor Code §§226.7, 512) (Ninth Cause of Action); Failure to Provide Itemized Wage and
26 Hour Statements (Cal. Labor Code §§226, Et Seq.) (Tenth Cause of Action); Waiting Time Penalties (Cal.
27 Labor Code §§201-203) (Eleventh Cause of Action); Private Attorney General Act (Labor Code §§2699
28 et seq.) (Twelfth Cause of Action); Unfair Competition Business and Professions Code §§17200 et seq.
(Thirteenth Cause of Action). (Geshgian Decl. ¶ 5)

3. On February 16, 2021, Defendants filed their Answer to the Complaint. (Geshgian Decl. ¶ 6)

4. Each of Plaintiff's wage and hour causes of action stems from the allegations that Defendants, denied him, and his coworkers, statutory rest and meal periods and failed to accurately compensate him for premium wages relative to the missed rest and meal periods. (Geshgian Decl. ¶ 7)

5. After the Action was filed, Plaintiff also received and reviewed relevant information to evaluate the strengths and weaknesses of the representative PAGA allegations. (Geshgian Decl. ¶ 8)

6. In addition to the above, Defendants categorically deny all of Plaintiff's allegations.
(Geshgian Decl. ¶ 9)

SETTLEMENT DISCUSSIONS

7. On May 17, 2022, Parties participated in a full-day private mediation with a reputable mediator in the field of employment and wage and hour law. Mitchell Tarighati, Esq. from ADR Services, Inc. assisted the Parties' settlement efforts. As a result of the mediation and the good faith effort put forth by the Parties, an agreement was reached to settle the case including the representative PAGA allegations. After the settlement was reached, Parties engaged in extensive discussions regarding the resolution of the PAGA cause of action.

8. On May 17, 2022, the Parties executed an agreement providing for settlement of the representative PAGA claim. (Geshgian Decl. ¶ 11, Exh. 1)

9. Prior to reaching a resolution of the representative PAGA claim, the Parties discussed the case at length, including the relative strengths and weaknesses of the Parties' positions as well as the benefits to all parties of an early, informal resolution. Prior to the resolution, Defendants provided information regarding size of the PAGA class. Including Plaintiff, there were five (5) potentially aggrieved truck drivers during the PAGA Liability Period who worked a grand total of approximately 152 workweeks. (Geshgian Decl. ¶ 12)

10. The Parties' settlement resolves Plaintiff's individual wrongful termination claims under FEHA, his individual wage and hour claims based on Defendant's failure to provide meal and rest periods, and his PAGA representative claim. (Geshgian Decl. ¶ 13)

11. The Parties recognize that the public's interest in ensuring the Court's proper

1 administration of the PAGA settlement approval procedure requires the disclosure of the amount of the
2 Settlement Payment that is allocated to Plaintiff's PAGA claim. The Parties represent that they agreed to
3 allocate **\$5,000.00** in settlement of Plaintiff's PAGA claim. The relevant language from the Settlement
4 Agreement reads as follows:

5 **C. Settlement Sum Payment Procedures**

6 **1. PAGA Settlement Amount**

7 PAGA Settlement Amount. The Parties agree to settle Dominguez's PAGA
8 claim for the Amount ("PSA") of \$5,000.00, which shall be all inclusive,
9 encompassing all payments to the LWDA and PAGA Members. No settlement
10 administration costs, or representative enhancement will be deducted from the
11 PSA. Attorney's fees in the amount of \$2,250.00 will be deducted from the PSA.
12 The remaining balance of the PSA in the approximate amount of \$2,750.00 shall
be paid (i) 75% to the California Labor and Workforce Development Agency
(LWDA) and (ii) 25% to PAGA Members. The 25% payable to PAGA Members
shall be divided equally among them.

13 (Geshgian Decl. ¶ 14, Exh. 1 at Pgs. 1-2)

14 **2. Funding and Distribution Process**

15 Valmont will pay the PSA within five business days of the expiration of the appeal period
16 after the final Court approval of the Settlement, or, if an appeal is filed, within five
business days after the settlement has been upheld on appeal or any appeal has been
denied or withdrawn.

17 Dominguez agrees that counsel for Dominguez will notify the LWDA of the settlement at
18 the same time the settlement is submitted to the Court for approval, seek approval of the
19 settlement, and perform any and all statutory tasks as required by law. The Parties agree
that there is no right for any PAGA Member to opt out or otherwise exclude himself or
herself from the PAGA Settlement

20 (Geshgian Decl. ¶ 14, Exh. 1 at Pg. 2.)

21
22 12. PAGA Members" consist of all current and former non-exempt employees who were
23 employed as truck drivers, and who worked at least one pay period for Valmont in California at any time
24 during the PAGA Period. "PAGA Period" shall be from November 30, 2019, through the date the Court
25 enters an order granting approval of the PAGA settlement and dismissing the PAGA claim with
26 prejudice. (Geshgian Decl. ¶ 14, Exh. 1 at Pg. 1). It is believed that there may be approximately 5
27 employees of Defendants who worked for the Defendants during the period of November 30, 2019,
28 through the Effective Date and could be qualified PAGA Member. The Effective Date is the date of
approval of the instant Joint Stipulation Requesting Approval of PAGA Settlement.

1 **RELEVANT FACTORS WEIGH IN FAVOR OF APPROVING SETTLEMENT**

2 13. A settlement reached between the parties on a PAGA claim is subject to court review and
3 approval. Cal. Lab. Code § 2699(l). However, the statute does not set forth the factors that should be
4 considered when determining whether to approve such a settlement.

5 14. Generally, the settlement of Plaintiff's PAGA claim should be approved because it is fair,
6 adequate, and reasonable. (Geshgian Decl. ¶ 17) *See Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D.
7 Cal. 1988) (opinion of experienced counsel is entitled to considerable weight).

8 15. In support of this conclusion, the Parties' counsel considered the following:

9 16. Factor 1: The Instant Settlement is the Result of Extensive Negotiations.

10 a. A settlement agreement that is the "product of extensive and hard-fought
11 adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple*
12 *Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

13 b. In this case, each of the Parties involved were zealously represented by competent
14 legal counsel with extensive experience in employment law and have represented clients in numerous
15 wage-and-hour disputes. (Geshgian Decl. ¶ 19)

16 17. Each party diligently and independently investigated the merits of Plaintiff's claims.
17 (Geshgian Decl. ¶ 20). Prior to reaching a resolution of the representative PAGA claim, the Parties
18 discussed the case at length, including the relative strengths and weaknesses of the Parties' positions as
19 well as the benefits to all parties of an early, informal resolution. Prior to the resolution, Defendant
20 provided information regarding the size of the PAGA class to only include five (5) potentially aggrieved
21 truck drivers who worked a total of 152 workweeks during the PAGA Liability Period. (Geshgian Decl.
22 ¶ 14)

23 18. Based on these circumstances, the instant PAGA settlement is presumptively fair.
24 (Geshgian Decl. ¶ 21).

25 19. Factor 2: Risk of Additional Litigation. Counsel for Plaintiff seriously considered the risk
26 of summary judgment in this case due to the potential application of the Federal Motor Carrier Safety
27 Administration ("FMCSA") Order to the claims asserted by Plaintiff in this case. As such, resolving the
28 instant PAGA claim may have been impossible if this Court were to summarily adjudicate Plaintiff's

1 individual meal and rest break claims due to the application of the FMCSA Order. In the estimation of
2 each party's counsel, the delay, inconvenience, distraction, and uncertainty imposed by these litigation
3 demands would far outweigh the potential benefits of additional litigation. Specifically, Plaintiff would
4 have needed to take the depositions of each of the potentially aggrieved employees who worked for
5 Defendant during the relevant time period, as well as the depositions of the various managers. Given
6 Plaintiff's position as a truck driver and the application of the FMCSA to his claims, Plaintiff may not
7 have been an "aggrieved" employee within the meaning of Section 2699 of the Labor Code, the likelihood
8 for any recovery on behalf of the representative class was greatly reduced. (Geshgian Decl. ¶ 22).

9
10 20. Factor 3: Amount of PAGA Settlement. The amount of the PAGA settlement is sufficient
11 to serve the policy rationale underlying PAGA. Indeed, the settlement amount is comparable (if not more
12 generous than) PAGA settlements involving much larger groups of allegedly aggrieved employees. For
13 example, in *Schiller v. David's Bridal, Inc.*, 1:10-cv-00616-AWI-SKO, 2012 U.S. Dist. LEXIS 80776
14 (E.D. Cal. June 11, 2012), the Court approved a \$10,000 PAGA settlement in a case involving 3,327 class
15 members. Similarly, in *Chu v. Wells Fargo Investments, LLC*, No. C-05-4526 MHP, 2011 U.S. Dist.
16 LEXIS 15821 (N.D. Cal. Feb. 16, 2011), the Court approved a \$10,000 PAGA settlement in a case
17 involving 2,752 class members. As such, because the instant settlement allocates \$5,000.00 for
18 approximately 5 potentially aggrieved employees, the amount of the settlement is very reasonable.

19 21. Factor 4: Defendant's Arguments. Counsel for Plaintiff and the allegedly aggrieved
20 employees also had to consider the various arguments advanced by Defendant in order to evaluate the
21 appropriate settlement value of Plaintiff's PAGA claim:

22 a. Defendants maintain that in light of the evidence adduced from plaintiff's pay and
23 time records, that he was not denied meal and rest periods during any of the pay periods and thus does not
24 have standing to maintain a PAGA action. See *Holak v. K Mart Corp.*, Case No. 1:12-cv-00304-AWI-
25 MJS, 2015 U.S. Dist. LEXIS 65439 (E.D. Cal. May 19, 2015) ("Because Plaintiff is not aggrieved by any
26 of the specific Labor Code violations alleged in the PAGA claim, he does not have standing to maintain
27 this PAGA action.").

28 b. Defendants also maintain that Plaintiff cannot maintain a PAGA claim because
there is no evidence of a common policy or practice that prevented, inhibited, or discouraged employees

1 from taking their statutory meal and rest breaks. *See, e.g., Amey v. Cinemark USA, Inc.*, No. 13-05669,
2 2015 U.S. Dist. LEXIS 63524 (N.D. Cal. May 13, 2015) (striking PAGA claim because the evidence
3 showed that numerous individualized determinations would be necessary to determine whether any class
4 member has been injured); *Geshgian v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 U.S. Dist.
5 LEXIS 36833 (N.D. Cal. Mar. 19, 2014); *Litty v. Merrill Lynch & Co., Inc.*, No. CV-14-0425 PA (PJWx),
6 2014 U.S. Dist. LEXIS 160448 (C.D. Cal. Nov. 10, 2014), *Bowers v. First Student, Inc.*, No. 2-14-cv-
7 8866 ODW (Ex), 2015 U.S. Dist. LEXIS 54238 (C.D. Cal. April 23, 2015); *Raphael v. Tesoro Ref. &*
8 *Mktg. Co. LLC*, No. 2:15-CV-02862-ODW, 2015 U.S. Dist. LEXIS 130532 (C.D. Cal. Sept. 25, 2015).

9
10 c. Plaintiff's Counsel also took into account that even if Plaintiff prevailed on the
11 merits of his PAGA claim, Defendants could persuasively argue that the Court should exercise its
12 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A Court in a
13 PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have,
14 as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified
15 [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in
16 an award that is unjust, arbitrary and oppressive, or confiscatory."

17 d. While Plaintiff's Counsel disagrees that Defendants' arguments are legally correct
18 or persuasive, they had to consider the foregoing facts and arguments and how they might impact any
19 judgment ultimately awarded if the Court were persuaded by them. In light of these arguments and the
20 potential risks, Plaintiff has determined that the Settlement was fair and reasonable. (Geshgian Decl. ¶¶
21 24.)

22 22. Nothing in this Stipulation shall be deemed an admission of liability, culpability, or
23 wrongdoing on the part of Defendants.

24 THE PARTIES THEREFORE stipulate and jointly request that, pursuant to California Labor
25 Code §2699(l) and the fully executed PAGA Settlement Agreement, the Court approve the following
26 terms of the instant settlement of Plaintiff's PAGA claim:

- 27 1. That a total of \$5,000.00 be allocated to the settlement of Plaintiff's PAGA claim, of
28 which **\$2,250.00** shall be paid to the Law Offices of Ramin R. Younessi as attorneys'
fees, **\$2,062.50** shall be paid to the LWDA and **\$687.50** will be paid to the "PAGA

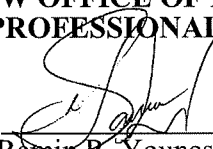
Settling Employees;” [Geshgian Decl. ¶14, Exh. 1 at Pgs. 1-2.] and

2. That the term “PAGA Members” consist of all current and former non-exempt employees who were employed as truck drivers, and who worked at least one pay period for Valmont in California at any time during the PAGA Period. The “PAGA Period” shall be from November 30, 2019, through the date the Court enters an order granting approval of the PAGA settlement and dismissing the PAGA claim with prejudice. [Geshgian Decl. ¶14, Exh. 1 at Pg. 1.]

IT IS SO STIPULATED between the Parties.

Dated: June 3, 2022

**LAW OFFICE OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

By: 

Ramin R. Younessi
Samvel Geshgian
Attorneys for Plaintiff

Dated: June 6, 2022

JACKSON LEWIS P.C.

By: 

~~Landon Schwob, Esq.~~ *Frank Liberatore*
Attorneys for Defendants
VALMONT INDUSTRIES, INC.,
VALMONT COATINGS, INC. and
VALMONT COATING

DECLARATION OF SAMVEL GESHGIAN

I, Samvel Geshgian, hereby declare as follows:

1. I am over eighteen years of age. I have personal knowledge of each of the matters set forth below and, if called as a witness, could and would competently testify to each of them under oath.

2. I am a managing attorney at the Law Offices of Ramin R. Younessi, A.P.L.C., and am counsel of record for Plaintiff ("Plaintiff") in the above-referenced lawsuit. I have practiced law for approximately seven (7) years. Over the course of my career, I have litigated hundreds of wage and hour disputes from inception to resolution. I was named a 2021 Southern California Rising Star by Super Lawyers in the field of employment and wage and hour law.

3. This declaration is being submitted in support of the Joint Stipulation Requesting Approval of Private Attorney General Act Settlement ("PAGA") (Labor Code §2698 *et seq.*).

4. On September 25, 2020, Plaintiff served a letter to the LWDA and Defendants ("September 2020 Letter"), in accordance with the requirements of Labor Code section 2699.3(a), to notify the LWDA of alleged violations of the California Labor Code by Defendants, as Plaintiff's joint employer, arising from Plaintiff's work as a truck driver for Defendants. The December 2020 Letter alleged that Defendants had violated California Labor Code by failing to pay Plaintiff and other aggrieved employees all wages owed, failing to provide uninterrupted meal and rest periods (Labor Code section 226.7 and 512), and failing to provide accurate wage statements (Labor Code sections 226, *et seq.*), and that Defendants were subject to penalties (Labor Code sections 201, 203, 1194). The December 2020 Letter also indicated that Plaintiff intended to pursue a representative civil action under the PAGA against Defendants. The LWDA declined to investigate the alleged violations, permitting Plaintiff to initiate a PAGA action in superior court.

5. On November 30, 2020, Plaintiff filed his Complaint against Defendants in the Superior Court of the State of California, County of Los Angeles, Case No. 20STCV45517. Plaintiff filed his Complaint against Defendants alleging the following causes of action: Discrimination in Violation Of Gov't Code §§12940 *et seq.* (First Cause of Action); Retaliation in Violation Of Gov't Code §§12940 *et seq.* (Second Cause of Action); Failure To Prevent Discrimination, and Retaliation in Violation of Gov't Code §12940(K), (Third Cause Of Action); Failure To Provide Reasonable Accommodations in

1 Violation of Gov't Code §§12940 et seq. (Fourth Cause Of Action); Failure To Engage in a Good Faith
2 Interactive Process in Violation of Gov't Code §§12940 et seq. (Fifth Cause of Action); For Declaratory
3 Judgement (Sixth Cause of Action); Wrongful Termination in Violation of Public Policy (Seventh Cause
4 of Action); Failure to Pay Wages (Labor Code §§201, 1194) (Eighth Cause of Action); Failure to
5 Provide Meal and Rest Periods (Labor Code §§226.7, 512) (Ninth Cause of Action); Failure to Provide
6 Itemized Wage and Hour Statements (Cal. Labor Code §§226, Et Seq.) (Tenth Cause of Action);
7 Waiting Time Penalties (Cal. Labor Code §§201-203) (Eleventh Cause of Action); Private Attorney
8 General Act (Labor Code §§2699 et seq.) (Twelfth Cause of Action); Unfair Competition Business and
9 Professions Code §§17200 et seq.

10 6. On February 16, 2021, Defendants filed their Answer to the Complaint.

11 7. Each of Plaintiff's wage and hour causes of action stems from the allegations that
12 Defendants, denied him, and his coworkers, statutory rest and meal periods and failed to accurately
13 compensate him for premium wages relative to the missed rest and meal periods.

14 8. After the Action was filed, Plaintiff also received and reviewed relevant information to
15 evaluate the strengths and weaknesses of the representative PAGA allegations.

16 9. In addition to the above, Defendants categorically deny all of Plaintiff's allegations.

17 10. On May 17, 2022, Parties participated in a full-day private mediation with a reputable
18 mediator in the field of employment and wage and hour law. Mitchell Tarighati, Esq. from ADR
19 Services, Inc. assisted the Parties' settlement efforts. As a result of the mediation and the good faith
20 effort put forth by the Parties, an agreement was reached to settle the case including the representative
21 PAGA allegations. After the settlement was reached, Parties engaged in extensive discussions regarding
22 the resolution of the PAGA cause of action.

23 11. On May 17, 2022, the Parties executed an agreement providing for settlement of the
24 representative PAGA claim. Attached hereto as **Exhibit 1** and incorporate herein by this reference is a
25 true and correct copy of the PAGA Settlement Agreement.

26 12. Prior to reaching a resolution of the representative PAGA claim, the Parties discussed the
27 case at length, including the relative strengths and weaknesses of the Parties' positions as well as the
28 benefits to all parties of an early, informal resolution. Prior to the resolution, Defendants provided

1 information regarding size of the PAGA class. Including Plaintiff, there were five (5) potentially
2 aggrieved truck drivers during the PAGA Liability Period who worked a grand total of approximately
3 152 workweeks.

4 13. The Parties' settlement resolves Plaintiff's individual wrongful termination claims under
5 FEHA, his individual wage and hour claims based on Defendant's failure to provide meal and rest
6 periods, and his PAGA representative claim.

7 14. The Parties recognize that the public's interest in ensuring the Court's proper
8 administration of the PAGA settlement approval procedure requires the disclosure of the amount of the
9 Settlement Payment that is allocated to Plaintiff's PAGA claim. The Parties represent that they agreed
10 to allocate \$5,000.00 in settlement of Plaintiff's PAGA claim. The relevant language from the
11 Settlement Agreement reads as follows:
12

13 C. Settlement Sum Payment Procedures

14 1. PAGA Settlement Amount

15 PAGA Settlement Amount. The Parties agree to settle Dominguez's PAGA
16 claim for the Amount ("PSA") of \$5,000.00, which shall be all inclusive,
17 encompassing all payments to the LWDA and PAGA Members. No settlement
18 administration costs, or representative enhancement will be deducted from the
19 PSA. Attorney's fees in the amount of \$2,250.00 will be deducted from the PSA.
The remaining balance of the PSA in the approximate amount of \$2,750.00 shall
be paid (i) 75% to the California Labor and Workforce Development Agency
(LWDA) and (ii) 25% to PAGA Members. The 25% payable to PAGA Members
shall be divided equally among them.

20 2. Funding and Distribution Process

21 Valmont will pay the PSA within five business days of the expiration of the
22 appeal period after the final Court approval of the Settlement, or, if an appeal is
23 filed, within five business days after the settlement has been upheld on appeal or
any appeal has been denied or withdrawn.

24 Dominguez agrees that counsel for Dominguez will notify the LWDA of the
25 settlement at the same time the settlement is submitted to the Court for approval,
26 seek approval of the settlement, and perform any and all statutory tasks as
required by law. The Parties agree that there is no right for any PAGA Member
to opt out or otherwise exclude himself or herself from the PAGA Settlement

27 15. PAGA Members" consist of all current and former non-exempt employees who were
28 employed as truck drivers, and who worked at least one pay period for Valmont in California at any time
during the PAGA Period. "PAGA Period" shall be from November 30, 2019, through the date the Court

1 enters an order granting approval of the PAGA settlement and dismissing the PAGA claim with
2 prejudice. It is believed that there may be approximately 5 employees of Defendants who worked for the
3 Defendants during the period of November 30, 2019, through the Effective Date and could be qualified
4 PAGA Member. The Effective Date is the date of approval of the instant Joint Stipulation Requesting
5 Approval of PAGA Settlement.

6 16. A settlement reached between the parties on a PAGA claim is subject to court review and
7 approval. Cal. Lab. Code § 2699(l). However, the statute does not set forth the factors that should be
8 considered when determining whether to approve such a settlement.

9 17. Generally, the settlement of Plaintiff's PAGA claim should be approved because it is fair,
10 adequate, and reasonable. See *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988) (opinion of
11 experienced counsel is entitled to considerable weight).

12 18. In support of this conclusion, the Parties' counsel considered the following:

13 19. Factor 1: The Instant Settlement is the Result of Extensive Negotiations.

14 a. A settlement agreement that is the "product of extensive and hard-fought
15 adversarial negotiations between the parties" is entitled to a presumption of
16 fairness. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

17 b. In this case, each of the Parties involved were zealously represented by competent
18 legal counsel with extensive experience in employment law and have represented
19 clients in numerous wage-and-hour disputes.

20 20. Each party diligently and independently investigated the merits of Plaintiff's claims.
21 Prior to reaching a resolution of the representative PAGA claim, the Parties discussed the case at length,
22 including the relative strengths and weaknesses of the Parties' positions as well as the benefits to all
23 parties of an early, informal resolution. Prior to the resolution, Defendant provided information
24 regarding the size of the PAGA class to only include five (5) potentially aggrieved truck drivers who
25 worked a total of 152 workweeks during the PAGA Liability Period.

26 21. Based on these circumstances, the instant PAGA settlement is presumptively fair.

27 22. Factor 2: Risk of Additional Litigation. Counsel for each party also considered the fact
28 that the existence of numerous disputes of fact in this case made summary judgment unlikely for all

1 parties. As such, resolving the instant PAGA claim would require extensive litigation. In the estimation
2 of each party's counsel, the delay, inconvenience, distraction, and uncertainty imposed by these
3 litigation demands would far outweigh the potential benefits of additional litigation. Specifically,
4 Plaintiff would have needed to take the depositions of each of the potentially aggrieved employees who
5 worked for Defendant during the relevant time period, as well as the depositions of the various
6 managers. Given the overwhelming discovery indicating Plaintiff may not have been an "aggrieved"
7 employee within the meaning of Section 2699 of the Labor Code, the likelihood for any recovery on
8 behalf of the representative class was greatly reduced.

9
10 23. Factor 3: Amount of PAGA Settlement. The amount of the PAGA settlement is
11 sufficient to serve the policy rationale underlying PAGA. Indeed, the settlement amount is comparable
12 (if not more generous than) PAGA settlements involving much larger groups of allegedly aggrieved
13 employees. For example, in *Schiller v. David's Bridal, Inc.*, 1:10-cv-00616-AWI-SKO, 2012 U.S. Dist.
14 LEXIS 80776 (E.D. Cal. June 11, 2012), the Court approved a \$10,000 PAGA settlement in a case
15 involving 3,327 class members. Similarly, in *Chu v. Wells Fargo Investments, LLC*, No. C-05-4526
16 MHP, 2011 U.S. Dist. LEXIS 15821 (N.D. Cal. Feb. 16, 2011), the Court approved a \$10,000 PAGA
17 settlement in a case involving 2,752 class members. As such, because the instant settlement allocates
18 \$5,000.00 for approximately 5 potentially aggrieved employees, the amount of the settlement is very
19 reasonable.

20 24. Factor 4: Defendant's Arguments. Counsel for Plaintiff and the allegedly aggrieved
21 employees also had to consider the various arguments advanced by Defendant in order to evaluate the
22 appropriate settlement value of Plaintiff's PAGA claim:

23 a. Defendants maintain that in light of the evidence adduced from plaintiff's pay and time
24 records, that he was not denied meal and rest periods during any of the pay periods and thus does not have
25 standing to maintain a PAGA action. See *Holak v. K Mart Corp.*, Case No. 1:12-cv-00304-AWI-MJS,
26 2015 U.S. Dist. LEXIS 65439 (E.D. Cal. May 19, 2015) ("Because Plaintiff is not aggrieved by any of
27 the specific Labor Code violations alleged in the PAGA claim, he does not have standing to maintain this
28 PAGA action.").

b. Defendants also maintain that Plaintiff cannot maintain a PAGA claim because there is no

evidence of a common policy or practice that prevented, inhibited, or discouraged employees from taking their statutory meal and rest breaks. See, e.g., *Amey v. Cinemark USA, Inc.*, No. 13-05669, 2015 U.S. Dist. LEXIS 63524 (N.D. Cal. May 13, 2015) (striking PAGA claim because the evidence showed that numerous individualized determinations would be necessary to determine whether any class member has been injured); *Geshgian v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 U.S. Dist. LEXIS 36833 (N.D. Cal. Mar. 19, 2014); *Litty v. Merrill Lynch & Co., Inc.*, No. CV-14-0425 PA (PJWx), 2014 U.S. Dist. LEXIS 160448 (C.D. Cal. Nov. 10, 2014), *Bowers v. First Student, Inc.*, No. 2-14-cv-8866 ODW (Ex), 2015 U.S. Dist. LEXIS 54238 (C.D. Cal. April 23, 2015); *Raphael v. Tesoro Ref. & Mktg. Co. LLC*, No. 2:15-CV-02862-ODW, 2015 U.S. Dist. LEXIS 130532 (C.D. Cal. Sept. 25, 2015).

c. Plaintiff's Counsel also took into account that even if Plaintiff prevailed on the merits of his PAGA claim, Defendants could persuasively argue that the Court should exercise its discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A 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."

d. While Plaintiff's Counsel disagrees that Defendants' arguments are legally correct or persuasive, they had to consider the foregoing facts and arguments and how they might impact any judgment ultimately awarded if the Court were persuaded by them. In light of these arguments and the potential risks, Plaintiff has determined that the Settlement was fair and reasonable.

25. Nothing in this Stipulation shall be deemed an admission of liability, culpability, or wrongdoing on the part of Defendants.

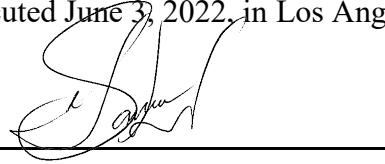
THE PARTIES THEREFORE stipulate and jointly request that, pursuant to California Labor Code §2699(l) and the fully executed PAGA Settlement Agreement, the Court approve the following terms of the instant settlement of Plaintiff's PAGA claim:

1. That a total of \$5,000.00 be allocated to the settlement of Plaintiff's PAGA claim, of which **\$2,250.00** shall be paid to the Law Offices of Ramin R. Younessi as attorneys' fees, **\$2,062.50** shall be paid to the LWDA and **\$687.50** will be paid to the "PAGA

Settling Employees;” and

2. That the term “PAGA Members” consist of all current and former non-exempt employees who were employed as truck drivers, and who worked at least one pay period for Valmont in California at any time during the PAGA Period. The “PAGA Period” shall be from November 30, 2019, through the date the Court enters an order granting approval of the PAGA settlement and dismissing the PAGA claim with prejudice.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed June 3, 2022, in Los Angeles, California.



Samvel Geshgian, Esq

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING

Subject to approval by the Los Angeles County Superior Court and with the provision that this Memorandum of Understanding (“MOU”) will be further memorialized in a Stipulation for Settlement (or similar long-form Settlement Agreement), the Parties hereby agree to the following binding settlement of Plaintiff Javier Dominguez’s (“Dominguez” or “Plaintiff”) individual and representative claims under the Private Attorneys General Act (PAGA), Cal. Lab. Code § 2699, *et seq.*) in the action designated as *Javier Dominguez v. Valmont Industries, Inc., et al.*, Case No. 20STCV45517 (the “Action”).

After informal discovery and extensive negotiations, the Parties reached the following binding agreement to resolve all the putative representative claims asserted in Plaintiff’s operative complaint in the Action.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Parties. This MOU is entered into, on the date of the final signature below, by and between Dominguez, on behalf of himself and “Aggrieved Employees” (defined below), on the one hand, and defendant Valmont Industries, Inc., Valmont Coatings, Inc., Valmont Coating (collectively “Valmont” or “Defendants”), on the other hand, to memorialize the essential terms of the settlement of Dominguez’s individual and representative claims asserted in the Action. Dominguez and Valmont may individually be referred to as a “Party” or collectively referred to as the “Parties” throughout this MOU.

2. Enforceability. This MOU becomes enforceable upon its execution by the signatories set forth below. The Parties agree to enter into a long-form, Joint Stipulation for Settlement (or similar long-form Settlement Agreement) that contains the terms set forth in this MOU and more specific information and procedures as required by law. Nonetheless, the Parties intend that the terms set forth herein in this MOU are fully enforceable by the Los Angeles Superior Court upon motion of any Party.

3. Duties Upon Execution. The Parties agree to fully cooperate to obtain approval of the settlement, pursuant to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement Agreement), and in effectuating the terms of the settlement of Dominguez’s representative claims asserted in the Action.

4. PAGA Members: “PAGA Members” consist of all current and former non-exempt employees who were employed as truck drivers, and who worked at least one pay period for Valmont in California at any time during the PAGA Period. Valmont estimates that there are 5 such employees of Valmont Coatings, Inc. during the PAGA Period.

5. PAGA Period. The “PAGA Period” shall be from November 30, 2019, through the date the Court enters an order granting approval of the PAGA settlement and dismissing the PAGA claim with prejudice.

6. PAGA Settlement Amount. The Parties agree to settle Dominguez’s PAGA claim for the Amount (“PSA”) of \$5,000.00, which shall be all inclusive, encompassing all payments

to the LWDA and PAGA Members. No settlement administration costs, or representative enhancement will be deducted from the PSA. Attorney's fees in the amount of \$2,250.00 will be deducted from the PSA. The remaining balance of the PSA in the approximate amount of \$2,750.00 shall be paid (i) 75% to the California Labor and Workforce Development Agency (LWDA) and (ii) 25% to PAGA Members. The 25% payable to PAGA Members shall be divided equally among them.

Valmont will pay the PSA within five business days of the expiration of the appeal period after the final Court approval of the Settlement, or, if an appeal is filed, within five business days after the settlement has been upheld on appeal or any appeal has been denied or withdrawn.

Dominguez agrees that counsel for Dominguez will notify the LWDA of the settlement at the same time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform any and all statutory tasks as required by law. The Parties agree that there is no right for any PAGA Member to opt out or otherwise exclude himself or herself from the PAGA Settlement.

The Parties further agree that should the Court deny approval of the settlement based on the allocation of the PGSA, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the settlement.

7. Release of Claims. Upon Court approval of the Settlement and performance of the payment obligations therein, Dominguez and PAGA Members will fully and finally release and discharge Valmont and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims asserted in the Complaint for civil penalties under PAGA, as well as any interest, fees, and costs available under PAGA based on the factual allegations in the Complaint and in Dominguez's September 25, 2020 LWDA letter, and all PAGA claims that could have been alleged based on the factual allegations contained collectively therein, including, but not limited to (1) failure to provide proper meal periods; (2) failure to authorize and permit rest periods; and (3) failure to furnish accurate wage statements; (4) failure to timely pay final wages; and (5) for alleged violations of California *Labor Code* §§ 201, 202, 226(a), 226.3, 226.7, 512, and 558 ("Released Claims").

8. Representation as to Number of PAGA Members: Valmont estimates that it has employed 5 persons from the beginning of the PAGA Period through present. If as of the date of court approval, the number of persons employed as drivers increases, then the amount of the Gross Settlement Amount shall increase in proportion to the increased number of drivers.

9. Obtaining Approval of PAGA Settlement. Dominguez will prepare and file a Joint Stipulation or motion, if necessary, with the Court requesting Approval of the PAGA Settlement. If the Court does not approve the settlement reached at mediation, the Parties agree to work cooperatively together to renegotiate the terms of any settlement within 60 days of the first date the Court fails to approve the settlement. Should Court approval of a settlement still not occur within 60 days after any such renegotiation, then any settlement and agreement is null and void, of no force and effect whatsoever and shall not be referred to or used for any purpose whatsoever

and the Parties will be restored to their positions prior to mediation, unless the Parties mutually agree otherwise in writing.

10. Court approval of the Settlement. Payments to PAGA Members and the LWDA within 10 business days after the expiration of the appeal period of the Court's approval order.

11. No Admission. The Parties agree that this MOU is not evidence that the operative complaint filed in the Action by Dominguez has any merit, nor does it constitute an admission of any wrongdoing by Valmont. Valmont does not admit to liability or to the suitability of this case for representative litigation other than for purposes of settlement. This MOU will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement. If the Court does not grant approval of this settlement, then the Parties revert to their previous positions and Valmont will contend that a representative action is not appropriate.

12. Returned or Uncashed Checks: Any Settlement check to any PAGA Members that is not negotiated within one hundred eighty (180) days of mailing to the PAGA Members shall be cancelled and reissued in the names of the PAGA Members to the State Controller's Office under the Unclaimed Property Statutes.

13. Discovery Stayed. Discovery is stayed in the Action while the Parties work toward settlement and court approval of the settlement. The Parties shall submit stipulation of settlement within 30 days of execution of a full and complete settlement agreement, which fully executed settlement agreement should occur within 45 days of the settlement.

14. Advice of Counsel. The Parties to this MOU are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this MOU agree that it reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

15. Confidential. The Parties agree that this MOU is confidential (except for purposes of enforcement) and that no Party will communicate with or to anyone the settlement or anything to do with the settlement, including, but not limited, to the issuance of any press release nor other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement. The Parties and their counsel agree that they will not initiate or have any contact with the press, respond to any press inquiry, or have any communication with the press about this case.

16. Counterparts. This MOU may be signed in counterparts and each has the same force and effect as the original.

17. Disclosure. The Parties intend that this MOU shall be fully enforceable and binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding the mediation confidentiality provisions that otherwise might apply under local, federal and state law.

18. Settlement Purposes Only. The Parties agree that the subsequent filing of a Joint Stipulation of Settlement (or similar Settlement Agreement) is for settlement purposes only and if,

for any reason, the settlement is not approved, the Joint Stipulation of Settlement and this MOU will be of no force or effect.

19. Neutral Reference and Mutual Non-Disparagement: If a prospective employer of Dominguez contacts Valmont for a reference, Valmont will provide a neutral reference consisting solely of dates of employment and positions held. Dominguez should direct all prospective employer reference requests, in writing, to Valmont's Human Resources Department.

20. Mutual Non-Disparagement: The Parties shall not make any disparaging or critical statement about, relating or pertaining to, or otherwise involving each other.

21. Integration Clause. The Parties to this Memorandum agree that the long-form Settlement Agreement will contain an integration clause.

JAVIER DOMINGUEZ Signature: <u></u> Date: May 17, 2022	VALMONT INDUSTRIES, INC. Signature: <u>Amy Woodke, Esq.</u> By: Amy Woodke Date: May 17, 2022
VALMONT COATINGS, INC. Signature: <u>Amy Woodke, Esq.</u> By: Amy Woodke Date: May 17, 2022	VALMONT COATING Signature: <u>Amy Woodke, Esq.</u> By: Amy Woodke Date: May 17, 2022
APPROVED AS TO CONTENT: LAW OFFICES OF RAMIN R. YOUNESSI Signature: <u>Samuel Geshagian, Esq.</u> Date: May 17, 2022	JACKSON LEWIS P.C. Signature: <u>Frank M. Liberatore</u> Date: May 17, 2022

PROPOSED ORDER

The Court, having considered the Joint Stipulation by the Parties requesting the Court's approval of the PAGA Settlement pursuant to California Labor Code §§2699 et seq, and good cause appearing therefor, it is hereby:

1. **ORDERED** that the PAGA penalties in the total amount of **\$5,000.00**, as part of the settlement of the Parties has been reviewed by the Court and are hereby approved pursuant to the Labor Code § 2699(1)(2); it is further

2. **ORDERED** that \$2,250.00 shall be paid to the Law Offices of Ramin R. Younessi, A.P.L.C., as attorney's fees in connection with the PAGA Settlement pursuant to §2699(g)(1); it is further

3. **ORDERED** that \$2,062.50 shall be paid to the California Labor & Workforce Development Agency representing 75% of the PAGA Settlement after accounting for the attorney's fees for Plaintiff's counsel; it is further

5. **ORDERED** that \$687.50 shall be paid to the "PAGA Settling Members;" it is further

6. **ORDERED** that the term "PAGA Members" consist of all current and former non-exempt employees who were employed as truck drivers, and who worked at least one pay period for Valmont in California at any time during the PAGA Period. The "PAGA Period" shall be from November 30, 2019, through the date the Court signs this Order; and it is further

7. **ORDERED** that the Twelfth Cause of Action brought under the Private Attorney general Act, Labor Code sections 2699 et seq. is hereby Dismissed with prejudice.

IT IS SO ORDERED.

DATED: 06/22/2022



Gregory Keosian

JUDGE OF SUPERIOR COURT

Gregory Keosian / Judge

1
2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I 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. My business address is 3435 Wilshire Boulevard, Suite 2200, Los
Angeles, California 90010.

5 On June 6, 2022, I served the foregoing document described as **JOINT STIUPLATION**
6 **REQUESTING APPROVAL OF PAGA SETTLEMENT; [PROPOSED] ORDER THEREON** on
the interested parties in this action as follows:

7
8 Landon Schwob, Esq. *Attorneys for Defendants*
Danielle.Cepeda@Jacksonlewis.com
9 Landon.Schwob@jacksonlewis.com
JACKSON LEWIS P.C.
10 725 South Figueroa Street, Suite 2500
11 Los Angeles, California 90017-5408

12 California Labor & Workforce Development *Agency*
13 Agency
1515 Clay Street, Ste. 801
14 Oakland, CA 94612
(VIA ELECTRONIC SERVICE)

15
16 ☒ BY ELECTRONIC SERVICE: Pursuant to SB 836, I electronically filed a copy of the
17 aforementioned document with California Labor & Workforce Development Agency Only.

18 ☒ BY ELECTRONIC MAIL: Pursuant to Code of Civil Procedure §§ 1010.6(a)(2) and 1013(g),
19 and the parties' written agreement to accept service electronically, I transmitted a copy of the
aforementioned document to each addressee above to the email address(es) indicated.

20 Executed on June 6, 2022, at Los Angeles, California.

21 ☒ STATE, I declare under penalty of perjury under the laws of the State of California that
22 the foregoing is true and correct.

23
24 Tony Noda

Tony Noda