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CLAUDIA VARGAS

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BENITO

CLAUDIA VARGAS, on behalf of herself and all similarly aggrieved employees, Plaintiff, v. VALLEY HARVEST LLC; HOLLISTER MANAGEMENT GROUP LLC; HOLLISTER HOLISTICS; HOLLISTER HOLISTICS 1; HOLLISTER HOLISTICS 2; AND HOLLISTER HOLISTICS 3; and DOES 1 through 50, inclusive,	Case No. CU-21-00140 **JOINT STIPULATION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.) SETTLEMENT AGREEMENT AND RELEASE** Complaint Filed: July 19, 2021 Trial Date: Not Set

Plaintiff Claudia Vargas and Defendant Valley Harvest, LLC (collectively, the "Parties"), hereby stipulate, by and through their respective counsel of record, as follows:

I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA"), Plaintiff hereby moves the Court for an order approving the non-reversionary PAGA settlement as set forth in the Private Attorneys General Act Settlement Agreement (the "Settlement Agreement" or "Settlement"). (**Exhibit A**, Settlement Agreement.) The Settlement concerns a PAGA group comprising 203 individuals who are or previously were employed by Defendant Valley Harvest, LLC ("Defendant") in California, who are or were classified as hourly, non-exempt employees and placed for work at Hollister Hollistics, any time during the PAGA Period. The PAGA Period is March 12, 2020, through the date the Court grants approval of this proposed settlement, subject to the escalator provision in the Settlement Agreement. Settlement ¶ 32.

Plaintiff alleges that Defendant failed to pay overtime wages, failed to provide complaint meal and rest periods, failed to reimburse for work-related expenses, and failed to issue accurate wage statements, resulting in violations of the PAGA based on Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802. (**Exhibit B**, PAGA Notice.)

As will be explained in further detail below, based on the California Supreme Court's opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as called for under the PAGA on behalf of the State of California and other similarly situated aggrieved employees, without seeking class certification or meeting the requirements of class certification (i.e., numerosity, typicality, commonality, and adequacy). As such, while the PAGA settlement reached herein is on behalf of the State of California and other aggrieved employees, the usual two-step preliminary and final approval process is not required. Rather, as called for under Labor Code § 2699(s)(2), all that is required is an approval by this Court of any settlement of the PAGA claims by the Parties. The Parties have reached such a PAGA settlement, and now seek this Court's approval of their settlement, which provides for the payment of civil PAGA penalties.

As demonstrated below, the proposed settlement warrants the Court's approval. The settlement was reached after the exchange of documents and information pertaining to the alleged aggrieved employees' claims, including documents reflecting their hours scheduled and worked, and corresponding payments issued to them by Defendant. Further, the Settlement was reached after arms-length negotiations following mediation with a well-respected mediator, Elizabeth R. Leitzinger, Esq., of Fenton & Keller, who has extensive experience with complex wage and hour claims.

Pursuant to the terms of the proposed PAGA Settlement Agreement, Defendant will pay the total amount of Eighty-Seven Thousand Five Hundred Dollars ($87,500.00) (the "Gross Settlement Payment"), which is the maximum amount that Defendant will pay pursuant to this Settlement, excluding the Confidential Individual Settlement, and subject to the escalator provision in this Settlement. (Settlement Agreement at ¶¶ 5, 31, 32.) This amount encompasses a settlement of PAGA claims asserted in this lawsuit, attorneys' fees to Plaintiff's counsel in the amount of Twenty-Nine Thousand One Hundred Sixty-Six Dollars and 67/100 Cents ($29,166.67), or approximately one-third (1/3) of the Gross Settlement Amount, Plaintiff's counsel's litigation costs of no more than $15,000.00, and settlement administration costs in the amount of $4,250.00 (Settlement Agreement at ¶¶ 13, 14.)

Based on the amounts above, the PAGA Fund will be at least $35,125.04. Pursuant to the PAGA, this amount includes $26,343.78 to be distributed to the California Labor and Workforce Development Agency ("LWDA"), and $8,781.26 to be distributed to the "PAGA Settlement Members," "all individuals who are or previously were employed by Defendant in California, who are or were classified as hourly, non-exempt employees and placed for work at Hollister Hollistics, at any time during the PAGA Period." (Settlement Agreement at ¶ 9.) The proposed settlement, moreover, does not release any substantive claims of PAGA Settlement Members, merely their rights to bring PAGA claims predicated on the same violations of the Labor Code raised in this Action that accrued during the PAGA Period. (Settlement Agreement at ¶¶ 16, 54.)

In light of the above, the proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the State of California and PAGA Settlement Members and accomplishes the goals of PAGA.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Summary of the Litigation and Settlement

On March 12, 2021, Plaintiff sent a letter to Defendant and the LWDA, on behalf of herself and other aggrieved employees, in compliance with California Labor Code section 2699.3.

The Parties litigated the applicability of an arbitration agreement and its impact on Plaintiff's putative class and PAGA claims, including, but not limited to, whether they could proceed at all or in Superior Court.

On July 19, 2021, Plaintiff filed an individual and PAGA complaint. The PAGA Action seeks civil penalties and an award of reasonable attorneys' fees and costs.

Plaintiff later filed an individual arbitration which the Parties litigated for several years. The litigation included written discovery, depositions, and motion practice. The Parties also discussed Defendants' ability to satisfy a judgment should the case proceed through arbitration and return to litigation. For example, Defendant Hollister Hollistics defaulted on its obligations to pay its arbitration fees and ultimately dropped its counsel because it did not have sufficient capital to fund its defense.

On January 26, 2026, the Parties engaged in private mediation with Elizabeth R. Leitzinger, Esq., which ultimately led to this Settlement.

Plaintiff's Counsel has thoroughly investigated the facts relating to the claims alleged in the operative complaint and has made a thorough study of the legal principles applicable to the claims asserted against Defendant. Based on their independent investigation and evaluation of this case, Plaintiff's Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and potential appellate issues.

During the mediation, the Parties engaged in meaningful and good-faith negotiations, exchanging information and evaluating the strengths and risks associated with their respective positions. Thereafter, the Parties entered the proposed representative action settlement now presented to the Court for approval. After reaching the agreement in principle to resolve the representative claim, Plaintiff's individual FEHA claims were resolved in a separate confidential settlement agreement. If the Court so requests, the Parties agree to provide information regarding Plaintiff's confidential individual settlement for the Court's review.

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the Settlement are described below and set forth in detail in the Settlement Agreement.

A. The PAGA Settlement Members

The "PAGA Settlement Members" affected by this Settlement include "all individuals who are or previously were employed by Defendant in California, who are or were classified as hourly, non-exempt employees and placed for work at Hollister Hollistics, at any time during the PAGA Period." (Settlement Agreement ¶ 9.) The PAGA Period commences on March 12, 2020, through the date the Court grants approval of this settlement (subject to the escalator provision set forth in Paragraph 32 of the Settlement Agreement). (*Id.* ¶ 8.)

Based upon Defendant's records, there are 203 PAGA Settlement Members. Defendant also represents that the total number of pay periods worked by PAGA Settlement Members during the PAGA Period is approximately 1,845 ("PAGA Pay Periods"). (Settlement Agreement ¶ 32.)

B. The Gross Settlement Amount

The Settlement Agreement requires Defendant to pay the Gross Settlement Payment of Eighty-Seven Thousand Five Hundred Dollars ($87,500.00) (the "Gross Settlement Payment"). (Settlement Agreement ¶¶ 5, 32.) The terms of the Settlement Agreement provide for an award of attorneys' fees and reimbursement of litigation costs to Plaintiff's counsel, a service award to Plaintiff, and settlement administration costs. (Settlement Agreement. ¶¶ 35-

41.)

C. Attorneys' Fees and Reimbursement for Litigation Costs

As part of the Settlement Agreement, Defendant does not object to Plaintiff's counsel's request for attorneys' fees of Twenty-Nine Thousand One Hundred Sixty-Six and 67/100 Cents ($29,166.67), plus reimbursement of litigation costs in the amount of up to $15,000.00, subject to the Court approving this Settlement. (Settlement Agreement ¶¶ 13, 14.) Any portion of the attorneys' fees and costs not approved by the Court will be added to the PAGA Fund. (Settlement Agreement ¶ 36.) The actual litigation costs incurred and sought for reimbursement are $13,918.14.

D. Service Award

The Agreement authorizes Plaintiff to request an incentive payment of $5,000.00. Plaintiff provided significant assistance with the lawsuit, including meeting and discussing the case with Counsel on multiple occasions, searching for and providing documents and information regarding Defendant's employment practices at issue in the case, sitting for her deposition, reviewing the various files and pleadings submitted in this case, and remaining available during the mediation session. Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement.

In addition to the invaluable services that she provided, Plaintiff also took significant risks, both professionally and monetarily, in acting as the representative, seeking benefits on behalf of the other employees. Because the claims alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had she not prevailed in this action. Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, Plaintiff also faces significant risk in not being able to find suitable employment and/or face retaliation from prospective employers, all as a result of filing this case against Defendant.

Plaintiff took these risks upon herself to the benefit of the employees. These are significant benefits that weigh in favor of granting the requested enhancement. As such, the incentive payment should be awarded to Plaintiff for her commitment, dedication, and risks taken for this litigation. Courts have routinely granted approval of settlements containing such enhancements. (See *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299-300 (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of $ 55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F.Supp.2d 907, 913-14 (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming $25,000 Incentive award to class representative in ERISA case).

E. Settlement Administration Costs

The Settlement Agreement provides for the payment of fees and expenses reasonably incurred by the Settlement Administrator. (Settlement Agreement ¶¶ 19, 38-40.) The Parties have agreed to utilize Phoenix Class Action Administration Solutions ("Phoenix Settlement Administrators") to administer the Settlement, with the administration costs estimated not to exceed Four Thousand Two Hundred and Fifty Dollars and Zero Cents ($4,250.00). (Settlement Agreement ¶¶ 19, 38-40.) Phoenix Settlement Administrators is a well-recognized class action settlement administrator, and submitted the lowest bid of the potential settlement administrators solicited by Plaintiff's Counsel. The Administration costs include the costs for translating and mailing the Notice in English and Spanish. Any portion of the settlement administration costs not approved by the Court shall be added to the PAGA Fund.

F. The PAGA Fund

The PAGA Fund is the balance of the Gross Settlement Payment remaining after the deduction of the Court-approved: (i) attorneys' fees ($29,166.67); (ii) litigation costs of up to $15,000.00;[1] (iii) service award ($5,000.00); and (iv) Settlement Administration Costs

[1] As noted above, the actual costs incurred are lower, at $13,918.14.

($4,250.00). Counsel estimates that the PAGA Fund will be at least $35,125.04. (Settlement Agreement ¶ 10.)

Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Fund, or $26,343.78, will be distributed to the LWDA for PAGA penalties. (Settlement Agreement ¶ 43, 48(a).) The remaining twenty-five percent (25%) of the PAGA Fund, or $8,781.26 will be distributed to the PAGA Settlement Members. (Settlement Agreement ¶ 43, 48(b).) Because these estimates are based on the amounts allocated in the Settlement Agreement, the actual distributions will likely be slightly higher because of the difference in the actual litigation costs incurred, as compared to those allocated in the Settlement Agreement.

The portion of the PAGA Fund distributed to the PAGA Settlement Members will be distributed on a pro rata basis, based on the number of pay periods each PAGA Settlement Member worked for Defendant during the PAGA Period divided by the aggregate total number of pay periods worked by all PAGA Settlement Members. (Settlement Agreement ¶ 46.)

Defendant has represented that there are approximately 203 PAGA Settlement Members who collectively worked a total of approximately 1,845 pay periods during the PAGA Period. (Settlement Agreement ¶ 32.)

Based thereon, on a raw average, each PAGA Settlement Member may potentially recover approximately $4.75 ($8,781.26 ÷ 1,845 pay periods) per pay period or approximately $43.17 each if based on a raw average, from the portion of the PAGA Fund attributable to the PAGA Settlement Members. (Settlement Agreement ¶ 46.) The amount any particular PAGA Settlement Member will be entitled to recover will fluctuate depending on the number of pay periods he or she worked during the PAGA Period. This is fair, as it directly allocates greater penalties to individual PAGA Settlement Members who have allegedly suffered greater harm.

G. Uncashed Checks.

Funds from any checks that have not been cashed within 180 days of issuance do not revert and shall be paid to the designated cy pres recipient: California Rural Legal Assistance Foundation. (Settlement Agreement ¶ 52). Neither counsel nor their respective firms have any relationship with the proposed *cy pres* recipient that would create an actual or potential conflict of interest. The Parties further agree that the proposed *cy pres* recipient, satisfies the legislative intent set out in Code of Civil Procedure § 384(a), in that the organization helps further the purposes of the underlying action and promote justice for all Californians.

H. Scope of the Released Claims

In exchange for the payments described above, Plaintiff, the LWDA, the State of California and the PAGA Settlement Members will release the Released Parties from the following limited release:

> any and all claims, whether known or unknown, to recover civil penalties pursuant to PAGA for any alleged violations by Defendants of California Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, and any category of violations identified in Labor Code § 2699.5, and the related applicable IWC Wage Order provision for the PAGA Period, and any other violations that were alleged or could have reasonably been alleged in Plaintiff's letter to the LWDA or any complaint filed in this Action, with the exception of Plaintiff's Individual Claims

(Settlement Agreement at ¶¶ 16, 54.)

The Settlement does not release Defendant from violations of any predicate statutes other than PAGA and will not affect a waiver of individual claims by PAGA Settlement Members against Defendant for any of the underlying Labor Code claims. The release is expressly limited to claims for civil penalties under the PAGA pertaining to the Labor Code violations raised in this lawsuit that accrued during the PAGA Period, thereby excluding all non-PAGA claims. (*Id.*)

Through this stipulation and pursuant to the Settlement Agreement, Plaintiff also requests that the Court dismiss without prejudice Defendants Hollister Hollistics and Hollister Management Group, LLC from the Action. These Defendants defaulted in the Arbitration and the Settlement Agreement does not provide for a release of claims as to either of these entities. Thus, the approval of this proposed settlement will preserve the claims of the LWDA and aggrieved employees against these Defendants should they wish to pursue them. (Settlement

Agreement at ¶ 34.).

IV. THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

Prior to the enactment of PAGA, many of the penalties provided against employers for violations of certain Labor Code provisions were solely within the province of the California Department of Labor to seek, enforce, and assess. (*Arias v. Superior Court, supra*, 46 Cal. 4th 969, 980.) However, due to the lack of financing to California's agencies and the potential number of Labor Code violations by California employers, the California Legislature found that it was in the public interest to allow aggrieved employees to act as private attorneys general and to enforce and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code violations committed by their employers. (*Id.*) As such, PAGA was enacted to allow such enforcement and recovery by private individuals who have been aggrieved by their employers.

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violation(s) alleged to have been violated by the employer. (See Cal. Labor Code § 2699.3(a)(1).) Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations or the time for the LWDA to investigate the violations passes, the aggrieved employee is allowed to proceed in a civil action against the employer on behalf of all other similarly aggrieved employees. (See Cal. Labor Code § 2699.3(a)(2)(A).)

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA claim needs to meet class certification requirements. (*Arias*, 46 Cal. 4th 969, 976.) After a substantial review of the legislative history of PAGA, the California Supreme Court held that an aggrieved employee's representative action brought on behalf of other similarly aggrieved employees against an employer for PAGA violations do not need to meet the requirements for class certification. (*Id.* at 975, 980-88.) As held by the California Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. (*Id.* at 986.) Because an employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. (*Id*.)

Finally, in a settlement of a PAGA action brought by an aggrieved employee, the Superior Court must "review and approve any settlement of any civil action filed pursuant to" PAGA. (Cal. Lab. Code § 2699, subd. (s)(2).) As the Parties to this current PAGA action have reached such an agreement, the Parties now seek this Court's approval as to the settlement of the penalties amount.

B. The Settlement Effectuates the Objectives of PAGA

With respect to evaluating the reasonableness of the settlement of the PAGA claim, the Court's focus is not the amount that aggrieved employees will ultimately receive as a result of a settlement. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." See *Moniz v. Adecco USA, Inc*. (2021) 72 Cal. App. 5th 56, 77; see also *Kang v. Wells Fargo Bank, N.A.*, (N.D.Cal., 2021) WL 5826230, at *15 (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals").

Here, the Settlement vindicates the rights of PAGA Members who have experienced alleged violations of the Labor Code. *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134 ("If the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the PAGA Members as employees and substantial monetary relief, a settlement not only vindicates the rights of the employees but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA"). The Settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in Neary[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu* (2006) 141 Cal. App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal.*, (1992) 3 Cal. 4th 273, 277- 278.

C. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims

In class action cases, the purpose of the Court's preliminary evaluation of the settlement is to determine whether it is within the "range of reasonableness," and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.25 et seq., § 13.64 (4th ed. 2002 & Supp. 2004) ("Newberg"). The "judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." Manual for Complex Litigation (Federal Judicial Center, 4th ed. 2004) § 21.632. To make the preliminary fairness determination, courts may consider several relevant factors, including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel.…" *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.

By contrast, court approval of PAGA settlements is governed by Labor Code § 2699(s)(2), which provides, in relevant part: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part." The Parties are not obligated to "satisfy class action requirements," including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim).

Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. (Cal. Labor Code § 2699(s)(2).) In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if any, reached between the parties." *Ochoa-Hernandez v. Cjaders Foods, Inc*. (N.D. Cal. 2010) 2010 WL 1340777 *13.

D. The Scope of the Release is Appropriately Limited

The limited scope of the release supports approval of this PAGA settlement. If approved, the Settlement would release the Released Parties from claims to recover civil penalties under PAGA that accrued during the PAGA Period and are predicated on the underlying violations of the Labor Code or Wage Order that were alleged, or could have been alleged, in Plaintiff's complaint or notice letter to the LWDA in this action. (Settlement Agreement ¶¶ 16, 54.) The Settlement would not impact any other aggrieved employees' ability to pursue PAGA claims predicated on other allegations aside from those raised in this lawsuit or any Labor Code claims not predicated on the PAGA.

Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." (*Arias*, 46 Cal. 4th 969, 986.) However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*Id.* at 987; see also, Labor Code § 2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").)

Here, as described above, the PAGA Settlement Members will be subject to only a limited release strictly confined to the civil penalties under the PAGA based on the facts and Labor Code violations alleged in this action. (Settlement Agreement ¶¶ 16, 54.) The release is therefore appropriately tailored, and the settlement should be approved.

E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation

Although Plaintiff is reasonably confident that she would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the still-evolving law under PAGA. If successful in proving a violation every pay period, the penalties could be as high as $184,500 (estimated civil penalty of $100 per pay period at issue). However, the Court retains significant discretion to reduce this penalty. Accordingly, the settlement of $87,500, which is approximately 47% of the exposure if the Court awarded a single $100 penalty per pay period is inherently reasonable.

F. Defendant's Ability to Pay a Large Judgment.

As a preliminary matter, Courts are to consider the amount of money that a defendant has available. A defendant's ability to pay a judgment larger than that provided by the proposed settlement is a relevant consideration for the court.

Here, Defendant argued that if Plaintiff litigated this case through trial and was successful, Defendant would be pushed to insolvency. Accordingly, even if Plaintiff succeeded, a judgment may not have been collectable. Thus, the settlement is fair, reasonable, and adequate, given the inherent risks of litigation, including the substantial risks and the costs of pursuing such litigation. The settlement is the result of extensive arm's-length negotiations between the Parties and their counsel and was facilitated by an experienced and neutral mediator.

G. The Attorneys' Fees are Reasonable

PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Labor Code § 2699(k)(1).) Similar to awarding fees in a class action, California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees for representative actions is to use a percentage of the total value of benefits to the members by the settlement. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("Serrano III"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc*. (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*, 557 F. 2d 759769.)

The Common Fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. (*Serrano* III, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." (*Id*.)

Indeed, most recently, the California Supreme Court has also held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. (See *Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.").)

An award of one-third of the fund in attorneys' fees "mimics the marketplace" as it is "supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." (*Fernandez v. Victoria Secret Stores LLC* (C.D. Cal. 2008) 2008 WL 8150856 at p. *16 n. 59 (citing Brickman, Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-

Competitive Fees (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11).) Indeed, "empirical studies [that] show that…fee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11.) In the *Laffitte* intermediate court decision, the court observed that "33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits." (*Laffitte v. Robert Half Int'l* (2014) 231 Cal. App. 4th 860, 871.) Here, the fee award representing one-third of the Settlement clearly falls within that range and is consistent with other comprehensive surveys of class action settlements and fee awards. (*See* Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award (2010) 7 J. Empirical Leg. Stud. 811, 833 (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent"); Eisenberg & Miller, Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008 (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).)

Here, Plaintiff's Counsel seeks 33.33% of the Gross Settlement Amount in attorneys' fees, equivalent to Six Thousand Six Hundred Sixty-Six Dollars ($6,666.00), which is reasonable for wage and hour representative actions. (*Martin v. AmeriPride Servs., Inc.* (S.D. Cal. June 9, 2011) 2011 WL 231604, at *8 ("More particularly, courts may award attorneys' fees in the 30–40% range in wage and hour class actions that result in recovery of a common fun under $10 million."); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, * 8 (approving attorney fee award and finding that award was similar to awards in three other wage and hour class action cases where fees ranged from 30.3% to 40%); *Romero v. Producers Dairy Foods, Inc*. (E.D. Cal. Nov.14, 2007) 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841.)

Furthermore, Plaintiff's Counsel's skill and experience justify the requested amount of attorneys' fees. Plaintiff's Counsel have significant experience in the area of employment and wage and hour class actions. Specifically, Plaintiff's Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases.

Accordingly, Plaintiff's Counsel's request for attorneys' fees in the amount of Twenty-Nine Thousand One Hundred Sixty-Six and 67/100 Cents ($29,166.67) is fair, reasonable, and adequate, and should be awarded in its entirety. (Settlement Agreement ¶ 14, 35.)

H. The Costs are Reasonable

Plaintiff's counsel has incurred $13,918.14 in litigation costs to date and anticipates an additional $40.15 for costs related to this Stipulation, for a total of $13,958.29. The costs were all directly incurred in the prosecution of this action. As such, the requested costs are fair and reasonable. (Settlement Agreement ¶ 13, 35, **Exhibit C**, Costs Reports.)

I. The Settlement Administrator's Fees Should be Approved

The Settlement Agreement allocates $4,250.00 for settlement administration costs. The Parties were able to secure a competitive bid from Phoenix Class Action Administration Solution not to exceed $4,250.00 to send notices and administer this settlement, which shall be paid out of the Gross Settlement Amount. (Settlement Agreement ¶ 19, 38-40.) Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The bid includes preparing the Notice in English and Spanish. (**Exhibit D**, Phoenix Bid.) The Parties believe that the administration fee is reasonable and should be approved.

J. Notice to the LWDA Has Been Provided

Plaintiff uploaded the Stipulation, the Settlement Agreement, and Proposed Order to the LWDA's website. (**Exhibit E**, LWDA Submission Confirmation.)

V. APPROVAL OF PAGA SETTLEMENT SHOULD BE GRANTED

Based on the above, Plaintiff and Defendant mutually request that this Court grant approval of the PAGA settlement in this matter. The terms of the PAGA settlement completely comply with the requirements of the Labor Code, and are fair, reasonable and adequate.

As such, in accordance with PAGA and the relevant case law, including the seminal case of *Arias v. Superior Court* (2009) 46 Cal. 4th 969, the Parties respectfully request that this Court grant approval to the joint stipulation regarding the settlement.

IT IS SO STIPULATED.

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

Dated: May 28, 2026

/s/ *B. James Fitzpatrick*
B. James Fitzpatrick
Larry W. Lee
Counsel for Plaintiff
Claudia Vargas

LITTLER MENDELSON, PC.

Dated: May 28, 2026

/s/ *Emilio A. Rodriguez*
Gerardo Hernandez
Emilio A. Rodriguez
Counsel for Defendant
Valley Harvest LLC

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action; my business address is FITZPATRICK & SWANSTON, 555 S. Main Street, Salinas, California 93901.

On the date written below, I served the foregoing document(s), described as **JOINT STIPULATION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.) SETTLEMENT AGREEMENT AND RELEASE**

on the interested parties in this action as indicated below and by the following means:

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Howard L. Magee (SBN: 185199)
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xx____________ **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6, Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served, addressed to the person(s) at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 28, 2026, at Salinas, California.

/s/ Josie Favila
Josie Favila