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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF BUTTE**

LETICIA BAEZ DE GUZMAN, on behalf of the
State of California and other aggrieved persons,

Plaintiff,

v.

AGROMILLORA CALIFORNIA, a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21CV02371

PAGA REPRESENTATIVE ACTION

*[Assigned for all purposes to: Hon. Tamara L.
Mosbarger, Dept. 1]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
APPROVE PAGA SETTLEMENT**

*[Filed concurrently with: Declaration of
Justin F. Marquez; Proposed Order; and
Declaration of Plaintiff Leticia Baez de
Guzman]*

APPROVAL HEARING:

Date: September 25, 2024

Time: 9:00 a.m.

Dept.: 1

Complaint Filed: September 21, 2021

Trial date: Not Set

NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT
TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 25, 2024 at 9:00 a.m. in Department 1 of the Butte County Superior Court, located at One Court Street Oroville, CA 95965, the Honorable Tamara L. Mosbarger presiding, Plaintiff Leticia Baez de Guzman (“Plaintiff”) will, and hereby does, move for an order under Labor Code section 2699(1)(2) approving the PAGA Settlement Agreement (“Settlement”) entered into by Plaintiff and Defendant Agromillora California (“Defendant”).

Pursuant to Labor Code § 2699(1)(2), the settlement of Plaintiff’s PAGA claims requires the Court’s approval. The basis for this motion is that Plaintiff and Defendant reached and fully executed a Settlement of the above-entitled case, Case No. 21CV02371, that disposes of the matter entirely and is fair, reasonable, and serves the purposes of the PAGA statute. The Settlement includes all persons who were engaged by Defendant as hourly-paid or non-exempt employees in California at any time from January 20, 2020 to May 15, 2023. The Settlement is fair, adequate, and reasonable, and it provides for civil penalties to be distributed to Plaintiff, other aggrieved employees, and the California Labor & Workforce Development Agency.

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Justin F. Marquez and attached exhibits, the Declaration of Leticia Baez de Guzman, as well as the records on file in this action and any argument the Court is presented with at the time of the hearing.

Respectfully submitted,

Dated: September 3, 2024

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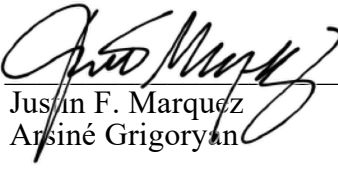
By: 
Justin F. Marquez
Arsiné Grigoryan
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On September 20, 2021, Plaintiff Leticia Baez de Guzman (“Plaintiff”) filed a Private Attorneys General Act of 2004 (“PAGA”) (Cal. Lab. Code §§ 2698, *et seq.*) representative action against Defendant Agromillora California (“Defendant”, and collectively with Plaintiff, the “Parties”). Plaintiff and Defendant then engaged in vigorous, arms-length negotiations regarding the resolution of this matter. After extensive negotiations regarding the Plaintiff’s claims and Defendant’s defenses, the Parties ultimately agreed to settle Plaintiff’s PAGA claim for \$155,000.00, which will provide significant civil penalties to the California Labor & Workforce Development Agency (“LWDA”) and other aggrieved employees.

Labor Code § 2699(l)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court.” Plaintiff submitted the proposed Settlement to the LWDA on June 24, 2024, pursuant to Labor Code § 2699(l)(2). (Declaration of Justin F. Marquez [“Marquez Decl.”], ¶ 9, Ex. 1.) The Parties now seek Court approval of the Settlement. For the reasons discussed in detail below, the Court should issue an order approving the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant operates in the nursery sector and produces and markets fruit trees, nuts, and olive trees with high genetic and health standards. (*Id.* at ¶ 3.) Plaintiff worked for Defendant in Gridley, California as an hourly-paid, non-exempt employee from approximately May 2018 to approximately July 2020. (*Id.*)

Plaintiff’s PAGA claim alleges Defendant failed to pay for all hours worked (minimum, straight time, and overtime wages), failed to provide meal periods, failed to authorize and permit rest periods, failed to pay all earned wages twice per month, failed to maintain accurate records of hours worked and meal periods, failed to timely pay wages at termination, failed to furnish accurate itemized wage statements, and failed to indemnify for necessary business expenditures. (*Id.* at ¶ 4.) Defendant denied all such alleged claims.

1 On July 16, 2021, Plaintiff provided notice to the LWDA and Defendant of the alleged
2 violations described above, as required by Labor Code § 2699.3(a)(1). (*Id.* at ¶ 5.) Pursuant to
3 Labor Code § 2699.3(a)(2)(A), the LWDA had 65 calendar days to notify Plaintiff and
4 Defendant whether it intended to investigate the alleged violations. (*Id.*) However, the LWDA
5 did not do so. (*Id.*)

6 After Plaintiff filed her complaint, the Parties engaged in extensive settlement
7 discussions. (*Id.* at ¶ 6.) To facilitate settlement, Defendant provided Plaintiff with timekeeping
8 and payroll data for a sampling of the aggrieved employees, and the applicable policies in effect
9 during the relevant time period. (*Id.*) Thereafter, the Parties engaged in extensive discussions
10 about the factual and legal strengths (and weaknesses) of the claims and defenses. (*Id.*) These
11 settlement negotiations were conducted at arm's length, and, although conducted in a
12 professional manner, were adversarial. (*Id.*)

13 The Parties ultimately agreed to settle the case and, on March 28, 2023, the Parties filed
14 a Notice of Settlement of Entire Case. (*Id.* at 7.) The Parties agreed to settle the PAGA claim
15 for \$155,000.00, which includes all persons who were engaged by Defendant as hourly paid or
16 non-exempt employees in California at any time from January 20, 2020 to May 15, 2023. (*Id.*
17 at ¶ 7.) Defendant agreed to avoid the cost of time-consuming, expensive and uncertain
18 litigation via such payment, although such claims were highly disputed. Expressly, the payment
19 is not to be interpreted as an admission of liability on the underlying issues, and there are other
20 terms and conditions which impact the rights and obligations of the Parties (See, e.g., Settlement
21 at ¶ 10.1).

22 There are approximately 124 aggrieved employees covered by the settlement. (*Id.* at ¶
23 7). Plaintiff submitted the Settlement to the LWDA on June 24, 2024, pursuant to Labor Code
24 § 2699(1)(2). (*Id.* at ¶ 9.) A true and correct copy of the Settlement Agreement executed by the
25 Parties, along with the confirmation that the Settlement Agreement was submitted to the LWDA
26 is attached to the Declaration of Justin F. Marquez as **Exhibit 1**. (Marquez Decl., ¶ 7; Ex. 1.)
27 Additionally, attached as **Exhibit 2** to the Declaration of Justin F. Marquez is the Settlement
28 Notice that will be sent to the PAGA Employees with payment after the Court enters a

Judgement on its Order Approving the PAGA Settlement.

III. ARGUMENT

PAGA permits an aggrieved employee to sue an employer for civil penalties associated with the employer's alleged violations of the Labor Code. (Cal. Lab. Code § 2699(a).) Under the statute, of the amount paid to settle a claim for PAGA penalties, twenty-five percent (25%) is payable to the aggrieved employees and seventy-five percent (75%) is payable to the LWDA. (Cal. Lab. Code § 2699(i).)

A. The Terms of the PAGA Settlement.

The Settlement provides for a Gross Settlement Amount of \$155,000.00 to be distributed to all Aggrieved Employees. (Settlement, ¶ 3.1). Aggrieved Employee means a person employed by Defendant in California and classified as an hourly-paid or non-exempt employee who worked for Defendant during the PAGA Period, January 20, 2020 to May 15, 2023. (Settlement, ¶¶ 1.4, 1.19). Of that amount, \$51,666.67 is allocated to Attorneys' Fees, up to \$10,000.00 is allocated to litigation costs, up to \$5,000.00 is allocated to Settlement Administrator Costs, and \$5,000.00 is allocated as a PAGA Representative Award to Plaintiff. (Settlement, ¶ 3.) The remaining \$83,333.33 will be allocated as PAGA penalties, with 75% (\$62,500.00) allocated to the LWDA PAGA Payment and 25% (20,833.33) allocated to the Individual PAGA Payments. (Settlement, ¶ 3.3.1).

Settlement Administration. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (Settlement, ¶ 4.3). Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payments, the PAGA Representative Award, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not proceed disbursements of Individual PAGA Payments. (Settlement, ¶ 4.4.)

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will

be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (Settlement, ¶ 4.4.) The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned as undelivered without USPS forwarding address. Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. (Settlement, ¶ 4.4.1.) For any Aggrieved Employee who's Individual PAGA Payment check is uncashed and uncanceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Settlement, ¶ 4.4.2.)

B. The Terms of the PAGA Settlement Are Fair and Should Be Approved.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (*See* Cal. Lab. Code § 2699(l).)

As with any settlement, the Court must be mindful in conducting its inquiry that "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, *9.) Indeed, "the very essence of a settlement is ... 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*See Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624-25.) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.*)

Although the operative PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, "a PAGA claim asserted on a non-class

1 representative basis...is not considered a class action but a law enforcement action, and
2 therefore does not have to meet the requirements of [a class action].” (*See Casida v. Sears*
3 *Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, *3; *Thomas v. Aetna Health of Cal.,*
4 *Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, *13 ; *Mendez v. Tween Brands, Inc.*, 2010 WL
5 2650571, *4 (E.D. Cal. July 1, 2010).) Based thereon, a court’s review of a PAGA settlement
6 necessarily implicates the following unique features that render the approval process distinct
7 from approval of a class action settlement under Code of Civil Procedure § 382 and California
8 Rules of Court, Rule 3.769.

9 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
10 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
11 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought
12 in a PAGA suit consists of civil penalties, not individual or class damages.” (*Mendez, supra*,
13 2010 WL 2650571 at *4.) “Unlike class actions, these civil penalties are not meant to
14 compensate unnamed employees because the action is fundamentally a law enforcement action.”
15 (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, *4.
16 Moreover, while “[a PAGA] action is ... designed to protect the public and penalize the
17 employer for past illegal conduct,” a reviewing Court must consider the fact that settlement of
18 a PAGA claim – like any settlement – involves a “compromise” that stops short of rendering
19 findings of liability and damages. (*Mendez*, 2010 WL 2650571 at p. *4) As such, the Court
20 must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief
21 for injured employees, the purpose of PAGA is to incentivize private parties to recover civil
22 penalties for the government that otherwise may not have been assessed and collected by
23 overburdened state enforcement agencies.” (*See Ochoa-Hernandez*, 2010 WL 1340777 at p.
24 *4.)

25 ///

26 ///

27 ///

28 ///

1 Second, consistent with the fact that unnamed employees have no property interest in a
2 PAGA claim,¹ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
3 have the ability to opt-out of the representative PAGA claim.” (*See Ochoa-Hernandez, supra*,
4 2010 WL 1340777 at p. *4.) This renders the approval process of a PAGA settlement distinct
5 from a class action settlement, as there is no need for the Court to employ the “two-step approval
6 process” required under Federal Rule of Civil Procedure 23(e) and Rule 3.769.²

7 Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of
8 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
9 binding not only on the named employee plaintiff but also on government agencies and any
10 aggrieved employee not a party to the proceeding...the non-party employees, because they were
11 not given notice of the action or afforded any opportunity to be heard, would not be bound by
12 the judgment as to remedies other than civil penalties.” (*See Arias v. Superior Court* (2009) 46
13 Cal.4th 969, 986-87 (2009).) Thus, except for the named Plaintiff, the scope of a release in a
14 PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the complaint
15 and claims that were or could have been alleged pursuant to PAGA based on the factual
16 allegations in the Complaint. In the case at hand, as the only claims at issue are PAGA claims,
17 those will be the only claims extinguished because of this Settlement, except for Plaintiff’s
18 much broader, general personal release against Defendant.

19 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
20 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action

21
22 ¹ As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 does
23 not create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an
24 aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought
by state labor law enforcement agencies.” (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior*
Court (2009) 46 Cal.4th 993, 1003.)

25 ² Significantly, the “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent
26 class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members to
27 exclude themselves or object. (*See Fed. R. Civ. P. 23(e)* (“The following procedures apply to a proposed
28 settlement ... (1) The court must direct notice in a reasonable manner to all class members who would be
bound by the proposal.... (4) ... the court may refuse to approve a settlement unless it affords a new
opportunity to request exclusion to individual class members.... (5) Any class member may object to the
proposal if it requires court approval under this subdivision”).) Cal. Rule of Court 3.769 contains similar
rules for State court class actions.

1 settlements (and representative PAGA settlements) involve a court approval process that exists
2 to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. of*
3 *Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79.) In the class action context,
4 there is a presumption of fairness of a class action settlement when: (1) the settlement is reached
5 as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery;
6 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.
7 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action
8 settlement, a trial court must develop an understanding "of the amount that is in controversy
9 and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008)
10 168 Cal.App.4th 116, 120.).

11 The proposed settlement meets all of these factors.

12 **1. The Settlement Was Reached Through Arms-Length Bargaining.**

13 The Parties engaged in settlement negotiations following the filing of the PAGA
14 complaint and reached the Settlement after extensive negotiations. (Marquez Decl., ¶¶ 6-7.)
15 The settlement negotiations were at arm's length and, although conducted in a professional
16 manner, were adversarial. (*Id.* at ¶ 6.) The Parties went into the negotiations willing to explore
17 the potential for a settlement of the dispute, but each side was also prepared to litigate their or
18 its position through trial and appeal if a settlement had not been reached. (*Id.*)

19 **2. The Settlement Is Based On Sufficient Investigation and Discovery.**

20 Before the Settlement, Plaintiff's counsel conducted an investigation into the claims
21 alleged by Plaintiff, conducted legal research, and engaged in informal discovery. Based upon
22 the information obtained through informal discovery, Plaintiff's counsel was able to act
23 intelligently and effectively in negotiating the proposed Settlement. (*Id.* at ¶ 8.)

24 **3. Plaintiff's Counsel Have Extensive Experience in PAGA Actions.**

25 Highly capable and experienced counsel conducted the settlement negotiations.
26 Plaintiff's counsel are respected members of the bar with a strong record of vigorous and
27 effective advocacy for their clients, and they are experienced in handling complex wage and
28 hour class action litigation and PAGA actions. (*Id.* at ¶¶ 27-39.) Although Plaintiff and her

counsel were prepared to litigate the claims in this action, they support the proposed Settlement as being in the best interests of the State of California and the aggrieved employees. (*Id.* at ¶ 8.)

4. Assessing the Amount In Controversy and the Risks of Trial.

Plaintiff and her counsel remain confident of the merits of Plaintiff's claims. (*Id.* at ¶ 10.) However, Plaintiff does acknowledge that her position includes risk and uncertainty, as described in more detail below. For instance, Plaintiff's allegation that Defendant failed to pay Plaintiff and the aggrieved employees all of their owed wages is based on Defendant's purported failure to pay employees for work performed "off-the-clock". (*Id.*) With respect to the meal period allegation, Plaintiff alleges that Defendant lacked compliant policies providing meal periods during the PAGA Period and allegedly pressured Plaintiff and other employees to work in lieu of taking meal breaks. (*Id.*) Although Plaintiff contends that this allegation is meritorious, there is risk with this underlying claim, particularly because Defendant issued some meal period premiums to their employees and implemented meal period waivers throughout the covered period. (*Id.*) With respect to the rest period allegation, Plaintiff contends that employees, including herself, were not provided with California-compliant rest periods. (*Id.*) Again, despite Plaintiff's contention that this allegation is credible, proving rest period allegations is particularly difficult because rest periods do not have to be recorded and Defendant has argued that all aggrieved employees were provided with rest periods simultaneously. With respect to the unreimbursed business expenses allegation, Plaintiff alleges that Defendant required her and the other aggrieved employees to purchase work-related tools and equipment for which they were not reimbursed. (*Id.*) Defendant disputes this claim. (*Id.*) Lastly, regarding Plaintiff's wage statement claim, Defendant argues that the wage statements issued to employees meet the requirements of Labor Code § 226(a). (*Id.*)

Additionally, Plaintiff faced a significant risk that even if the Court did award PAGA penalties, the Court could drastically reduce the penalties based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved employee..., a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based

1 on the facts and circumstances of the particular case, to do otherwise would result in an award
2 that is unjust, arbitrary and oppressive, or confiscatory.”). Plaintiff believed there was a
3 legitimate risk of the Court significantly reducing penalties given the technical nature of the
4 alleged violations. (Marquez Decl., ¶ 11.)

5 Without this settlement, the Parties face preparation for trial, as well as extensive formal
6 discovery efforts and further depositions. (*Id.*) As a result, the Parties would incur considerably
7 more attorneys’ fees and costs through trial. (*Id.*) This settlement avoids those risks and the
8 accompanying expense. Thus, this factor favors settlement approval. (*Id.*)

9 As described above, the proposed Settlement provides a fair and reasonable monetary
10 recovery for the PAGA Employees and the LWDA in the face of the contested claims. Plaintiff
11 estimated Defendant’s realistic exposure for the PAGA penalties as follows:

12 PAGA Penalties for Unpaid Wages, Meal Period Violations, Rest Period Violations, and
13 Unreimbursed Business Expenses: \$134,970.00

14 Plaintiff’s expert determined that there were 4,499 pay periods during the relevant time
15 period which presented issues with regard to unpaid wages, meal period violations, rest period
16 violations, and unreimbursed business expenses. (*Id.* at ¶ 12.) Plaintiff acknowledges that when
17 evaluating Defendant’s potential exposure, it is likely that the Court would impose only the
18 initial \$100 violation for all PAGA violations. (*See Amaral v. Cintas Corp. No. 2* (2008) 163
19 Cal.App.4th 1157, 1207 [finding that the “initial” violation rate applies until the employer has
20 been notified that it is violating a Labor Code provision].) Applying the \$100 “initial violation”
21 penalty for each of these pay periods, Defendant’s potential PAGA exposure is \$449,900.00
22 (based on 4,499 pay periods). (Marquez Decl., ¶ 12.) However, Defendant’s contention that
23 the underlying allegations lacked merit led to Plaintiff discounting this maximum exposure by
24 70% to account for the risk of not prevailing on the merits and the Court’s discretion in reducing
25 penalties, for a total of \$134,970.00. (*Id.*)

26 PAGA Penalties for Wage Statement Violations: \$131,250.00

27 Plaintiff’s expert determined that there were 4,499 pay periods at issue with regard to
28 the wage statement violations claim. (*Id.* at ¶ 13.) Because Plaintiff’s wage statement theory

1 of liability is predicated on Defendant’s alleged issuance of facially deficient wage statements
2 – each of the wage statements issued would carry a potential PAGA penalty. (*Id.*) As Labor
3 Code § 226(e) specifies what penalties are recoverable for violations of § 226(a) (\$50 penalty
4 per initial violation and a \$100 penalty per subsequent violation, up to an aggregate penalty of
5 \$4,000 per employee), the PAGA penalties recoverable through this section mirror the penalties
6 available through § 226(e). (*See* Labor Code § 2699(a).) Accordingly, Defendants’ maximum
7 exposure for its wage statement violations is \$437,500.00 (124 “initial” violations x \$50 per
8 violation) + (4,375 “subsequent” violations x \$100 per violation). (Marquez Decl., ¶ 13.)

9 However, based on Defendant’s counterarguments and because the Court maintains
10 discretion to reduce these penalties, Plaintiff discounted that figure by 70% for a risk of not
11 prevailing on the merits and to account for the Court’s discretion to reduce the penalties (given
12 the highly technical nature of the alleged violations), for a total of \$131,250.00. (*Id.*; *see also*
13 *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4
14 [reducing PAGA penalties from \$2.8 million to \$500,000]; *Thurman v. Bayshore Transit*
15 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 [affirming trial court’s finding that
16 awarding maximum PAGA penalties would be unjust].)

17 Using these estimated figures, Plaintiff predicted that the realistic total potential
18 recovery for the PAGA Employees and the LWDA would be approximately \$266,220.00.
19 (Marquez Decl., ¶ 14.) The proposed Settlement of \$155,000.00 therefore represents 58% of
20 Plaintiff’s reasonably forecasted total recovery. (*Id.*) “The fact that a proposed settlement may
21 only amount to a fraction of the potential recovery does not, in and of itself, mean that the
22 proposed settlement is grossly inadequate and should be disapproved.” (*Linney v. Cellular*
23 *Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted].) In this
24 case, continued litigation would delay payment to the LWDA and the PAGA Employees as they
25 await trial and, most likely, appellate proceedings. (Marquez Decl., ¶ 14.) Furthermore, while
26 Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each of the
27 predicate Labor Code violations. (*Id.*) The possibility that the Court finds no liability at the
28 PAGA bench trial is also a risk. (*Id.*) In sum, when the risks of litigation, the burdens of proof

1 necessary to establish liability, and the probability of appeal of a favorable judgment are
2 balanced against the merits of Plaintiff's claims, it is clear that the Settlement amount is fair.
3 (*Id.*) Further, because of the proposed Settlement, the PAGA Employees will receive timely,
4 guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) Plaintiff also
5 recognizes that proving the amount of wages due to each employee would be an expensive,
6 time-consuming, and uncertain proposition. (*Id.*)

7 If the Court approves the terms of the Settlement, then each aggrieved employee's
8 payment will be approximately \$168.01 and approximately \$62,500.00 will go to the LWDA.
9 (*Id.* at ¶ 15.) In reality, some employees will likely receive more, and others may receive less
10 depending on the length of their employment with Defendant. (*Id.*)

11 **C. The PAGA Representative Award Is Reasonable.**

12 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
13 compensation "for the expense or risk they have incurred in conferring a benefit on other
14 members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186
15 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements
16 containing additional awards for the class representatives, which are "intended to compensate
17 class representatives for work done on behalf of the class, to make up for financial or
18 reputational risk undertaken in bringing the action, and, sometimes, to recognize their
19 willingness to act as a private attorney general." (*Cellphone Fee Termination Cases* (2010) 186
20 Cal.App.4th 1380, 1393-94 [citations omitted].)

21 The Settlement provides for a PAGA Representative Award to Plaintiff in an amount not
22 to exceed \$5,000.00. (Settlement, ¶ 3.2.3.) The requested service award is intended to
23 recognize: (1) the substantial time and effort that Plaintiff has expended on behalf of the State
24 and Aggrieved Employees; (2) the risks faced by Plaintiff as a result of bringing this action; (3)
25 the fact that Plaintiff put the interests of the State of California and other aggrieved employees
26 ahead of her own; and (4) the substantial benefit conferred upon the State and the aggrieved
27 employees as a result of Plaintiff's actions. (Marquez Decl., ¶ 16.) Plaintiff has spent numerous
28 hours performing tasks for this case, including, but not limited to, the following: consulting with

counsel in-person and over the telephone; searching for and producing relevant documents; reviewing documents produced by Defendant and settlement documents; keeping informed of the developments in the case; and participating in decisions concerning the case, including settlement. (*Id.* at ¶ 17.) As a result of her efforts, the LWDA and about 124 aggrieved employees will receive compensation for civil penalties for underpaid wages and other wage and hour violations. (*Id.*)

Plaintiff put herself at significant risk in pursuing this action on behalf of the State, as serving as a Plaintiff in a representative action could affect her prospects for future employment. (*Id.* at ¶ 18.) Plaintiff also placed herself at substantial risk because, if Defendant was to prevail in this action, Plaintiff could be liable for Defendant’s costs and attorneys’ fees. (*Id.*)

In short, this action would not have been possible without the aid of Plaintiff, who put her own time and effort into this litigation, sacrificed the value of her individual claims by entering into a general release of all known and unknown claims, and placed herself at risk for the sake of the State and the aggrieved employees. (*Id.* at ¶ 19.) Accordingly, the requested PAGA Representative Award is reasonable and should be approved by the Court.

D. The Requested Attorneys’ Fees and Costs Are Reasonable.

A prevailing party in a PAGA action is entitled to recover her attorneys’ fees and costs for her claims. (Cal. Lab. Code § 2699(g), 2699(i) [“Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”].) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.)

Fee awards of roughly one-third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions. “[F]ee awards in class actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 ; *see also, In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 [holding that class counsel’s fee award should have been

1 calculated as one-third of the gross settlement fund]; *Chavez v. Saticoy Lemon Ass'n* (Cal.
2 Super. Ct. Ventura Cty. Aug. 10, 2015) Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL
3 5561118 [approving attorneys' fees of one-third of settlement fund in representative PAGA
4 settlement]; *Clavel v. Lupe's Thousand Oaks Mexican Restaurant, Inc.* (Cal. Super. Ct. Ventura
5 Cty. Mar. 25, 2016) Case No. 56-2015-00467353-CU-OE-VTA, 2016 WL 1601221 [same].)

6 The fee award requested here (\$51,666.67, representing 33 1/3% of the \$155,000.00
7 gross settlement amount) is justified because Plaintiff's counsel achieved a significant monetary
8 recovery for the aggrieved employees and the LWDA in an uncertain and risky case while
9 bearing the substantial burdens of representation on a contingency basis, and the fees requested
10 are in line with the market rates described above. Plaintiff's counsel expended significant time
11 and resources in litigating this case, which resulted in a favorable result for the LWDA, Plaintiff,
12 and the aggrieved employees. Plaintiff's counsel elected to bear the contingency risk of this
13 litigation for the benefit of the aggrieved employees, as well as for the State of California (who
14 elected not to take the case after receiving the PAGA notice). (Marquez Decl., ¶¶ 40-45.)

15 Critically, this settlement exceeds other PAGA awards approved by courts. (*See, e.g.,*
16 *Aguirre v. DSW, Inc.* (C.D. Cal. Nov. 29, 2012) 2012 WL 11875296, *3 [approving \$10,000
17 PAGA payment]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575,
18 *7 ["GTI agrees to allocate \$10,000 to Plaintiffs' PAGA claims, and will pay \$7,500 to the
19 LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
20 settlement approval of PAGA awards in other cases. [Citations.] Therefore, the Court will
21 approve the allocation of the Settlement to Plaintiffs' PAGA claim."]; *Boyd v. Bank of America*
22 *Corp.* (C.D. Cal. Nov. 18, 2014) 2014 WL 6473804, *8 [approving \$18,750 PAGA payment];
23 *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, *14 [approving
24 \$10,000 PAGA payment]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011
25 WL 672645, *1 [approving \$10,000 PAGA payment]; *cf. Nordstrom Comm'n Cases* (2010) 186
26 Cal.App.4th 576, 589 [holding that trial court did abuse its discretion in approving wage and
27 hour class action settlement that involved PAGA claims even though no settlement money was
28 allocated to the PAGA claims and paid to the LWDA].) The fact that Plaintiff's counsel

1 achieved these results without engaging in a protracted legal battle, in the face of serious defense
2 challenges and an uncertain legal landscape, confirms the strength of the results achieved.

3 As discussed above, this case carried substantial risk as to the merits as well as the
4 potential of the Court drastically reducing penalties in the context of a contested trial or
5 summary judgment proceeding. Accordingly, it is fair and reasonable to account for these risks
6 in compensating Plaintiff's counsel. Since undertaking this representation, Plaintiff's counsel
7 has dedicated substantial resources to this litigation, including approximately \$7,343.95 in
8 costs, without receiving any compensation to date. (Marquez Decl., ¶¶ 20, 26.) Plaintiff's
9 counsel conducted extensive legal research regarding the merits of Plaintiff's claims, her ability
10 to recover penalties under the PAGA, and Defendant's potential defenses. (*Id.* at ¶ 8.)
11 Plaintiff's counsel expended significant additional effort in preparing formal settlement
12 documents and this Motion to Approve PAGA Settlement. (*Id.* at ¶ 21.) Given the considerable
13 potential for adverse outcomes in this case, including, but not limited to, Defendant defeating
14 Plaintiff's claims on the merits, and/or facing a drastic reduction to potential PAGA penalties,
15 the contingent risk borne by Plaintiff's counsel was great. The quality of Plaintiff's counsel's
16 work, and the efficiency and dedication with which it was performed, should be compensated.

17 Plaintiff's counsel's previous experience in litigating similar class and representative
18 actions also supports the reasonableness of the fee request. Plaintiff's counsel brings extensive
19 plaintiff-side wage-and-hour class, collective, and representative action experience. (*Id.* at ¶¶
20 27-39.) They have been found to be adequate counsel in numerous cases alleging wage and
21 hour claims. (*Id.* at ¶ 35.) Practice in the narrow field of wage-and-hour litigation requires skill
22 and knowledge concerning the rapidly evolving substantive state and federal law, as well as the
23 procedural law of class and representative action litigation. Because it is reasonable to
24 compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, a fee
25 award of 33 1/3% of the gross settlement amount is reasonable.

26 Plaintiff's request for reimbursement of actual litigation costs of \$10,000.00 is also fair
27 and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are
28 documented and reasonably incurred. (*See* Marquez Decl., Ex. 3 [Expense Summary].)

IV. CONCLUSION

Respectfully submitted,

WILSHIRE LAW FIRM

Justin F. Marquez
Arsiné Grigoryan

Attorneys for Plaintiff

PROOF OF SERVICE

Baez de Guzman v. Agromillora California, et al.
21CV02371

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy S. Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is sandy.sespene@wilshirelawfirm.com.

On September 3, 2024, I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF APPROVE PAGA SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

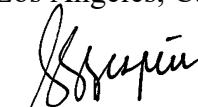
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Attorneys for Defendant Agromillora California

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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

Executed on September 3, 2024, at Los Angeles, California.



Sandy S. Sespene