

1 John A. Van Hook (SBN 205067)
2 VAN HOOK LAW FIRM
3 14156 Magnolia Blvd, Suite 200,
4 Sherman Oaks, California 91423
5 Telephone: (310) 592-5884
6 Email: john@vanhooklawfirm.com

7 Adrian Byrne (SBN 304020)
8 THE BYRNE LAW GROUP
9 8605 Santa Monica Blvd, Suite 48497
10 West Hollywood, California 90069
11 Telephone: (800) 805-4002
12 Email: adrian@thebyrnelawgroup.com

13 Attorneys for Plaintiff Enrique Barajas
14 and all Aggrieved Employees

15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ENRIQUE BARAJAS, on behalf of himself
and all other aggrieved employees,

Plaintiff,

v.

VLOT CALF RANCH, INC., a California
corporation; CASE VLOT, an individual;
AND DARCY VLOT, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: MCV087569
[Hon. Michael J. Jurkovich, Dept. 411B]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
REPRESENTATIVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Filed concurrently with:

- Declaration of John A. Van Hook
- Declaration of Adrian C. Byrne
- Declaration of Enrique Barajas
- [Proposed] Order and Judgment

Date: May 5, 2025

Time: 8:30 a.m.

Dept.: DBOS (200 W. 4th St.)

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE THAT on May 5, 2025, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard in Department DBOS of the Madera County Superior Court, 200 W. 4th
4 Street, Madera, CA 93637, Plaintiff Enrique Barajas, on behalf of himself and all other aggrieved
5 employees and the State of California as a private attorney general, will and hereby does move
6 the Court for an order approving the Parties' representative settlement under the California Labor
7 Code Private Attorneys General Act of 2004 (the "PAGA Settlement").

8 The Motion is based on this Notice of Motion and Motion, the accompanying
9 Memorandum of Points and Authorities, the Declarations of John A. Van Hook, Adrian C. Byrne
10 and Enrique Barajas and exhibits thereto, and on such further oral and documentary evidence
11 which may be submitted at the time of hearing, and on the complete files and records in this
12 action.

13
14 Dated: April 9, 2025

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

15
16 

17 John A. Van Hook
Adrian C. Byrne

18 Attorneys for Plaintiff Enrique Barajas and all
19 other Aggrieved Employees
20
21
22
23
24
25
26
27

TABLE OF CONTENTS

_Toc195109035

I.	INTRODUCTION.....	- 4 -
II.	FACTUAL OVERVIEW	- 4 -
III.	PROCEDURAL BACKGROUND	- 5 -
	A. Plaintiff Files a PAGA Notice with the LWDA and the Parties Agree to Tolling to Discuss Potential Resolution	- 10 -
	B. Plaintiff Files His Demand for Individual Arbitration, and Files this Lawsuit Asserting Representative PAGA Claims.....	- 10 -
	C. The Parties Participate in Their First Mediation.....	- 10 -
	D. Litigation and Resolution of Plaintiff's Individual Arbitration	- 10 -
	E. The Court Lifts the Stay on the Representative PAGA Action and the Parties Resume the Litigation.....	- 10 -
	F. The Parties Resolve the Representative PAGA Action Through a Second Private Mediation	- 10 -
IV.	TERMS OF THE PAGA SETTLEMENT	- 5 -
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND SHOULD BE APPROVED.	- 10 -
	A. Legal Standard	- 10 -
	B. This Settlement Was the Product of Extensive Arm's-Length Negotiations.	- 11 -
	C. Calculation of Civil Penalty Exposure.	- 11 -
	D. The Risks of Further Litigation Are Substantial and the PAGA Settlement Provides Significant Relief for the State and the Putative Aggrieved Employees.....	- 13 -
	E. The Requested Fees and Litigation Costs are Reasonable and Appropriate.	- 15 -
	F. The Requested Enhancement for Plaintiff is Reasonable and Appropriate.	- 15 -
VI.	CONCLUSION.....	- 19 -

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Enrique Barajas (“Barajas” or “Plaintiff”) and Defendants Vlot Calf Ranch, Inc.
4 (“VCR”), Case Vlot, and Darcy Vlot (together, “Defendants”, and collectively with Plaintiff, the
5 “Parties”) seeks approval of a representative settlement pursuant to the California Labor Code
6 Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”). This
7 settlement, in the amount of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00), was
8 reached after years of hard-fought litigation and negotiations.

9 For the reasons discussed herein, this is a fair, reasonable and appropriate settlement. Thus,
10 Plaintiff respectfully requests that this Court grant approval of the PAGA Settlement Agreement
11 and order the Parties to take all steps necessary to effectuate the settlement.

12 **II. FACTUAL OVERVIEW**

13 VCR is a cattle ranch in Chowchilla, California, and is owned by Case and Darcy Vlot. See
14 Declaration of John. A Van Hook [“Van Hook Decl.”], ¶ 3.

15 Plaintiff began working for VCR in July 2020 and ended his employment in September
16 2021. Plaintiff was employed primarily as an “irrigator,” responsible for providing water to the
17 cattle and plants on the ranch. Plaintiff was one of a few irrigators that worked for VCR. In addition
18 to irrigators, VCR employed a variety of other hourly workers, generally called “ranch hands” or
19 similar titles. See *id.*, ¶ 4.

20 During the time period covered by this representative PAGA settlement (November 30,
21 2020, through January 23, 2025 (the “PAGA Period”), VCR’s records reflect approximately 215
22 non-exempt employees who worked a total of approximately 9,697 biweekly pay periods. See *id.*,
23 ¶ 5.¹

24 ///

25
26 ¹ As described further below, the settlement includes an escalator clause, increasing the
27 settlement sum if the total number of pay periods during the PAGA Period exceeds a certain
28 threshold.

1 **III. PROCEDURAL BACKGROUND**

2 **A. Plaintiff Files a PAGA Notice with the LWDA and the Parties Agree to Tolling to**
3 **Discuss Potential Resolution.**

4 On November 30, 2021, Plaintiff filed a notice with the Labor and Workforce Development
5 Agency (“LWDA”) of Plaintiff’s potential claims under PAGA, and their supporting facts and
6 theories. The PAGA Notice defined the allegedly aggrieved employees as all of Defendants’
7 hourly employees in California since November 30, 2020, and asserted various wage and hour
8 claims, including for unpaid straight and overtime wages, meal and rest period violations, failure
9 to pay wages at termination, failure to provide accurate wage statements, record-keeping
10 violations, and failure to reimburse business expenses, among other violations. See *id.*, ¶ 6.

11 Following the filing of Plaintiff’s LWDA notice, the Parties began to discuss possible
12 resolution. To that end, on or about February 8, 2022, the Parties entered into an agreement to toll
13 the limitations period on all of Plaintiff’s employment claims, including representative PAGA
14 claims. During this period, Defendants produced Plaintiff’s own time and payroll records, as well
15 as a large sampling of time and payroll records for potentially aggrieved employees during the
16 PAGA Period. The Parties’ settlement discussions were unsuccessful, however, and the tolling
17 agreement was terminated, effective June 13, 2022. See *id.*, ¶¶ 7-8.

18 **B. Plaintiff Files His Demand for Individual Arbitration, and Files this Lawsuit**
19 **Asserting Representative PAGA Claims.**

20 On July 11, 2022, Plaintiff formally initiated arbitration proceedings of his individual
21 claims. See *id.*, ¶ 9. Plaintiff initially waited to file his representative PAGA lawsuit given the
22 highly anticipated *Viking River* case that was pending before the U.S. Supreme Court. After the
23 U.S. Supreme Court’s *Viking River* decision, and the subsequent California Supreme Court
24 decision in *Adolph v. Uber*, Plaintiff concluded that an individual arbitration agreement did not
25 deprive him of standing to pursue a representative PAGA case. Accordingly, on August 15, 2022,
26 Plaintiff filed this representative PAGA lawsuit in Madera County Superior Court. Consistent with
27 the guidance from appellate and trial court decisions in the wake of *Viking River* and *Adolph v.*

1 *Uber*, the parties stipulated to stay the PAGA lawsuit pending the resolution of the individual
2 arbitration. See *id.*, ¶ 10.

3 **C. The Parties Participate in Their First Mediation.**

4 On December 19, 2022, the Parties participated in a full day, private mediation with Mark
5 Peters, Esq., a prominent San Francisco-area employment and class/PAGA mediator. The Parties
6 attempted to resolve both Plaintiff's individual claims pending in the arbitration, as well as the
7 representative PAGA claims pending in this action. The Parties were not able to reach any
8 resolution through the mediation. See *id.*, ¶ 11.

9 **D. Litigation and Resolution of Plaintiff's Individual Arbitration.**

10 Following the unsuccessful mediation, the Parties resumed litigation of Plaintiff's
11 individual arbitration. The Parties conducted substantial discovery regarding Plaintiff's wage and
12 hour claims. This discovery included multiple sets of written discovery propounded by each side.
13 In addition, Defendants deposed Plaintiff for a full day, and Plaintiff deposed Case Vlot, presented
14 as VCR's person most knowledgeable witness, for a full day. These depositions, written discovery,
15 and document productions related not only to Plaintiff's individual claims in the arbitration, but
16 also to issues directly relevant to the representative PAGA claims, including Plaintiff's legal
17 theories and supporting evidence for wage and hour liability, as well as VCR's policies and
18 procedures relating to timekeeping and payroll, meal and rest periods, and reimbursement of
19 business expenses. See *id.*, ¶¶ 12-13.

20 Plaintiff's individual claims in arbitration were ultimately resolved. Plaintiff prevailed on
21 some of his claims through Plaintiff's motion for summary adjudication, and the Parties resolved
22 the remaining claims. As part of this resolution, the arbitrator awarded Plaintiff's counsel with
23 attorney's fees and litigation costs for the work and costs relating to the individual arbitration. The
24 arbitrator excluded fees and costs for activities that were determined to be part of the representative
25 PAGA action. See *id.*, ¶ 14.

1 **IV. TERMS OF THE PAGA SETTLEMENT**

2 The PAGA Settlement Agreement provides that Defendants will pay a total of \$275,000
3 (the “Gross Settlement Amount”), as a non-reversionary settlement fund to settle the representative
4 PAGA claims in this action. The “Aggrieved Employees” for purposes of the PAGA Settlement
5 are Defendants’ non-exempt employees that worked in California at any time during the PAGA
6 Period, i.e., between November 30, 2020, through January 23, 2025. From the Gross Settlement
7 Amount of \$275,000, the following amounts will be paid, subject to this Court’s approval:

- 8 • Plaintiff’s counsel’s attorney’s fees of roughly 1/3 of the Gross Settlement Amount
9 (\$91,666.00);
- 10 • Plaintiff’s counsel’s out-of-pocket litigation expenses of \$8,000.00 for the
11 representative PAGA claims (including Plaintiff’s share of the mediation fees);
- 12 • PAGA settlement administration expenses of \$4,250.00; and
- 13 • An enhancement payment of \$10,000.00 to Plaintiff for serving as representative of the
14 State and the Aggrieved Employees, and his efforts made in the case.
- 15 • This results in an estimated Net Settlement Amount of \$161,084.00 (i.e., the Gross
16 Settlement Amount, minus requested fees, costs, representative plaintiff enhancement,
17 and PAGA settlement administration expenses). *See id.*, ¶ 24; Ex. 1.

18 As required by PAGA, 75% of the Net PAGA Settlement Amount will be paid to the
19 LWDA and the remaining 25% of the Net PAGA Settlement Amount will be distributed among
20 the Aggrieved Employees on a pro-rata basis according to their pay periods during the PAGA
21 period.² *See id.*, ¶ 25.

22 Defendants’ data as of the second mediation reflected approximately 215 non-exempt
23 employees who worked a total of approximately 9,697 biweekly pay periods during the PAGA
24

25 ² On June 27, 2024, the California Legislature passed two bills amending various provisions of
26 PAGA. However, the amendments were only applicable to civil actions brought on or after June
27 19, 2024. See Assembly Bill 2288 and Senate Bill 92. Thus, this case is subject to the original
28 legal landscape for PAGA cases and settlements and all references to PAGA refer to the prior
statutory provisions applicable to this matter.

Period. To avoid the dilution of this PAGA Settlement, the Parties agreed to end the settlement on the date the Parties accepted the mediator's proposal (January 23, 2025), rather than extending the settlement period through the date of court approval. In addition, recognizing that the final headcount and pay period figures may change somewhat, the Parties agreed to a 10% buffer to the 9,697 pay periods, meaning that no additional consideration shall be necessary if the total number of pay periods covered by the PAGA Settlement does not exceed 10,667. If the total number of pay periods is greater than that, then the Gross Settlement Amount shall be increased by a pro-rata amount for those pay periods greater than 10,667. *See id.*, ¶ 26; Ex. 1.

Payments will be made to the Aggrieved Employees by check to their last known home address, and Aggrieved Employees will not be required to submit a claim form or take any other steps to receive their payment. As this is a PAGA-only settlement, non-PAGA claims (such as underlying claims for alleged unpaid wages or statutory penalties) of other Aggrieved Employees are not being released by virtue of the PAGA Settlement. See *id.*, ¶ 27; Ex. 1.

Subject to the Court’s approval, the settlement administration, including calculation and issuance of payments, will be performed by Phoenix Settlement Administrators, a nationally recognized settlement administrator. See *id.*, ¶ 28. Attached as **Exhibit 2** to the Van Hook Declaration is a true and correct copy of Phoenix’s settlement administration quote of \$4,250.

The PAGA Settlement Agreement releases Defendants and the defined Released Parties from PAGA penalties for “all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action including, but not limited to: (1) Failure to Pay Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Civil Penalties for Failure to Timely Pay Wages at Termination and Failure to Pay Continuing Wages Penalty; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Civil Penalties for Failure to Pay Wages Timely During Employment; (7) Civil Penalties for Failure to Keep Complete and Accurate Records; (8) Civil Penalties for Failure to Reimburse Business Expenses; (9) Civil Penalties for Violation of IWC Wage Order 14., and; (10) any claims

1 under the Private Attorney General Act of 2004.” See *id.*, ¶ 29; Ex. 1 [¶ 5.2].

2 Within 30 days of the Court’s order approving the settlement, Defendants will fund the
3 settlement. See *id.*, ¶ 30; Exh. 1 [¶ 4.3]. Within 14 days of funding of the settlement by Defendants,
4 the Settlement Administrator shall:

- 5 • Distribute a total of 25% of the Net PAGA Fund to the Aggrieved Employees, along
6 with an explanatory letter, translated into English and Spanish (the English version is
7 attached hereto as Exhibit 1-A).
- 8 • Distribute 75% of the Net PAGA Fund to the LWDA.
- 9 • Distribute Plaintiff’s counsel’s fees and costs, as approved by the Court.
- 10 • Distribute enhancement payment to Plaintiff, as approved by the Court.
- 11 • Pay itself for services as Settlement Administrator, as approved by the Court.

12 See *id.*, ¶ 31; Ex. 1 [¶ 4.3].

13 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND SHOULD BE APPROVED.**

14 **A. Legal Standard**

15 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of
16 other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v.*
17 *CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Labor Code § 2699 (l) provides that
18 “[t]he superior court shall review and approve any penalties sought as part of a proposed settlement
19 agreement pursuant to” PAGA. “[T]here is no requirement that the Court certify a PAGA claim
20 for representative treatment” as in a class action. *Villalobos v. Calandri Sonrise Farm LP* (C.D.
21 Cal., July 22, 2015, No. CV122615PSGJEMX), 2015 WL 12732709 at *5.

22 Settlement of a PAGA claim requires that the “Court shall review and approve any
23 penalties sought as part of a proposed settlement agreement pursuant to this part.” Cal. Lab. Code
24 § 2699(l)(2). In contrast to class settlements, there is little case law addressing the standard for
25 approving a PAGA settlement. Courts have found that the PAGA settlement must be reasonable
26 in light of the potential verdict value. See *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
27 201 F.Supp.3d 1110, 1135 (rejecting settlement of less than one percent of the potential verdict).

1 However, PAGA settlement may be substantially discounted given the uncertainties that the
2 plaintiff would prevail, and because courts often exercise their discretion to award PAGA penalties
3 below the statutory maximum, even where a claim succeeds at trial. *See Visceral v. Mistras Group,*
4 *Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869 at **8-9. *See also*
5 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (affirming a judgment which only
6 provided for a PAGA penalty of \$5 per violation, as opposed to the \$100 maximum awardable
7 penalty).

8 **B. This Settlement Was the Product of Extensive Arm’s-Length Negotiations.**

9 While PAGA settlements do not need to satisfy the same requirements for class action
10 settlements, in the context of class action settlements, a “presumption of fairness exists where: (1)
11 the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
12 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
13 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.* (2008)
14 168 Cal.App.4th 116, 128. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53 and
15 *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390. While PAGA
16 settlements are not treated as class action settlements, we set forth the class action settlement
17 standard here as a general guide for PAGA settlements approval.

18 Here, with the exception of the percentage of objectors (which is not a factor in the PAGA
19 settlement context) all of these factors are satisfied. The PAGA settlement here was the result of
20 years of substantive litigation and vigorous, arm’s-length negotiations between experienced
21 employment law attorneys who are familiar with the substantive legal issues and with complex
22 representative PAGA litigation. The Parties participated in two full-day, private mediations with
23 experienced mediators before the Parties managed to reach a settlement of this representative
24 PAGA action, subject to court approval. *See* Van Hook Decl., ¶¶ 11, 21.

25 In addition, Plaintiff’s Counsel are experienced in the litigation and settlement of complex
26 wage-and-hour cases, including class action and representative PAGA actions. *See* Van Hook
27 Decl., ¶¶ 32-37; Declaration of Adrian C. Byrne [“Byrne Decl.”], ¶¶ 3-5. Based on their experience

litigating similar cases, Plaintiff's attorneys firmly believe that the PAGA Settlement is fair, reasonable, and adequate and is in the best interests of all Parties, the LWDA, and the Aggrieved Employees, in light of all known facts and circumstances and the risks inherent in litigation. *See* Van Hook Decl., ¶¶ 38-40; Byrne Decl., ¶ 10.

C. Calculation of Potential Civil Penalty Exposure.

Based on the data provided by Defendants, the Parties estimated in the PAGA Settlement that there were a total of 215 non-exempt employees who worked a total of approximately 9,697 pay periods during the PAGA Period. For purposes of Plaintiff's calculations of the total potential exposure for PAGA penalties, the "initial" penalty rate of \$100 per pay period was applied for all pay periods. *See Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1172-73 (9th Cir. 2021) ("subsequent" penalty rate applies only after an employer is notified by a court or the Labor Commissioner that it is violating the Labor Code). Accordingly, in the absence of "stacking" of penalties of multiple alleged Labor Code penalties for the same pay periods,³ assuming a Labor Code violation could be proven for every aggrieved employee in every pay period, and assuming no discretionary reduction of penalties by the Court, the maximum potential PAGA penalties total **\$969,700.00** (9,697 pay periods x \$100 per pay period).

The PAGA settlement here is **\$275,000**, or **28.4%** of this estimated PAGA exposure. Based on an estimated 9,697 pay periods, the settlement provides for a gross payment of **\$28.36** per pay period. Based on comparable PAGA cases, and based on their extensive experience, Plaintiff's believe that this is an excellent result for the State and the Aggrieved Employees. *See* Van Hook Decl., ¶ 38; Byrne Decl., ¶ 10.

³ Plaintiff contends that he could pursue PAGA penalties for every Labor Code provision that was allegedly violated. Even if PAGA did permit "stacked" penalties, however, many of these violations would be derivative of each other, and provide arguably redundant penalties. It is quite likely, therefore, that despite the maximum theoretical recovery that might be available from "stacked" penalties, the Court would exercise its discretion to reduce penalties that appeared redundant or excessive. Accordingly, for purposes of settlement, and as discussed further below, Plaintiff and his counsel believe that this is a reasonable and appropriate method to calculate potential PAGA penalty exposure.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Given the risks and challenges that Plaintiff's claims would face in extended litigation, and the vigorous substantive and procedural defenses that Defendants would present, Plaintiff and his counsel believe that this is a fair and reasonable settlement, and a fair and reasonable outcome for the LWDA and for the Aggrieved Employees. Plaintiff applied various risk discounts to account for the perceived strengths of each claim. *See Van Hook Decl.*, ¶¶ 38-40.

7
88
910
11

11
12
13
14
15
16
17
18

19
20
21
22
23
24
25
26

1 interpretation, Plaintiff recognizes the lack of certainty, including the lack of appellate authority,
2 as to how trial courts would interpret the statute.

3 **b) The Trial Court's Discretion to Reduce PAGA Penalties**

4 As Defendants have vigorously argued throughout these settlement negotiations, even if
5 Plaintiff were to prevail on some or all of his PAGA claims, the statute gives trial courts the
6 discretion to reduce the penalties actually awarded. *See* Lab. Code § 2699(e)(2) (allowing
7 reductions of penalties where the full amount would be “unjust, arbitrary and oppressive, or
8 confiscatory”). Moreover, as long as the Court awards some penalties, the statute imposes no limit
9 to the reduction that a Court can make to PAGA penalties. Defendants have argued that this Court
10 could (and should) greatly reduce any penalty award against them. The Court might also reduce
11 any penalty amount based on Defendants’ apparent voluntary remedial measures taken to improve
12 various wage and hour practices. *See* Van Hook Decl., ¶¶ 39-40. Plaintiff and his counsel properly
13 considered this substantial uncertainty in reaching this settlement.

14 Likewise, in light of this judicial discretion (and the other uncertainties surrounding
15 PAGA), courts have approved significantly *lower* PAGA settlements involving many more
16 employees and pay periods. *See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.*, 2015 U.S.
17 Dist. LEXIS 21374, *2-3 (N.D. Cal. 2015) [approving \$20,000 PAGA settlement]; *Franco v. Ruiz*
18 *Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving PAGA
19 penalties in amount of \$10,000 for 2,055 employees asserting wage and hour violations]; *Garcia*
20 *v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving \$10,000 in
21 PAGA penalties for 1,868 employees in wage and hour case]; *Chu v. Wells Fargo Investments,*
22 *LLC*, 2011 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA penalties of \$7,500
23 for 2,752 employees in wage and hour action].

24 In light of these potential issues, this PAGA Settlement is a reasonable and fair result for
25 the State of California and the Aggrieved Employees.

26 **c) Defendants' Legal Defenses**

27 Throughout this litigation, including in the settlement negotiations and in the settlement

1 agreement, Defendants steadfastly argued that Plaintiff would lose on the vast majority of his
2 PAGA claims if they were tried because Defendants complied with their obligations under the
3 Labor Code. Regarding the unpaid overtime for irrigators, the likelihood of liability on that claim
4 was strong, but had very limited potential penalties. Defendants' records showed that irrigators
5 worked a combined total of only 75 pay periods prior to Defendants' correction of VCR's overtime
6 practices for irrigators. Accordingly, even if no discount was applied to these penalties claims, the
7 penalties would likely not exceed \$7,500 (75 pay periods x \$100).

8 As to Plaintiff's claims for meal and rest period violations (the cornerstone of Plaintiff's
9 representative PAGA claims), Defendants have argued that they had lawful meal and rest period
10 policies and practices, and that any non-compliant meal and rest periods were the result of
11 decisions by the employees themselves, and not the result of Defendants' actions. Most
12 significantly, the timekeeping and payroll records supplied by Defendants in advance of the second
13 mediation (supplied in early 2025) suggested that Defendants substantially improved their meal
14 period practices since the time period covered by the sampling Defendants provided in early 2022.
15 *See Van Hook Decl.*, ¶¶ 39-40. Accordingly, even if Plaintiff could prevail on meal and rest period
16 claims for some aggrieved employees for some of the pay periods, it is very questionable the
17 number of pay periods in which violations occurred, and the extent of recoverable penalties.
18 Defendants, presumably, would also argue that their remedial measures should be seen as a good
19 faith effort towards compliance, further justifying a reduction in penalties awarded.

20 Moreover, proving meal period and rest period violations would have depended in
21 significant part on testimony from the various allegedly aggrieved employees. Therefore,
22 substantial risk and uncertainty existed as to Plaintiff's ability to prevail on these claims, and the
23 extent of penalties that might be awarded. The uncertainty and risk that both sides face further
24 supports Plaintiff's valuation of the case for settlement purposes.

25 **E. The Requested Fees and Litigation Costs are Reasonable and Appropriate.**

26 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Labor Code §
27 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund for
28

the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. *Accord, Serrano v. Priest* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys' fees and costs when a litigation proceeding in a representative capacity secures a substantial benefit); *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. This guidance should equally apply to representative settlements under PAGA.

Plaintiff requests an award of attorney's fees of \$91,666, equaling one-third of the gross PAGA settlement sum, which is typical in class and PAGA settlements. As described more fully in the declarations of Plaintiff's counsel, Plaintiff's attorneys, to date, have billed 163.8 hours totaling \$93,261.00 on this representative PAGA matter. *See* Van Hook Decl., ¶¶ 41-43; Byrne Decl., ¶¶ 7-8.

Attorney	Hourly Rate	Hours Billed	Lodestar
John A. Van Hook	\$650.00	92.4	\$60,060.00
Adrian C. Byrne	\$465.00	71.4	\$33,201.00
Totals		163.8	\$93,261.00

This does not include additional expected work relating to the hearing and settlement administration. It also does not include work relating to the arbitration. *See* Van Hook Decl., ¶¶ 42-43; Byrne Decl., ¶ 7.

Where Plaintiff's attorneys have provided detailed declarations reflecting their hours billed, it is not required that Plaintiff's counsel attach their actual time records to support a request for attorney's fees. *See, e.g., Raining Data Corp. v. Barrenechea*, 175 Cal. App. 4th 1363, 1375 (2009) ("an award of attorney fees may be based on counsel's declarations, without production of detailed time records"); *Lunada Biomedical v. Nunez*, 230 Cal.App.4th 459, 487-488 (2014) (a party requesting attorney fees "can carry its burden of establishing its entitlement to attorney fees by submitting a declaration from counsel instead of billing records or invoices.").

It would be reasonable for Plaintiff to seek a multiplier on the lodestar to reflect the risks

1 that Plaintiff's counsel would not be paid for years of work. Multipliers are routinely requested
2 and granted, particularly where the attorneys worked on a contingency fee basis. See *Ketchum v.*
3 *Moses*, 24 Cal. 4th 1122, 1138 (2001) (recognizing it is appropriate "to provide a fee enhancement
4 reflecting the risk the attorney will not receive payment if the suit does not succeed, constitutes
5 earned compensation; unlike a windfall, it is neither unexpected nor fortuitous."); *Mangold v. Cal.*
6 *Pub. Utils. Comm'n*, 67 F.3d 1470, 1478-79 (9th Cir. 1995) (2.0 multiplier); *City of Oakland v.*
7 *Oakland Raiders* 203 Cal. App. 3d 78, 82-85 (1988) (2.34 multiplier); Nevertheless, Plaintiff
8 requests attorney's fees of \$91,666, below Plaintiff's counsel's lodestar of \$93,261.

9 Plaintiff's counsel's requested fees are especially appropriate because this litigation not
10 only resulted in this substantial settlement, but it also resulted in Defendants making positive
11 changes to certain policies and practices. For example, after this case was filed, Defendants began
12 to properly pay irrigators for their overtime and paid back overtime that was owed. Defendants'
13 records produced in advance of the January 2025 mediation also reflect that Defendants' meal
14 period compliance was greatly improved. See Van Hook Decl., ¶ 20. There is little doubt that
15 Plaintiff's litigation of this case, and Plaintiff's counsel's work, was a substantial catalyst for these
16 improvements for Defendants' hourly workforce. In fact, under the catalyst theory for attorney's
17 fees, Plaintiff could have sought to recover his attorney's fees even in the absence of a settlement.
18 See *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 559 (2004) ("Under
19 the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial
20 resolution if the defendant changes its behavior substantially because of, and in the manner sought
21 by, the litigation").

22 Plaintiff's counsel's litigation costs are also reasonable, as Plaintiff seeks \$8,000 for
23 reimbursement of out-of-pocket litigation costs, including a portion of the two mediation fees paid
24 by Plaintiff. These costs are detailed in the declaration of Plaintiff's counsel. See Van Hook Decl.,
25 ¶¶ 46-47.

26 **F. The Requested Enhancement for Plaintiff is Reasonable and Appropriate.**

27 Plaintiff requests an enhancement payment of \$10,000 to recognize the risks, efforts, and
28

1 time he expended in pursuing these claims on behalf of the State and his former co-workers.

2 In PAGA settlements, as in class settlements, it is reasonable and appropriate to provide an
3 incentive payment to the named plaintiffs for their service as representatives. *See, e.g., In re*
4 *Cellphone Fee Termination Cases, supra*, 186 Cal.App.4th at 1380 (upholding \$10,000 incentive
5 awards to each of the four class representatives). Courts frequently approve service awards of
6 \$10,000 or more for class and PAGA representatives to compensate them “for the expense or risk
7 they have incurred in conferring a benefit on other members of the class.” *Id.* at 1394 quoting
8 *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, 806.

9 This requested enhancement of \$10,000 to Mr. Barajas is reasonable in light of the risks he
10 incurred in pursuing these claims, as well as the time and effort that he provided. Plaintiff provided
11 substantial, invaluable assistance to counsel throughout this case, and during the process of
12 investigating and evaluating the claims prior to initiating suit.

13 Unlike many PAGA cases, where settlements are reached quickly with minimal
14 involvement by the named plaintiff, Mr. Barajas spent more than three years actively assisting
15 counsel in prosecuting these claims. Plaintiff met with and spoke with counsel regularly and
16 provided critical help to counsel in fact gathering, in identifying potential witnesses, locating
17 evidence to support Plaintiff’s claims, sitting for a full-day, in-person deposition, and actively
18 participating in a full-day mediation. *See* Van Hook Decl., ¶¶ 48-49; Byrne Decl., ¶ 9; Declaration
19 of Enrique Barajas [“Barajas Decl.”], ¶¶ 1-4. This case would not have been prosecuted, and this
20 settlement would not have been achieved, without the prolonged, diligent efforts of Plaintiff.

21 Not only did this lawsuit result in a substantial settlement that will benefit the State and the
22 aggrieved employees, but Plaintiff’s decision also to pursue these claims has helped to achieve
23 positive changes at VCR that have significantly improved the working conditions for current and
24 future employees of VCR. Defendants, for example, are now paying irrigators overtime correctly
25 and have paid back overtime owed. Defendants’ records also reflect substantial improvement in
26 meal period practices. There is little doubt that Plaintiff’s pursuit of these claims was a major
27 catalyst for these positive changes. *See* Van Hook Decl., ¶ 20; Barajas Decl., ¶ 5.

1 In addition to his time and effort, Plaintiff sacrificed pay to participate in this case. For
2 each deposition and mediation, Plaintiff had to take time off work without pay. For a low-paid
3 hourly worker such as Plaintiff, giving up any pay is a substantial hardship. Nevertheless, Plaintiff
4 made these sacrifices because pursuing these claims, and attempting to improve the working
5 conditions for his former co-workers, was important for Plaintiff. *See* Van Hook Decl., ¶ 48; Byrne
6 Decl., ¶ 9; Barajas Decl., ¶ 4.

7 Plaintiff also risked his job prospects to serve as a PAGA representative. While Plaintiff
8 no longer works for VCR, he continues to perform similar work in the Central Valley. He faces
9 the ongoing risk that a future employer might treat him adversely due to his decision to step
10 forward and fight for the employment rights of himself and other workers. *See* Barajas Decl., ¶ 4.
11 Courts have recognized that assuming potentially career-damaging risks for the vindication of the
12 rights of fellow employees is a factor justifying a substantial enhancement award. *See, e.g., Roberts*
13 *v. Texaco* (S.D.N.Y. 1997) 979 F. Supp. 185, 201 (“present or past employee whose present
14 position or employment credentials or recommendation may be at risk by reason of having
15 prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of litigation
16 at some personal peril, a substantial enhancement award is justified”). Thus, Plaintiff and his
17 counsel believe that the requested enhancement is reasonable and justified.

18 **VI. CONCLUSION**

19 For the foregoing reasons, Plaintiff respectfully requests that this Court approve the
20 proposed PAGA Settlement Agreement and direct the Parties to take all steps necessary to
21 effectuate its terms.

22 Dated: April 9, 2025

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

23
24 

25 John A. Van Hook

26 Adrian C. Byrne

27 Attorneys for Plaintiff Enrique Barajas and all
28 other Aggrieved Employees