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9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 LUIS GONZALEZ,

12 Plaintiff,

13 vs.

14 GENERAL PRODUCE CO., A
15 CALIFORNIA LIMITED PARTNERSHIP, a
16 California Limited Partnership; and DOES 1 to
100, inclusive,

17 Defendants.
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Case No. 34-2022-00317208

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. 2705050

Date: April 5, 2023

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: March 22, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on April 5, 2023, at 9:00 a.m. or as soon thereafter as the matter
3 may be heard in Department 54 of the above-entitled Court, Plaintiff Luis Gonzalez ("Plaintiff") will
4 move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act ("PAGA") and, as such, was authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$50,000 PAGA Settlement, which is incorporated by reference as if stated
9 here in full; and
- 10 3. Approving and adopting the Proposed Order and its implementation schedule, which is filed
11 herewith and incorporated by reference.

12 This Motion is being made pursuant to California Labor Code section 2699(1)(2) on the grounds
13 that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the
14 asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement
15 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
16 points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Luis Gonzalez, exhibits,
17 the record and files of this case, and any further oral or documentary evidence introduced at the hearing
18 of this motion.

19 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
20 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
21 **department may be downloaded off the court's website. If the party does not have online access,**
22 **they may call the dedicated phone number for the department as referenced in the local telephone**
23 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
24 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
25 **court day before the hearing, no hearing will be held.**

26 Dated: March 9, 2023

Shimoda & Rodriguez Law, PC

27 By: *Brittany Berzin*
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Attorneys for Plaintiff

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Case No. 34-2022-00317208

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. 2705050

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

The settlement of a Private Attorneys General Act (“PAGA”) cause of action presented to the Court for approval in this Motion is the result of a unique procedural posture. Plaintiff Luis Gonzalez (“Plaintiff”) filed a petition to compel class arbitration against Defendant General Produce Co., A California Limited Partnership, (“Defendant”) (Plaintiff and Defendant sometimes collectively referred to as “Parties”) on March 2, 2022. Plaintiff also filed this PAGA only lawsuit on March 22, 2022. *See generally* Exhibit A (Plaintiff’s Operative Complaint). On May 3, 2022, the Court granted Plaintiff’s petition. *See generally* Exhibit B (May 3, 2022, Order granting Plaintiff’s Petition to Compel Class Arbitration). Subsequent to the petition being granted, the Parties agreed to engage in informal discovery and attempt to mediate the class and PAGA claims. Ultimately, the Parties were able to resolve the class and PAGA claims as a result of mediation and continued settlement discussions that took place over several months after the mediation. *See generally* Exhibit C (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]); *see also* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶¶ 2, 8. Pursuant to the Court’s May 3, 2022, order, California Labor Code section 2699(1)(2), and the Agreement, Plaintiff is seeking approval of the PAGA settlement allocation and waiver of PAGA claims through this Court action while contemporaneously seeking approval of the class settlement in the class arbitration proceedings. *See* Decl. Berzin, ¶ 2.

Plaintiff has alleged that Defendant failed to pay all overtime, failed to provide all meal periods or pay premiums in lieu thereof, failed to all provide rest periods or pay premiums in lieu thereof, failed to provide accurate wage statements, failed to timely pay final wages, failed to provide all paid sick time, and the failed to comply with provisions regulating hours and days of work in any industrial welfare commission order pursuant to California Labor Code section 558. *See generally* Exhibit A; *see also* Decl. Berzin, ¶¶ 3, 9. Defendant has denied all of Plaintiff’s allegations and any liability. *See* Decl. Berzin, ¶ 5. Defendant has also denied that this case is appropriate for treatment as a representative action due to manageability. *See id.* However, subject to the Court’s approval, the Parties have been able to compromise and settle the PAGA claim as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed PAGA settlement allocation and waiver of claims is fair, reasonable, and adequate based on

1 the investigations, informal discovery, employee data exchanges, negotiations, and a detailed knowledge
2 of the issues in this case. *See* Decl. Berzin, ¶¶ 6-7, 9-10. Accordingly, Plaintiff requests that the Court:
3 (1) make a finding that Plaintiff has exhausted all administrative remedies and that Plaintiff is authorized
4 to enter into the proposed Agreement on behalf of the LWDA; (2) approve the proposed PAGA payment
5 allocation and waiver of PAGA claims as fair, reasonable, and adequate.

6 **II. PROCEDURAL AND LITIGATION HISTORY**

7 As noted above Plaintiff gave written notice to the LWDA and Defendant providing facts and the
8 legal basis for all claims asserted in the Complaint and the claims that are being resolved under the
9 Agreement. *See* Exhibit D (Plaintiff's Ltr. to the Labor and Workforce Development Agency). Plaintiff
10 also submitted the \$75.00 filing fee. *See* Decl. Berzin ¶ 4. Notice was also sent via certified mail to
11 Defendant at the same time. *See* Exhibit D. The LWDA did not provide any response to Plaintiff's
12 notice correspondence within the statutorily required time frame and, as a result, Plaintiff became
13 authorized to act as a Private Attorney General for the asserted claims. Plaintiff filed this lawsuit on
14 March 22, 2022, and uploaded a copy of the filed Complaint to the LWDA. No trial date has been set in
15 this matter. *See* Decl. Berzin ¶ 4.

16 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

17 Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims.
18 *See id.* at ¶¶ 4, 6-8, 9-10. Plaintiff worked during the time all of Defendant's policies and practices at
19 issue in the Complaint were in effect and provided information regarding these policies and practices,
20 enabling pre-filing investigations to take place. *See* Declaration of Luis Gonzalez ("Decl. Gonzalez") ¶
21 2; Decl. Berzin ¶ 7. The Parties engaged in informal discovery and exchange of documents, including a
22 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
23 for the entirety of the statute of limitations applicable to the asserted claims. The discovery covered all
24 aspects of the asserted claims, including merits issues, damages, the scope and configuration of
25 Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues
26 relating to manageability concerns at trial, among other relevant areas. *See* Decl. Berzin ¶¶ 7, 9. The
27 information allowed Plaintiff to determine the extent and frequency of any violations in accordance with
28

1 Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any
2 settlement. *See id.* at ¶¶ 6-7, 9-10.

3 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

4 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

5 The final settlement occurred only after extended, arm's length negotiations. Over the course of
6 approximately 18 months, Plaintiff has been investigating the claims and discussing with Defendant's
7 counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 4, 6-7. The Parties
8 exchanged substantial amounts of information and legal analysis in connection with these discussions.
9 *See id.* It was only after these extended investigations, negotiation discussions, a full day mediation
10 with Hon. Ronald M. Sabraw (Ret.), and post-mediation negotiations facilitated by the mediator, that the
11 Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

12 **b. The Terms of the Agreement**

13 1. The scope of Aggrieved Employees covered under the Agreement includes all non-
14 exempt employees, who have, or continue to, work for Defendant, except for any employees who only
15 worked as drivers with a Class A or B driver's license, from November 9, 2020, up to March 18, 2023.
16 *See* Exhibit C, ¶¶ 1.2, 1.23, 1.27.

17 2. \$50,000 will be allocated towards payment for resolving the asserted PAGA claims. *See*
18 *id.* at ¶¶ 1.24, 5.5.

19 3. Any and all claims for civil penalties under the PAGA that asserted in this case or LWDA
20 notice letter and any additional claims for civil penalties that could have been asserted based on the facts
21 alleged therein will be deemed fully, finally, and forever released against the Released Parties. *See*
22 Exhibit C, ¶¶ 1.22-1.23, 1.31-1.32, 6.2.

23 4. Although notice to Aggrieved Employees would not be required in a pure PAGA action,
24 a Notice of Settlement will be distributed in connection with the class arbitration approval process. *See*
25 Exhibit E (Proposed Notice of Settlement); *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
26 1340777, at *5 (N.D. Cal. 2010) ("Unnamed employees need not be given notice of the PAGA claim,
27 nor do they have the ability to opt-out of the representative PAGA claim"); *see also Arias v. Superior*
28 *Ct.*, 46 Cal.4th 969, 984-988 (2009) (rejecting a defendant's due process argument that aggrieved

employees must be given notice similar to class members in class actions). Information regarding the waiver of PAGA claims and the PAGA payment allocation will be included in the Notice of Settlement. *See* Exhibit E. The Settlement Administrator will also perform searches and updated mailings following standard class notification procedures. *See* Exhibit C, ¶¶ 7.2, 7.5-7.7. However, because the class settlement is under the purview of the class arbitration, Plaintiff will not address them further here.

c. Allocation of PAGA Payment

The PAGA Payment will be split among the LWDA and Aggrieved Employees according to statute. The LWDA will receive 75% of the of the PAGA Payment and Aggrieved Employees will be paid 25% of the PAGA Payment. *See* Cal. Lab. Code § 2699(i); Exhibit C, ¶ 5.5. Aggrieved Employees share of the 25% will be determined by taking their Qualifying Workweeks for the individual Aggrieved Employee and dividing that by the Qualifying Workweeks for all Aggrieved Employees and multiplying that fraction by the 25% share of the PAGA Payment. *See* Exhibit C, ¶ 5.8.

V. THE PAGA PAYMENT ALLOCATION AND WAVIER OF CLAIMS SHOULD BE APPROVED AS PLAINTIFF MET ALL STATUTORY REQUIREMENTS FOR PROCEEDING WITH THE PAGA CLAIM AND PAGA SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A PAGA settlement is not effective unless the statutory requirements for becoming an authorized representative of the LWDA have been complied with and the Court has reviewed and approved the terms of the PAGA settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c). The Court has broad discretion in making the decision to approve or reject a settlement for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should be assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of the case. *See id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must 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.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same established framework Courts use to evaluate whether class action settlements are fair, reasonable, and adequate. *See id.*; *see also* *Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4 n.5 (E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O’Connor v. Uber*

1 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by
2 comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v.*
3 *NCI Group, Inc.*, 2018 WL 1409590, *1–*2 (C.D. Cal. 2018) (same). This framework has been used
4 many times over by multiple Courts. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS
5 14971, *6, n.4-5 (E.D. Cal. 2017); *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D. Cal.
6 2017); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017);
7 *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55,*
8 *Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*,
9 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL
10 2029061 at *2 (N.D. Cal. 2019). An important difference in the analysis, however, is that the evaluation
11 should focus on the amount of the settlement as a whole rather than any individual aggrieved
12 employee’s share because a PAGA lawsuit is fundamentally a law enforcement action where the “relief
13 is designed to protect the public[,] not to benefit private parties.” *See Moniz*, 72 Cal.App.5th at 74
14 (internal quotation and citations omitted).

15 **a. Plaintiff has Met All Statutory Requirements For Proceeding With A PAGA Claim**

16 An aggrieved employee must give written notice of the facts, theories, and statutes supporting
17 the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing
18 fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). An “aggrieved employee”
19 means any person who was employed by the alleged violator and against whom one or more of the
20 alleged violations was committed.” *id.* at § 2699(c). If the LWDA does not provide notice of its intent
21 to investigate within 65 calendar days of the notice, the aggrieved employee may commence a civil
22 action. *See id.* at §§ 2699.3(a)(2)(A), 2699.5. For alleged violations of the Labor Code sections not
23 enumerated in section 2699.5, an aggrieved employee may commence a civil action if the employer has
24 not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An
25 aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the
26 same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

27 As set forth above, Plaintiff complied with all statutory requirements to commence a civil action.
28 *See* Decl. Berzin ¶ 4; Exhibit D. The notice letter to the LWDA sets forth all claims and theories of

liability stated in the Complaint as well as supporting facts. *See* Exhibit D. Plaintiff also paid the \$75.00 filing fee. *See* Decl. Berzin ¶ 4. As the LWDA did not provide any notice of its intent to investigate within the required time frame and no cure under the statute took place, Plaintiff is authorized resolve those claims contained in the notice letter(s) and the operative Complaint. *See id.*; Exhibit A; Exhibit D. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire motion for approval to the LWDA for its consideration at the same time this motion was filed. *See* Berzin ¶ 17; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).

b. The PAGA Payment And Release of PAGA Claims Are Fair, Reasonable, and Adequate

Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable, and adequate include the strength of the 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 Chamberlain*, 2020 WL 4350207, *4 n.5; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.App.4th at 1802. Indeed, the law favors settlement of lawsuits, particularly complex litigation cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008);.

i. The PAGA Settlement is a Result of Extensive, Non-Collusive Arm’s Length Negotiations Between the Parties

Settlement of the PAGA claims was reached only after substantial investigations, litigation, and extensive arm’s length negotiations lasting nearly 18 months which included a full day mediation and resolution through continued negotiations with the help of a mediator. *See* Decl. Berzin, ¶ 8. At all times, the negotiations were adversarial, although still professional in nature. *See id.*

1 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
2 **Information to Enter into an Informed and Reasonable Settlement**

3 The Parties were in possession of all necessary information during the negotiations. The Parties
4 engaged in substantial informal discovery, which included all necessary components for evaluating the
5 PAGA claims and creating an accurate damages model. *See id.* at ¶¶ 7, 9. Plaintiff was in possession
6 of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able
7 to make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the
8 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
9 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
10 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

11 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

12 Plaintiff's counsel has considerable experience in complex litigation such as class and PAGA
13 actions. *See Decl. Berzin*, ¶¶ 12-16. Thus, Plaintiff's counsel are qualified to evaluate the PAGA
14 claims, the value of settlement versus moving forward with litigation, and viability of possible
15 affirmative defenses. Plaintiff's counsel believe that the PAGA Payment allocation and waiver of
16 PAGA claims is fair, reasonable, and adequate in light of the risks associated with the claims, the
17 uncertainties of complex litigation, and the secured benefit to Aggrieved Employees and the LWDA that
18 the Agreement provides. *See id.*

19 **iv. The PAGA Settlement is Fair and Reasonable Based on the Strength of Plaintiff's**
20 **Case and the Risks and Costs of Further Litigation**

21 Plaintiff's claims and the manageability of the litigation proceeding as a PAGA action were
22 heavily disputed by Defendant. *See Decl. Berzin*, ¶¶ 5, 9. Based on the records and facts of this case,
23 the PAGA Payment represents approximately between 33% to 128% of the low end and 2.5% to 9.7%
24 of the high end of the more realistic range of recovery. *See Decl. Berzin*, ¶¶ 9-10. The \$50,000 Gross
25 Settlement Amount is a reasonable compromise and exceeds approved settlement ranges in other PAGA
26 cases whether comparing either absolute numbers or as a percentage of total available damages. *See*
27 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases
28 with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018
WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated

value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in representative action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed

1 on all the claims, provided there is a record that allows “an understanding of the amount that is in
2 controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

3 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
4 data points relied upon in reaching these ranges. *See* Decl. Berzin ¶¶ 4, 9-10. The record demonstrates
5 that the compromises made by Plaintiff were reasonable and have resulted in a settlement with recovery
6 percentage well within the range of what has been found to be sufficient in several other cases. *See,*
7 *supra*, Section V.b.iv; *see also* *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)
8 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
9 in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”);
10 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in
11 theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a
12 single percent of the potential recovery”).

13 VI. CONCLUSION

14 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
15 has met all statutory requirements to commence a PAGA civil action; approve the PAGA Payment
16 Allocation and waiver of PAGA claims.

17
18
19 Dated: March 9, 2023

Shimoda & Rodriguez Law, PC

20
21 By: *Brittany Berzin*
22 Galen T. Shimoda
23 Justin P. Rodriguez
24 Brittany V. Berzin
25 Attorneys for Plaintiff
26
27
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6
7
8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 LUIS GONZALEZ,

12 Plaintiff,

13 vs.

14 GENERAL PRODUCE CO., A
CALIFORNIA LIMITED PARTNERSHIP, a
15 California Limited Partnership; and DOES 1 to
100, inclusive,

16 Defendants.
17
18
19
20

Case No. 34-2022-00317208

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. 2705050

Date: April 5, 2023

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: March 22, 2022

Trial Date: None Set

1 I, Brittany V. Berzin, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Luis Gonzalez (“Plaintiff”) herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private Attorneys
5 General Act (“PAGA”) Settlement. A true and correct copy of the Joint Stipulation Regarding Class
6 Action and PAGA Settlement and Release is being filed with this Motion as Exhibit C. The terms
7 relating to the PAGA settlement are contained therein.

8 2. The PAGA settlement before the Court for review is a component of a larger class
9 action and PAGA settlement. The case is in a unique procedural posture due to the presence of
10 arbitration agreements and *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022), which was
11 pending review in the United States Supreme Court during the course of this litigation. Prior to this
12 lawsuit being filed, our office filed a hybrid wage and hour class action and PAGA lawsuit in
13 Sacramento County Superior Court on behalf of Miguel Villarruel and Jose Galvan, Case No. 34-2021-
14 0311463 (“Villarruel Action”). The Villarruel Action was originally filed on November 10, 2021, and
15 is still pending. During the course of the Villarruel Action, one of the arguments counsel for Defendant
16 General Produce Co., A California Limited Partnership (“Defendant”) made was that *Viking River*
17 *Cruises, Inc.* would impact the claims asserted in the Villarruel Action and likely reverse the
18 prohibition against arbitrating PAGA claims and/or cause the named representatives to proceed on an
19 individual basis in arbitration. In consultation with Miguel Villarruel, Jose Galvan, and Luis Gonzalez,
20 we filed this PAGA only action and also filed a petition to compel class arbitration, so that the claims
21 could proceed separately provided we were successful on the petition. We felt maintaining the separate
22 PAGA only action may help insulate those claims from arbitration, or lessen the negative effect of a
23 potentially unfavorable ruling in *Viking River Cruises, Inc.* On March 2, 2022, Plaintiff filed a petition
24 to compel Defendant to class arbitration. On March 22, 2022, Plaintiff filed this PAGA only lawsuit.
25 On May 3, 2022, the Court entered an order granting Plaintiff’s petition to compel class arbitration. A
26 true and correct copy of the May 3, 2022 order is being filed with this motion as Exhibit B. After the
27 Court granted the petition to compel class arbitration, the parties agreed to engage in an information
28 and document exchange and mediate the claims raised in the class arbitration, the Villarruel Action, and

1 this PAGA only action. The class settlement portions of the Agreement are currently proceeding
2 through preliminary and final approval procedures in class arbitration. However, pursuant to the
3 Court's May 3, 2022 order, California Labor Code section 2699(1)(2), and the Agreement, Plaintiff is
4 seeking approval of the PAGA settlement allocation and waiver of PAGA claims through this Court
5 action.

6 3. This PAGA lawsuit is based on Plaintiff's contention that Defendant failed to pay all
7 overtime, failed to provide all meal periods or pay premiums in lieu thereof, failed to all provide rest
8 periods or pay premiums in lieu thereof, failed to provide accurate wage statements, failed to timely
9 pay final wages, failed to provide all paid sick time, and the failed to comply with provisions regulating
10 hours and days of work in any industrial welfare commission order pursuant to California Labor Code
11 section 558. These claims were based allegations that Defendant violated California law by 1) failing to
12 incorporate the value of nondiscretionary remuneration, such as bonuses and incentives, into Aggrieved
13 Employees' regular rates of pay for the purpose of paying overtime and sick time; 2) failing to provide
14 Aggrieved Employees with meal periods beginning before their fifth hour of work; 3) failing to provide
15 Aggrieved Employees with second meal periods when they worked shifts over 12 hours; 4) failing to
16 provide Aggrieved Employees with meal periods altogether in some instances; and 5) failing to
17 authorize and permit all rest periods. The waiting time and wage statement claims are derivative. A
18 true and correct copy of Plaintiff's operative Complaint is being filed with this Motion as Exhibit A.

19 4. From our initial investigations of the claims and documents, we believed these claims
20 had merit and could be maintained as a PAGA action. These investigations began to take place as far
21 back as June 2021, meeting with Miguel Villarruel to discuss the potential violations and review of
22 documents. The investigations continued and also included discussions with Luis Gonzalez and Jose
23 Galvan. The Labor Code violations the PAGA claims are based on are the same facts alleged in the
24 class arbitration and the Villarruel Action. Plaintiff filed this lawsuit on March 22, 2022. Plaintiff
25 exhausted administrative remedies through the Labor and Workforce Development Agency ("LWDA")
26 prior to filing the Complaint in order to pursue penalties under the PAGA. Plaintiff filed a notice with
27 the LWDA on January 5, 2022, setting forth the facts and theories of liability. A true and correct copy
28 of the notice filed with the LWDA is being filed with this Motion as Exhibit D. This notice amended a

1 previous notice that was filed November 9, 2021, by adding Plaintiff as a named representative. Copies
2 of the notices were sent to Defendant via certified mail and the \$75.00 filing fee was remitted to the
3 LWDA. There was no response by the LWDA regarding its intent to investigate the claims alleged in
4 the notices. As such, Plaintiff became authorized to commence a civil action under the PAGA. A copy
5 of the Complaint was uploaded to the LWDA shortly after we received a file stamped copy back from
6 Court. No trial date has been set in this matter.

7 5. Defendant is represented in this matter by Palmer Kazanjian Wohl Hodson LLP. From
8 the beginning, Defendant has contested the merits of this case, the manageability of the case at trial,
9 and Plaintiff's ability to prove a violation in each pay period for each employee among other defenses
10 and contentions they made challenging the propriety of this action. Defendant further contended that,
11 even assuming there was a finding supporting the imposition of PAGA penalties, the Court would
12 likely exercise its discretion to substantially reduce any such penalties owed based on evidence of good
13 faith attempts to comply with Labor Code obligations by Defendant. Notwithstanding its agreement to
14 settle this matter, Defendant contends it fully comply with all state and federal employment laws with
15 respect to Plaintiff and Aggrieved Employees.

16 6. Based on the expected testimony from Plaintiff and Aggrieved Employees, a review of
17 Defendant's policies and procedures and other documents relating to the alleged claims, information
18 regarding the number of pay periods worked by Aggrieved Employees, a representative sample of
19 payroll data, the scope of the potential penalties at issue in light of the claims alleged, the Court's
20 statutorily authorized discretion to reduce any penalties assessed, and the negotiations that have taken
21 place, I believe that the proposed PAGA payment allocation and waiver of claims is in the best interest
22 of Aggrieved Employees affected by the Agreement and the LWDA. The length and risks of trial and
23 other normal perils of complex litigation that impact the value of the claims were also considered and
24 weighed in reaching the proposed settlement. These risks were also exacerbated in this case in that it
25 would have been necessary for Plaintiff to litigate the existence of violations for numerous individual
26 Aggrieved Employees in each pay period that they worked. In addition, I carefully considered the
27 difficulties of complex litigation, and the lengthy process of establishing specific damages and various
28 possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that

1 penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was
2 successful on proving those claims and there was risk that a Court could find no willfulness in the failure
3 to pay wages at separation, which would eliminate the value of the waiting time penalty entirely.
4 Overall, I believe it is more beneficial to secure a guaranteed benefit to Aggrieved Employees and the
5 LWDA now rather than to proceed with litigation and potentially obtain zero funds due to legal or
6 factual issues.

7 7. My office, including the partners, Galen T. Shimoda and Justin P. Rodriguez, our
8 paralegal, and myself, along with Plaintiff's, Miguel Villarruel's, and Jose Galvan's assistance,
9 thoroughly investigated the merits of the claims and potential damages for such claims. Because the
10 mediation was aimed at resolving the class arbitration, the Villarruel Action, and this PAGA only action,
11 the information and data exchange covered more than just the PAGA Claim Period. The parties
12 engaged in informal discovery, including a random sample of employee time and pay records consisting
13 of nearly 25,000 rows of data regarding approximately 99 Class Members (approximately 20% of the
14 total group), relevant policies and procedures for the entirety of the statute of limitations applicable to
15 the alleged claims, and information about Class Members, including information about their job
16 positions, total workweeks, total pay periods, average hours worked per day, average hourly rate of pay,
17 and the number of former employees. This included the total number of pay periods within the PAGA
18 Claim Period and the total number of former employees within the PAGA Claim Period. In addition, we
19 interviewed several employees and obtained their personnel files. We also reviewed documents
20 obtained by Plaintiff, Miguel Villarruel, and Jose Galvan, including their personnel files, time and pay
21 records, job descriptions, arbitration agreements, and employment agreements. The discovery covered
22 all aspects of the asserted claims, including merits issues, damages, the scope and configuration of
23 Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues
24 relating to manageability concerns at trial, among other relevant areas. From this production we were
25 able to determine information critical to a reliable damages analysis. This information allowed my
26 office to assess both liability and damages and create an accurate damages model. Plaintiff, Miguel
27 Villarruel, and Jose Galvan assisted in all aspects of this litigation including providing factual
28

1 information relating to employment conditions, providing witness information, providing a substantial
2 number of documents, and answering questions regarding Defendant's factual contentions in this matter.

3 8. Throughout this litigation our office had numerous communications with Defendant's
4 Counsel discussing our respective positions. We participated in a global mediation on October 18,
5 2022, using an experienced mediator, Hon. Ronald M. Sabraw (Ret.). We did not settle on the day of
6 mediation, but continued to discuss the claims and negotiate for several months thereafter until we were
7 able to settle the claims in January 2022. It was only after nearly 18 months of extensive
8 investigations, arm's length negotiations, litigation, a full day mediation, and post mediation
9 negotiations facilitated by the mediator that the parties were able to reach a settlement. The
10 negotiations were at all times contentious and adversarial, though still professional in nature.

11 9. The following represents the potential maximum recovery for Plaintiff's PAGA claims
12 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,
13 including the sample of payroll records. We also interviewed several employees, covering their work
14 experiences in relation to the asserted claims and utilizing that information in conducting a merits and
15 damages analysis. Because there was a subset of non-exempt employees within the PAGA Claim
16 Period (employees who only worked as drivers with a Class A or B driver's license) that were subject
17 to several exemptions for overtime and meal and rest period protections under federal law, they were
18 ultimately excluded from the scope of Aggrieved Employees. *See, e.g., IWC Wage Order No. 9,*
19 *Section 3(L); see also Collins v. Overnite Transp. Co.* 105 Cal.App.4th 171 (2003) (noting the motor
20 carrier exemption's application to California overtime requirements as set forth in the wage orders).
21 There was a total of 16,000 pay periods and 287 former employees within the PAGA Claim Period.
22 Additionally, based on our research, we did not find any prior Labor Commissioner or court decisions
23 that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may
24 not be found for penalty calculation purposes, and the exposure analysis here is based on an "initial
25 violation" valuation being adopted by any fact finder if this matter went to trial. *See Amaral v. Cintas*
26 *Corp. No. 2,* 163 Cal.App.4th 1157, 1207-1209 (2008). This information was used to provide the
27 following analysis:
28

1 a) Count One - Overtime: This portion of the PAGA claim is based on allegations that
2 Aggrieved Employees were paid bonuses or incentives that were not included in their
3 regular rates of pay for the purpose of calculating overtime wages owed. At the time of
4 mediation, the maximum possible damages for this portion of the PAGA claim based on
5 Defendant's time and payroll records was \$73,600.00. Only approximately 9.2% of all
6 pay periods had some type of bonus and/or incentive pay as well as overtime. This
7 amount does not take into account any potential risks with respect to proving the merits
8 or damages. Defendant contended that to the extent bonuses and incentives should have
9 been characterized as nondiscretionary, the alleged violation was corrected by
10 November 2021, whereas Plaintiff calculated the damages as continuing to October
11 2022. Furthermore, it is disputed whether the overtime premiums owed on the bonus
12 should have been paid at 1.5x the regular rate or .5x the regular rate as it was a
13 production bonus. Although the penalty amount is set by statute, the difference in
14 calculation would have an impact because it is unlikely that the full penalty amount
15 would be awarded when the actual substantive loss was nominal in comparison. Taking
16 these factors into account, a more realistic range of recovery for this claim is
17 \$36,800.00. to \$44,160.00.

18 b) Count Two - Meal Periods: This portion of the PAGA claim is based on allegations that
19 Aggrieved Employees were not provided all legally compliant meal periods, did not
20 begin all meal periods before the completion of their fifth hour of work, and did not
21 receive all second meal periods for shifts longer than 12 hours. At the time of
22 mediation, the maximum possible damages for this claim based on Defendant's time and
23 payroll records was \$800,000.00. Based on the data, at least one unique meal period
24 violation occurred in 37% of all shifts and 97% of all shifts were greater than five hours.
25 Because Aggrieved Employees worked approximately four shifts per week, the unique
26 violation rate translates into at least one violation per weekly pay period. However,
27 several of the theories supporting meal period violations were subject to substantial
28 disputes and risk. For example, Defendant maintained facially valid written meal period

1 policies during the relevant period that were provided to employees. Additionally,
2 second meal period waivers for shifts in excess of ten hours but less than 12 hours where
3 the first meal period was not also waived were entered into by Aggrieved Employees.
4 Although the time records did show non-compliant meal periods occurred, they also
5 showed a substantial number of compliant meal periods occurring. This presented a
6 substantial risk for the claim based on late first meal periods. Because of the facially
7 valid policy and the large number of compliant meal periods, it could be found that
8 individual inquiry would be needed to determine why meal periods were missed, which
9 could be deemed reason to find the PAGA claim unmanageable. Eliminating late first
10 meal period violations would reduce the potential violation rate to 4% to 11%, which are
11 the time where there was either no meal period recorded or no second meal period
12 recorded where the Aggrieved Employee worked in excess of 12 hours. It is extremely
13 unlikely that a Court would award 100% of the potentially available penalty where the
14 actual violation rate only occurred at rates ranging from 4%-37% within a given pay
15 period. Taking these factors into account, a more realistic range of recovery for this
16 claim is \$32,000.00 to \$296,000.00.

- 17 c) Count Three - Rest Periods: This portion of the PAGA claim is based on allegations that
18 Aggrieved Employees were not provided all legally compliant rest periods. At the time
19 of mediation, the maximum possible damages for this claim based on Defendant's
20 payroll records was \$1,600,000.00. Based on the data and interviews with employees,
21 this violation occurred in approximately 15% of all shifts. Similar to the meal period
22 claims, Defendant maintained facially valid written rest period policies during the
23 relevant period that were provided to Aggrieved Employees. It contends that due to its
24 legally compliant policy, Aggrieved Employees had the opportunity to take all legally
25 required rest periods. Although the risks for this claim are similar to the meal period
26 claims, the rest period claims do not benefit from any violation presumption based on
27 the time records like meal period claims do. There is no obligation for employers to
28 keep records of when rest periods are taken by employees. Thus, Defendant's

1 contention that individual inquiry into why Aggrieved Employees did not receive rest
2 periods would be necessary and may entirely preclude this claim from reaching trial due
3 to manageability issues. Again, it is unlikely that a Court would award 100% of the
4 potentially available penalty where the actual violation rate was much lower. Taking
5 these factors into account, a more realistic range of recovery for this claim is \$0 to
6 \$240,000.00.

7 d) Count Four - Wage Statements: This portion of the PAGA claim is derivative of the
8 claims above. It is based on allegations that Defendant failed to provide accurate wage
9 statements including the accurate amount of gross and net wages earned, meal and rest
10 period premiums earned, and accurate hourly rates in effect. At the time of mediation,
11 the maximum possible damages for this claim based on Defendant's payroll records was
12 \$4,000,000.00. Because this claim is derivative, the same risks identified for Plaintiff's
13 overtime, meal period, rest period claims apply here. Moreover, this calculation
14 assumes a violation in 100% of pay periods although the alleged claims above had
15 maximum violation rates well below 100% (e.g., 9.2%-37%). Furthermore, the
16 calculation valued civil penalties for wage statement violations under Labor Code
17 section 226.3 (which provides the civil penalty amount is \$250 per violation) instead of
18 the \$100 per violation default penalty under Labor Code 2699(f), which results in a
19 reduction to \$1,600,000.00. Taking these factors into account, a more realistic range of
20 recovery for this claim is \$147,200.00 to \$1,480,000.00.

21 e) Count Five - Waiting Time: This portion of the PAGA claim is derivative of the claims
22 above. It is based on allegations that Defendant failed to pay all overtime, meal
23 premiums, rest premiums, and sick pay to employees after their termination or
24 separation. At the time of mediation, the maximum possible damages for this claim
25 based on the number for formerly employed Aggrieved Employees within the statutory
26 period was \$1,594,744.20. Because this claim is derivative, the same risks identified for
27 Plaintiff's overtime, meal period, rest period, and sick pay claims apply here. Thus, due
28 to the lower violation rates tied to a more realistic view of the claims, there is substantial

1 risk than less than 100% of individuals will be found to be owed waiting time penalties.
2 In fact, if looking at the strongest claim for wage loss, the overtime regular rate of pay
3 claim, only approximately 49% of all employees were affected. This alone would
4 reduce the waiting time penalties to approximately \$781,424.66. Furthermore, the
5 calculation valued civil penalties for failure to pay final wages under Labor Code section
6 256 (which provides the civil penalty amount will not exceed 30 days' pay as waiting
7 time under the terms of Section 203) instead of the \$100 per violation default penalty
8 under Labor Code 2699(f), which would have reduced the maximum civil penalties to
9 \$28,700.00. Additionally, there is substantial risk that the arguments Defendant put
10 forth in contesting the claims would provide it with a good faith affirmative defense,
11 which would eliminate the value of this claim entirely. *See Diaz v. Grill Concepts*
12 *Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Taking these factors into account, a more
13 realistic range of recovery for this claim is \$0 to \$781,424.66.

14 f) Count Six – Violation of Labor Code 558: The primary purpose behind this claim is to
15 enable the potential for individual liability if Defendant were to become insolvent or
16 claim financial distress during litigation. Because all claims arising under this series in
17 the Labor Code are already separately valued as outlined above, there is no additional
18 amount of penalties associated with this portion of the PAGA claim.

19 g) Count Seven - Sick Time: This claim is based on allegations that employees were paid
20 bonuses or incentives that were not included in their regular rates of pay for the purpose
21 of calculating paid sick time wages. Because only restitutionary, injunctive, and/or
22 declaratory relief is available for these types of claims, there is no additional amount of
23 civil penalties associated with this portion of the PAGA claim. Regardless, the
24 maximum possible damages for the substantive violation based on the payroll records
25 was only \$167.90.

26 10. In addition to the risks on the merits and disputes regarding the proper valuation of the
27 penalty amounts, I believe the Court may exercise its discretion to reduce PAGA penalties in this case
28 because a majority of the civil penalties sought would be in addition to amounts owed for substantive

1 violations, some of the violations are due to technical non-compliance with the Labor Code, such as
2 derivative wage statement violations, and Defendant produced legally compliant policies among other
3 documents, that a Court may find demonstrates a good faith attempt at compliance. Courts are
4 statutorily authorized to use discretion to reduce penalties and the range of discretion used varies
5 substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
6 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82%
7 reduction). The 82% reduction equates to roughly \$9-\$50 worth of civil penalties per pay period per
8 employee depending on the total potential value of the civil penalty (*i.e.*, \$50-\$250), which is more in
9 line with actual awards based on my experience and review of awards in other cases. Thus, even if
10 using the maximum values possible and setting aside risks of proving the claims on the merits, the total
11 exposure may be cut to approximately \$1,193,101.96 (82% reduction) to \$4,639,840.94 (30%) or
12 lower. Given the substantial risks associated with the claims, we believe the amount that might
13 ultimately be awarded under the PAGA would be significantly lower than our maximum exposure
14 calculation. Using a more realistic range of recovery that accounts for the disputed PAGA penalty
15 values and risks associated with the merits would lower the potential exposure further to \$38,880 to
16 \$511,485.24 on the lower end (82% reduction) and \$151,200 to \$1,989,109.26 on the higher end (30%
17 reduction).

18 11. I believe the PAGA payment allocation of \$50,000 represents a reasonable compromise
19 of the PAGA claims based on the legal and factual disputes in this case, especially in light of amounts
20 that Courts have approved as reasonable valuations in other cases. *See Junkersfeld v. Med. Staffing*
21 *Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement
22 values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D.
23 Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no
24 recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000
25 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or
26 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS
27 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement);
28 *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500

PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

12. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda & Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working on individual, class action and PAGA employment cases throughout law school. I also participated in an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour, discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation, and wrongful termination, etc.), preparing wage claims, and providing representation in wage claims before the California Labor Commissioner. From 2016-2017, I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and defended a client against five misdemeanor charges in a jury trial in the United States District Court for The Eastern District of

California. I was also a member of the nationally recognized McGeorge Mock Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in 2021. I have over seven years of experience working on civil litigation and employment law matters. Most of that experience has been specific to analyzing and litigating wage and hour claims. As an associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach of contract, independent contractor misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhausen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156 (Sac. Sup. Ct.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);

- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreya v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Neufield v. Professional Transportation, Inc.*, Case No. 34-2021-00309849 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);

- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

13. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

14. Justin P. Rodriguez, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the Philosophy program. He was one of only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge. Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

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1 15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
2 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
3 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
4 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr.
5 Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour
6 litigation in general and complex class and PAGA litigation in particular. These engagements include
7 the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California
8 (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense
9 Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers
10 Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any
11 Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and
12 Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento
13 County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association
14 Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive
15 committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law
16 Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses
17 on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor
18 Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation handled by
19 our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited
20 to, the following:

- 21 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 22 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 23 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 24 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 25 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
26 (San Joaquin Sup. Ct.);
- 27 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 28 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);

- 1 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
2 Sup. Ct.);
- 3 • *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
4 Ct.);
- 5 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 6 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
7 00271174 (Sac. Sup. Ct.);
- 8 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
9 Ct.);
- 10 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
11 Ct.);
- 12 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
13 Sup. Ct.);
- 14 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 15 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
16 Ct.);
- 17 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 18 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
19 00209613 (Sac. Sup. Ct.);
- 20 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 21 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
22 00222101 (Sac. Sup. Ct.);
- 23 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 24 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 25 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 26 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 27 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 28 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.

1 Ct.);

- 2 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 3 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 4 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 5 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 6 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 7 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 8 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 9 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 10 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 11 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 12 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 13 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 14 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 15 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 16 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 17 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-
18 EFB (E.D. Cal.);
- 19 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 20 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 21 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 22 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
23 00082201 (Sac Sup. Ct.);
- 24 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 25 • *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 26 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 27 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 28 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);

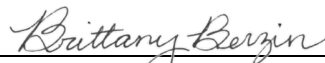
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

16. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

17. A copy of the proposed Agreement and the entire Motion to Approve the PAGA Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit F.

18. A true and correct copy of the proposed Notice of Settlement to be distributed to Aggrieved Employees informing them of the settlement and all material terms is being filed with this Motion as Exhibit E.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 9, 2023 in Sacramento, California.



Brittany V. Berzin

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5 Attorneys for Plaintiff LUIS GONZALEZ
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7
8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 LUIS GONZALEZ,

12 Plaintiff,

13 vs.

14 GENERAL PRODUCE CO., A
15 CALIFORNIA LIMITED PARTNERSHIP, a
16 California Limited Partnership; and DOES 1 to
100, inclusive,

17 Defendants.
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21
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Case No. 34-2022-00317208

**DECLARATION OF LUIS GONZALEZ IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Reservation No. 2705050

Date: April 5, 2023

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: March 22, 2022

Trial Date: None Set

1 I, Luis Gonzalez, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion To Approve Private Attorneys General Act Settlement.

5 2. I worked for Defendant General Produce Co., A California Limited Partnership
6 ("Defendant") from approximately May 11, 2020, to August 9, 2021, as a non-exempt employee. I was
7 subject to all of Defendant's policies and practices that have been alleged as unlawful in the complaint
8 and the notice sent to the Labor and Workforce Development Agency ("LWDA"), including the
9 following: failure to pay all overtime, failure to provide all meal periods or pay premiums in lieu
10 thereof, failure to all provide rest periods or pay premiums in lieu thereof, failure to provide accurate
11 wage statements, failure to timely pay final wages, and failure to provide all paid sick time.

12 3. I have actively participated in the litigation of the claims at issue in this case for the
13 benefit of all Aggrieved Employees and the LWDA. On November 10, 2021, prior to this lawsuit
14 being filed, Miguel Villarruel and Jose Galvan filed a class action and Private Attorneys General Act
15 ("PAGA") lawsuit against Defendant in Sacramento County Superior Court, Case No. 34-2021-
16 00311463, which is still pending. Although not a named representative in that case, I assisted in
17 providing information and documents related to the claims. Ultimately, I decided to also become a
18 named representative and pursue class arbitration on the same claims to address and combat arguments
19 Defendant's counsel was making regarding arbitration agreements and the impact they had on the
20 claims. I also filed this separate, PAGA only complaint against Defendant based on the same
21 violations. From the beginning, I have participated in the litigation of this case for the benefit of
22 Aggrieved Employees and the LWDA to help ensure a positive outcome. My attorneys explained to
23 me the risks and benefits of bringing a representative action. I understood that pursuing the case as a
24 representative action meant that it would take substantially longer than pursuing my claims
25 individually, and that I risked getting nothing in the end, but I believed it was important to make sure
26 that Defendant followed the law for everyone. I understood that I took on the risk, both professionally
27 and financially, in pursuing the case as a representative action rather than pursuing my claims
28 individually.

4. During the course of this litigation, I have given detailed accounts of all the facts related to my employment. I also searched for any documents I had related to the claims and worked with my attorneys to obtain my personnel file. I have had several discussions with my attorneys to help them understanding documents produced by Defendant and provide detailed information about Defendant's employment policies and practices as they applied to me and how I believed they applied to Defendant's other employees. For example, I gave detailed information about bonus or incentive payments I received and the criteria for receiving the payments. I also gave detailed information about Defendant's meal and rest period policies and practices, how I learned the policies, what was communicated to me about meal and rest periods by Defendant, and my experience with respect to meal and rest periods during my employment. In addition, I gave information to my attorneys about the type of business Defendant runs, my experience on a typical day working for Defendant, information about Defendant's scheduling, timekeeping, and payroll policies and practices, and how those policies and practices affected myself and other employees. My attorneys also asked me questions related to the time and payroll data sample that was produced as part of informal discovery for mediation.

5. I participated in the negotiations and settlement discussions in this case, including participating in mediation by phone, speaking with my attorneys to answer questions, provide any additional information needed to assist the negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy. Throughout the course of this litigation I have asked questions when I needed clarification about various aspects of this case to make sure there were continually steps taken to advance the interests of Aggrieved Employees and the LWDA. I believe the PAGA allocation and waiver of the PAGA claim under the Agreement are fair and reasonable given the facts of the case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 3/9/2023 in Sacramento, California.

DocuSigned by:

Luis Gonzalez

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32EF80FD40B Luis Gonzalez

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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5 Attorneys for Plaintiff LUIS GONZALEZ
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 LUIS GONZALEZ,

12 Plaintiff,

13 vs.

14 GENERAL PRODUCE CO., A
15 CALIFORNIA LIMITED PARTNERSHIP, a
16 California Limited Partnership; and DOES 1 to
100, inclusive,

17 Defendants.
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22
23

Case No. 34-2022-00317208

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Reservation No. 2705050

Date: April 5, 2023

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: March 22, 2022

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Plaintiff's Operative Complaint
B	May 3, 2022 Order Granting Plaintiff's Petition to Compel Class Arbitration
C	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
D	Plaintiff's Letter to the Labor and Workforce Development Agency
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: March 9, 2023

Shimoda & Rodriguez Law, PC

By: *Brittany Berzin*
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

03/22/2022

Ibaldwin1

By _____, Deputy

Case Number:

34-2022-00317208

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Justin P. Rodriguez (Cal. State Bar No. 278275)
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5 Attorneys for Plaintiff LUIS GONZALEZ
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 **LUIS GONZALEZ,**

12 **Plaintiff,**

13 **vs.**

14 **GENERAL PRODUCE CO., A**
15 **CALIFORNIA LIMITED PARTNERSHIP, a**
16 **California Limited Partnership; and**
DOES 1 to 100, inclusive,

17 **Defendants.**
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Case No.

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

1 Plaintiff LUIS GONZALEZ ("Plaintiff"), on behalf of himself and all other Aggrieved
2 Employees, hereby file this Complaint against Defendants GENERAL PRODUCE CO., A
3 CALIFORNIA LIMITED PARTNERSHIP, a California Limited Partnership; and DOES 1 to 100,
4 inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
5 Plaintiff alleges the following:

6 INTRODUCTION

7 1. This is a representative Private Attorneys General Act ("PAGA") lawsuit brought by
8 Plaintiff for failure to provide overtime wages, meal and rest period violations, wage statement
9 violations, unpaid sick time, and waiting time penalties.

10 JURISDICTION AND VENUE

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
13 Labor Code, and Wage Order No. 13.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
15 Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law
16 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
17 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
18 (1984).

19 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
20 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
21 and other Aggrieved Employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written notice
22 via online submission to the Labor and Workforce Development Agency ("LWDA"). Plaintiff provided
23 facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the
24 Private Attorneys General Act cause of action. The \$75.00 filing fee was also paid. The notice was also
25 sent via certified mail to Defendants on the same day. Plaintiff is informed and believes, that the
26 LWDA did not provide any response to Plaintiff's notice correspondence and that it has been more than
27 65 days since his notice correspondence was sent to the LWDA. Accordingly, Plaintiff is informed and
28 believes that he has exhausted all administrative remedies pursuant to the Private Attorneys General Act

1 and may bring this action on behalf of himself and all Aggrieved Employees. See Cal. Labor Code §
2 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
3 (2005). Aggrieved Employees includes all non-exempt employees who have, or continue to, perform
4 work for Defendants in California from November 9, 2020 to the present.

5 PARTIES

6 5. Plaintiff LUIS GONZALEZ is an individual over the age of eighteen (18) and is a
7 resident of the State of California.

8 6. On information and belief, Plaintiff alleges, GENERAL PRODUCE CO., A
9 CALIFORNIA LIMITED PARTNERSHIP, is now and/or at all times mentioned in this Complaint
10 was a California Limited Partnership and the owner and operator of an industry, business and/or
11 facility doing business in the State of California.

12 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
13 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
14 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
15 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
16 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
17 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
18 Plaintiff.

19 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
20 other Defendants and was acting within the course and scope of such agency or employment. The
21 Defendants are jointly and severally liable to Plaintiff.

22 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
23 were members of and/or engaged in a joint employment, joint venture, partnership and common
24 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
25 joint venture, partnership and common enterprise.

26 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
27 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.
28

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as though fully set forth herein.

13. Defendants operate a business that packages and transports produce. Plaintiff worked for Defendants from approximately May 11, 2020 to August 9, 2021 as an hourly, non-exempt employee.

14. Plaintiff and Aggrieved Employees regularly worked ten (10) to twelve (12) hours in a day or more and/or over forty (40) hours in a week. Plaintiff and Aggrieved Employees were also paid non-discretionary remuneration, such as incentives and bonuses for arriving on time to work, packing a certain number of boxes of produce per day, and getting trucks out quickly with produce without any delays. Defendants failed to incorporate the value of this non-discretionary remuneration into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages and paid sick time.

15. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Plaintiff and Aggrieved Employees did not receive all uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction thereof. Defendants required Plaintiff and Aggrieved Employees to clock out before their fifth hour of work for meal periods regardless of whether they were able to take a meal period at that time or not. Sometimes Plaintiff and Aggrieved Employees were able to take a meal period later in the day and other times meal periods were missed entirely or did not last a full thirty (30) minutes. Additionally, Plaintiff and Aggrieved Employees worked over ten (10) or twelve (12) hours in a day without being authorized and permitted to take a second meal period or third rest period. Defendants did not pay Plaintiff and Aggrieved Employees missed meal or rest period premiums.

16. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, paid sick time, and meal and rest period premiums owed, the wage statements Defendant issued were inaccurate. The paystubs Defendants issued did not itemize accurate regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. As

1 a result, Plaintiff and Aggrieved Employees were not able to determine the total wages owed to them
2 from their paystubs alone.

3 17. As of the date of this Complaint being filed, Defendants have not paid Plaintiff and
4 Aggrieved Employees all overtime wages, paid sick time, and meal and rest period premiums owed to
5 them.

6 **CAUSES OF ACTION**
7 **FIRST CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(As to all Defendants)**

10 18. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 17 as though fully
11 set forth herein.

12 19. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
13 following provisions of the Labor Code in their dealings with him and other Aggrieved Employees:

- 14 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 13, § 3 (Failure to Pay
15 Overtime Wages)
- 16 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
17 Statements)
- 18 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 19 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
20 Work in Any Industrial Welfare Commission Order)
- 21 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 13, §§ 11(A) and 11(B)
22 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 23 • Violation of Labor Code § 226.7; IWC Wage Order 13, § 12(A) (Failure to Provide
24 Rest Periods or Pay Premiums in Lieu Thereof)
- 25 • Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

26 20. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no
27 civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

28 21. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections
2699(a) and 2699.3.

1 **DAMAGES**

2 WHEREFORE Plaintiff requests relief as follows:

3 1. **As to the First Cause of Action:**

- 4 a. For civil penalties as provided for in the Labor Code for each enumerated
5 violation in an amount proven at trial;
- 6 b. For those Labor Code sections, the violation of which there is no civil penalty
7 provided, the default penalty provided in Labor Code section 2699(f): for any
8 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
9 period; For any subsequent violation, two hundred dollars (\$200) for each
10 aggrieved employee per pay period;
- 11 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- 12 d. For any other remedies as allowed by law and/or deemed appropriate by the
13 Court.

14
15 Dated:

Shimoda & Rodriguez Law, PC

16
17 By: 

18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Brittany V. Berzin
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

EXHIBIT B

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 05/03/2022

TIME: 09:00:00 AM

DEPT: 54

JUDICIAL OFFICER PRESIDING: Christopher Krueger

CLERK: G. Toda

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: N. Alvi, J. Reilly

CASE NO: **34-2022-00316218-CU-PT-GDS** CASE INIT.DATE: 03/02/2022

CASE TITLE: **Gonzalez vs. General Produce Co., A California Limited Partnership**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Petition to Compel Arbitration - Civil Law and Motion

APPEARANCES

Nature of Proceeding: Petition to Compel Class Arbitration

TENTATIVE RULING

Petitioner Luis Gonzalez' ("Petitioner") petition to compel responded General Produce Co., a California Limited Partnership ("Respondent") to class arbitration pursuant to the terms of the class arbitration agreement is UNOPPOSED and GRANTED.

This is a wage and hour case arising out of Petitioner's employment with Respondent. Petitioner worked for Respondent as an hourly, non-exempt employee from May 11, 2020, to August 9, 2020. When Petitioner applied for the job, the employment application he filled out contained an arbitration provision. (Gonzalez Decl. ¶ 3, Exh. A (Employment Application).) The application is in Spanish, but Petitioner states the terms are not relevant to this petition because after Petitioner was hired, on or about May 11, 2020, he entered into a second arbitration with Respondent that superseded any prior agreement. (Gonzalez Decl. ¶ 4, Exh. B (Arbitration Agreement).)

The relevant provisions of the Arbitration Agreement (the "Agreement") state:

"To resolve employment disputes in an efficient and cost-effective manner, you and General Produce Co. agree that any and all claims arising out of or related to your employment that could be filed in a court of law, including but not limited to, claims of unlawful harassment or discrimination, wrongful demotion, defamation, wrongful discharge, breach of contract, invasion of privacy, or class action shall be submitted to final and binding arbitration, and not to any other forum." (Gonzalez Decl. ¶ 4, Exh. B, ¶ 1.)

"This agreement sets forth the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements and understandings, whether written, oral or implied, pertaining to the subject matter of this agreement." (Gonzalez Decl. ¶ 4, Exh. B, ¶ 7.)

"THIS ARBITRATION AGREEMENT IS A WAIVER OF ALL YOUR RIGHTS TO A CIVIL JURY TRIAL OR PARTICIPATION IN A CIVIL CLASS ACTION LAWSUIT FOR CLAIMS ARISING OUT OF YOUR

EMPLOYMENT. TO THE EXTENT REQUIRED BY APPLICABLE LAW, THIS WAIVER EXCLUDES CLAIMS MADE PURSUANT FROM THE PRIVATE ATTORNEYS GENERAL ACT (PAGA)." (Gonzalez Decl. ¶ 4, Exh. B, ¶ 8.)

Petitioner seeks to represent in arbitration a putative class of all non-exempt employees who have, or continue to, work for Respondent in California from January 31, 2018, to the present, who entered into arbitration agreements with Respondent. (Exh. E (Petitioner's Class Arbitration Complaint).) Petitioner alleges claims for failure to pay overtime, failure to provide meal and rest periods, failure to provide accurate wage statements, waiting time penalties, and unfair competition.

On January 31, 2022, Petitioner made a demand to Respondent for class arbitration. (Shimoda Decl. ¶ 2, Exh. C.) On February 4, 2022, Respondent provided a response and stated it did not dispute the existence of the Agreement, or that Petitioner's individual claims were covered, but contested Petitioner's ability to compel arbitration on a class wide basis. (Exh. D.)

As a result, Petitioner now moves to compel Respondent into class arbitration pursuant to the Agreement.

"Under both federal and state law, the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate." (*Sparks v. Vista Del Mar Child and Family Svcs.* (2012) 207 Cal.App.4th 1511, 1517.) "Absent a clear agreement to submit disputes to arbitration, courts will not infer that the right to a jury trial has been waived." (*Id.* at 1518.) "A party seeking to compel arbitration has the burden of proving the existence of a valid agreement to arbitrate." (*Id.*) "Once that burden is satisfied, the party opposing arbitration must prove by a preponderance of the evidence any defense to the petition." (*Id.*)

On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy, the Court shall order the petitioner and the respondent to arbitrate the matter if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) the right to compel arbitration was waived by the petitioner; (b) grounds exist for the revocation of the agreement; or, (c) a party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. (CCP § 1281.2; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.)

"Although California has a strong policy favoring arbitration, the courts recognize that the right to pursue claims in a judicial forum is a substantial right and one not lightly to be deemed waived. Because the parties to an arbitration clause surrender this substantial right, the general policy favoring arbitration cannot replace an agreement to arbitrate. Thus, the right to compel arbitration depends upon the contract between the parties, and a party can be compelled to submit a dispute to arbitration only where that party has agreed in writing to do so." (*Smith v. Microskills San Diego L.P.* (Cal.App.4th Dist. 2007) 153 Cal. App. 4th 892, 896.) "'There is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate'" (*Bouton v. USAA Casualty Ins. Co.* (2008) 43 Cal.4th 1190, 1199; accord, *Zavala v. Scott Brothers Dairy, Inc.* (2006) 143 Cal.App.4th 585, 590.)

Petitioner contends the explicit language in the Agreement states class action claims shall be submitted to final and binding arbitration and the Third District Court of Appeal evaluated a nearly identical provision in *Garner v. Inter-State Oil Co.* (2020) 52 Cal.App.5th 619 and found the agreement explicitly provide for arbitration of class claims. In *Garner*, the arbitration agreement provided: "To resolve employment disputes in an efficient and cost-effective manner, you and Inter-State Oil Co. agree that any and all claims arising out of or related to your employment that could be filed in a court of law, including but not limited to, claims of unlawful harassment or discrimination, wrongful demotion,

defamation, wrongful discharge, breach of contract, invasion of privacy, or class action shall be submitted to final and binding arbitration, and not to any other forum." The second relevant sentence appears in bold lettering just above the signature lines, and states: "**This Arbitration Agreement Is A Waiver Of All Rights To A Civil Jury Trial Or Participation In A Civil Class Action Lawsuit For Claims Arising Out Of Your Employment.**" (*Garner, supra*, 52 Cal.App.5th at 623-624.) The parties disputed whether there was an agreement to arbitrate class claims and whether the right to submit the class claims to arbitration was waived. The Court of Appeal found the arbitration agreement contained an express agreement to arbitrate class action claims as it provided: "To resolve employment disputes you and Inter-State Oil Co. agree that any and all claims ... that could be filed in a court of law, including but not limited to ... class action shall be submitted to final and binding arbitration, and not to any other forum." (*Ibid.*) The Court of Appeal further concluded the waiver sentence specifically stated the agreement was a waiver of the right to participate in a class action *lawsuit*, there was no indication the word "lawsuit" intended to apply to both court actions and arbitration claims, and when read as a whole, the agreement was one to arbitrate all claims, including class claims, with a notice at the end of the agreement that it is a waiver of all jury trials and class action lawsuits. (*Ibid.*)

The provision at issue here is similar to *Garner*. The Agreement expressly states "To resolve employment disputes ... you and General Produce Co. agree that any and all claims ... that could be filed in a court of law, *including* but not limited to ... class action shall be submitted to final and binding arbitration, and not to any other forum." (Exh. B, ¶ 1.) In addition, like *Garner*, the waiver sentence at the end of the Agreement only waives Petitioner's right to participate in a "civil class action *lawsuit*," not participate in any class action claim. (Exh. B, ¶ 8.) Third District Court of Appeal case of *Garner* is binding authority, and the Court agrees with Petitioner.

The motion to compel class arbitration is GRANTED.

The civil action is STAYED pending resolution of the arbitration.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.

EXHIBIT C

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Justin P. Rodriguez (Cal. State Bar No. 278275)
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10 Attorneys for GENERAL PRODUCE CO.,
11 A CALIFORNIA LIMITED PARTNERSHIP

12
13 LUIS GONZALEZ, individually and on behalf
14 of all other similarly situated employees,

15 Claimant,

16 vs.

17 GENERAL PRODUCE CO., A
18 CALIFORNIA LIMITED PARTNERSHIP, a
California Limited Partnership; and DOES 1 to
19 100, inclusive,

20 Respondents.

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between Luis Gonzalez ("Claimant"), Miguel Villarruel, and Jose Galvan, on behalf of
3 themselves, the Labor and Workforce Development Agency, Class Members, and Aggrieved Employees,
4 and Respondent General Produce Co., A California Limited Partnership ("Respondent"). This Agreement
5 is subject to the terms and conditions set forth below and the approval of the Arbitrator and Court as set
6 forth herein.

7 **1. DEFINITIONS**

8 The following terms, when used in this Agreement, have the following meanings:

9 1.1 "Action" means the arbitration case, *Gonzalez v. General Produce Co.*, pending before
10 Arbitrator David Perrault of Judicate West, Case No. A298161, initiated November 30, 2022, and the
11 lawsuit filed in the Sacramento County Superior Court, *Gonzalez v. General Produce Co.*, Case No. 34-
12 2022-00317208, filed March 22, 2022.

13 1.2 "Aggrieved Employee(s)" means all non-exempt employees, who have, or continue to, work
14 for Respondent, except for any employees who only worked as drivers with a Class A or B driver's license,
15 during the PAGA Claim Period.

16 1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation
17 Regarding Class Action and PAGA Settlement and Release.

18 1.4 "Arbitrator" means David Perrault.

19 1.5 "Claimant" means Luis Gonzalez.

20 1.6 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
21 Shimoda & Rodriguez Law, PC.

22 1.7 "Class Member(s)" means all non-exempt employees, who have, or continue to, work for
23 Respondent, except for any employees who only worked as drivers with a Class A or B driver's license,
24 from January 4, 2020 up to up to either (1) the Preliminary Approval Date, or (2) 60 days after this
25 Agreement is signed, whichever is earlier. The estimated number of Class Members is 458.

26 1.8 "Class Period" means January 4, 2020 up to either (1) the Preliminary Approval Date, or
27 (2) 60 days after this Agreement is signed, whichever is earlier.

28 1.9 "Class Representatives" means Luis Gonzalez, Miguel Villarruel and Jose Galvan.

1 1.10 “Complaint” means the Class Arbitration Complaint submitted with Claimant’s Demand
2 for Class Arbitration.

3 1.11 “Court” means the Sacramento County Superior Court.

4 1.12 “Enhancement Payment” means the amount approved by the Arbitrator to be paid to the
5 Class Representatives in recognition of the time and effort expended on behalf of Class Members for the
6 benefit of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
7 Representatives as a Participating Class Member.

8 1.13 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
9 that has not later been withdrawn, in which case the Effective Date will be either (a) when the period for
10 filing any appeal, writ or other appellate proceeding opposing the Agreement has lapsed without any
11 appeal, writ or other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any
12 appellate proceeding opposing the settlement has been finally dismissed with no material change to the
13 terms of this settlement and there is no right to pursue further remedies or relief, whichever is later.

14 1.14 “Final Approval Date” means the date the Arbitrator signs an order granting final approval
15 of this Agreement or the date the Court enters a signed order approving the PAGA settlement, whichever
16 is later.

17 1.15 “Gross Settlement Amount” is the sum of Nine Hundred Thousand Dollars and No Cents
18 (\$900,000).

19 1.16 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
20 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
21 Sections 1.18, 1.23, 1.24, 5.5, and 5.8.

22 1.17 “LWDA” means the California Labor and Workforce Development Agency.

23 1.18 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
24 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
25 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
26 Payment to the Class Representatives.

27 1.19 “Notice of Settlement” means the document substantially in the form attached hereto as
28 Exhibit 1.

1 1.20 "Notice Period" means sixty (60) calendar days from the initial mailing of the Notice of
2 Settlement to Class Members and Aggrieved Employees.

3 1.21 "PAGA" means Private Attorneys General Act.

4 1.22 "PAGA Complaint" means the Complaint filed in the Sacramento County Superior Court,
5 Case No. 34-2022-00317208.

6 1.23 "PAGA Claim Period" means from November 9, 2020 up to up to either (1) the Preliminary
7 Approval Date, or (2) 60 days after this Agreement is signed, whichever is earlier.

8 1.24 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards
9 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

10 1.25 "Parties" mean Respondent and Claimant.

11 1.26 "Participating Class Member" means any and all Class Members who have not made any
12 timely request to opt-out of the Agreement.

13 1.27 "Preliminary Approval Date" means the date the Arbitrator signs an order granting
14 preliminary approval of this Agreement.

15 1.28 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the
16 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
17 under this Agreement shall be made. Any amounts Respondent has agreed to pay under this Agreement
18 shall remain the property of Respondent until the payments required under the Agreement are made.

19 1.29 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved
20 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class
21 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
22 Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of
23 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class
24 Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member
25 and/or Aggrieved Employee was actively employed in California in a particular workweek shall be
26 construed from Respondent's records.

27 1.30 "Released Class Claims" means any and all class claims that are alleged in the Complaint,
28 and any additional wage and hour claims that could have been brought based on the facts alleged in the

1 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
2 The Released Class Claims exclude claims for workers' compensation or unemployment insurance
3 benefits. This release will cover all Class Members who do not opt out.

4 1.31 "Released PAGA Claims" means any and all claims that were brought under the Private
5 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the LWDA letter or PAGA Complaint
6 and any additional wage and hour PAGA claims that could have been brought based on the facts alleged
7 in the LWDA letter or PAGA Complaint during the PAGA Claim Period. Aggrieved Employees cannot
8 opt out of this waiver of claims.

9 1.32 "Released Parties" means Respondent, as well as Respondent's officers, shareholders,
10 directors, agents, employees, attorneys, and insurers.

11 1.33 "Respondent" means General Produce Co., A California Limited Partnership.

12 1.34 "Respondent's Counsel" means Palmer Kazanjian Wohl Hodson LLP.

13 1.35 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity
14 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
15 agreed to by the Parties and approved by the Arbitrator for the purposes of administering this Agreement.
16 The Parties each represent that they do not have any financial interest in the Settlement Administrator.

17 1.36 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
18 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
19 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
20 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
21 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
22 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
23 Members and/or Aggrieved Employees, Class Counsel, and Respondent's Counsel; all costs and fees
24 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
25 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
26 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
27 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
28 other filings required by any governmental taxing authority or agency; all costs and fees associated with

1 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
2 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
3 in connection with the execution of its duties under this Agreement.

4 **2. DESCRIPTION OF THE LITIGATION**

5 2.1 On November 9, 2021 Miguel Villarruel and Jose Galvan sent notice to the LWDA to
6 exhaust administrative remedies under the PAGA for failure to pay overtime wages, failure to provide meal
7 periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof,
8 failure to provide accurate wage statements, failure to pay final wages, violation of provisions regulating
9 hours and days of work in the Industrial Welfare Commission Order, and failure to provide paid sick leave.
10 On January 5, 2022 the notice was amended to include Claimant. The LWDA did not respond to the notices
11 within the statutorily required time frame and, as such, Claimant became authorized to act as a Private
12 Attorneys General on all alleged PAGA claims.

13 2.2 On March 2, 2022, Claimant filed a Petition to Compel Respondent to Class Arbitration.
14 On May 3, 2022, the Court entered an order granting Claimant's Petition to Compel Class Arbitration. On
15 November 30, 2022, Claimant initiated class arbitration through Judicate West alleging class action claims
16 for failure to pay overtime wages, meal period violations, rest period violations, wage statement violations,
17 waiting time penalties, and unfair competition. On March 22, 2022, Claimant filed a Complaint in the
18 Sacramento County Superior Court alleging a single PAGA cause of action based on the violations alleged
19 in the notices sent to the LWDA. Miguel Villarruel and Jose Galvan are class members in the Gonzalez
20 class arbitration. Miguel Villarruel and Jose Galvan had previously filed nearly identical class action claims
21 against Respondent in November 2021 in the Sacramento County Superior Court, Case No. 34-2021-
22 00311463 ("Villarruel Action"). After the Final Approval Date, Miguel Villarruel and Jose Galvan intend
23 to seek to dismiss the Villarruel Action without prejudice.

24 2.3 Through informal discovery, Respondent and Respondent's Counsel provided Class
25 Counsel with copies of policies and procedures and information on Class Members including, but not
26 limited to, the number of workweeks in the Class Period, the number pay periods in the PAGA Claim
27 Period, the total number of Class Members, the number of former Class Members, the average rate of pay,
28

1 and the average shift length, as well as timecard and payroll data for a randomly selected sample of Class
2 Members.

3 2.4 On October 18, 2022, Claimant, Respondent, Miguel Villarruel and Jose Galvan
4 participated in a lengthy mediation with private mediator Hon. Ronald M. Sabraw (Ret.). Negotiations
5 continued with the help of the mediator until a resolution was reached on approximately November 22,
6 2022. At all times, the settlement negotiations have been non-collusive, adversarial, and at arm's length.

7 2.5 Discussions between Claimant, Miguel Villarruel, and Jose Galvan and Class Counsel,
8 between counsel for the Parties, document productions, extensive legal analysis, the provision of
9 information by Respondent to Claimant and the detailed analysis of the records, have permitted each side
10 to assess the relative merits of the claims and the defenses to those claims.

11 2.6 In the Action, Claimant contends that Respondent violated California law by 1) failing to
12 incorporate the value of nondiscretionary remuneration, such as bonuses and incentives, into Class
13 Members' regular rates of pay for the purpose of paying overtime and paid sick time; 2) failing to provide
14 Class Members with meal periods beginning before their fifth hour of work; 3) failing to provide Class
15 Members with second meal periods when they worked shifts over 12 hours; 4) failing to provide Class
16 Members with meal periods altogether in some instances; and 5) failing to provide all rest periods. The
17 waiting time, wage statement, unfair competition, and PAGA claims are derivative. Respondent has denied
18 each of Claimant's claims and Respondent has denied that this Action is appropriate for class certification
19 for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after
20 evaluating the Parties' theories of potential exposure for the underlying claims and the class data supporting
21 these claims. The Parties, Miguel Villarruel and Jose Galvan, with the assistance of the mediator, also
22 assessed appropriate discounts to the potential liability based on Respondent's factual and legal contentions
23 and defenses.

24 2.7 The Parties, Miguel Villarruel and Jose Galvan agree that the above-described investigation
25 and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to
26 assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable
27 basis. Claimant, Miguel Villarruel, Jose Galvan, Class Counsel, Respondent, and Respondent's Counsel
28 have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions

1 set forth herein in order to avoid further expense, inconvenience and distraction of further legal
2 proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action.
3 Therefore, the Parties, Miguel Villarruel and Jose Galvan desire to resolve the claims in the Action.
4 Claimant, Miguel Villarruel, Jose Galvan, Class Counsel, Respondent, and Respondent's Counsel are of
5 the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and
6 adequate in light of all known facts and circumstances.

7 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

8 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
9 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
10 claims. Because the Action includes class action claims, this Agreement must receive preliminary and
11 final approval from the Arbitrator. Because the Action includes PAGA claims, the PAGA settlement must
12 also receive approval from the Court. Accordingly, the Parties, Miguel Villarruel and Jose Galvan enter
13 into this Agreement and associated settlement on a conditional basis. If the Effective Date does not occur,
14 or if the Arbitrator's or Court's approval of the settlement is reversed or materially modified on appellate
15 review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall
16 not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the
17 Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152,
18 Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

19 3.2 Respondent has denied all claims as to liability, damages, liquidated damages, penalties,
20 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Respondent
21 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
22 the Effective Date does not occur, Respondent does not waive, but rather expressly reserve, all rights to
23 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
24 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert
25 any and all other potential defenses or privileges.

26 **4. SCOPE OF THE CLASS**

27 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
28 obligations and duties required under the Agreement, shall include all Class Members as defined in Section

1 1.7 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
2 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
3 Section 7.5.1.

4 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
5 this Agreement.

6 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
7 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
8 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
9 data request to the Settlement Administrator. The data request must contain all of the following
10 information: (a) the full name and, if applicable, Social Security Number of the individual making the
11 request; (b) the name used by such employee as of the time his or her employment with Respondent ended;
12 (c) the individual's dates of employment with Respondent; and (d) a return address to which a response
13 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
14 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the
15 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
16 more than two business days) transmit the data requests to Respondent's Counsel and request that
17 Respondent review its records.

18 4.4 If Respondent agrees that the person listed in a data request is a Class Member and/or
19 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
20 person who submitted the data request, at the address designated for that purpose in the data request. All
21 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
22 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
23 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
24 Employee for all other purposes.

25 4.5 If Respondent does not agree that the person listed in a data request is a Class Member
26 and/or Aggrieved Employee, Respondent's Counsel and Class Counsel shall attempt to resolve any such
27 dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data
28 request dispute. Respondent's records shall control unless the individual submitting the data request

1 provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that
2 Respondent's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement
3 Administrator. The Settlement Administrator must accept and weigh all the evidence provided in a good
4 faith attempt to resolve the dispute. The Settlement Administrator must resolve any dispute submitted to
5 it within seven (7) calendar days after Respondent's Counsel and Class Counsel submit the dispute to the
6 Settlement Administrator. The decision by the Settlement Administrator shall be final as between the
7 parties, subject to Arbitrator review.

8 **5. TERMS OF THE SETTLEMENT**

9 The Parties agree as follows:

10 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
11 Section 6, Respondent shall pay the Gross Settlement Amount (\$900,000). Funding of the Gross
12 Settlement Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF
13 by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
14 Members, Aggrieved Employees, any monies necessary to satisfy Respondent's tax obligations (e.g.
15 employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to
16 Participating Class Members, all attorneys' fees, costs and litigation expenses related to the Action incurred
17 to date, as well as all such fees and costs incurred in documenting the Agreement, administering the
18 Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the
19 Enhancement Payment to the Class Representatives and the PAGA Payment.

20 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Arbitrator for attorney's fees of
21 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Respondent
22 has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the
23 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not
24 to exceed \$25,000, which shall be paid from the Gross Settlement Amount. Respondent has agreed to not
25 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
26 exceed the \$25,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099
27 for the attorneys' fees and costs paid under this Agreement. In the event that the Arbitrator awards less
28 than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class

1 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
2 a pro rata basis.

3 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
4 Gross Settlement Amount and shall not exceed \$15,000. The difference between any actual costs and the
5 allocated \$15,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
6 Members on a pro rata basis.

7 5.4 Enhancement Payment: Class Counsel, on behalf of Claimant, Miguel Villarruel and Jose
8 Galvan shall apply to the Arbitrator for an Enhancement Payment to each of the Class Representatives in
9 an amount not to exceed Fifteen Thousand Dollars and No Cents (\$15,000) to compensate for the risks,
10 time, and expense of their involvement in the Action and securing the benefits of this Agreement for Class
11 Members. The Enhancement Payment is in addition to the Individual Settlement Amount Claimant, Miguel
12 Villarruel and Jose Galvan would otherwise be due under the Agreement as a Participating Class Member.
13 Respondent has agreed to not oppose Class Counsel's request for an Enhancement Payment to Claimant,
14 Miguel Villarruel and Jose Galvan so long as it does not exceed the amount stated herein. The
15 Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-
16 MISC. In the event that the Arbitrator awards less than the Enhancement Payment amount requested, then
17 any portion of the requested amount not awarded to the Class Representatives shall be added to the Net
18 Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

19 5.5 PAGA Payment: Fifty Thousand Dollars and No Cents (\$50,000) of the Gross Settlement
20 Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA
21 Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees
22 on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the
23 allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating
24 Class Members on a pro rata basis.

25 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
26 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
27 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
28

1 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
2 of *cypres*. No portion of the Gross Settlement Amount will revert to Respondent for any reason.

3 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
4 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
5 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
6 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
7 any new or additional compensation or benefits under any company bonus or other compensation or benefit
8 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
9 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
10 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
11 Amounts provided for in this Agreement are the sole payments to be made by Respondent to the
12 Participating Class Members and Aggrieved Employees in connection with this Agreement
13 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
14 might have been in effect during the period covered by this Agreement).

15 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
16 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
17 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
18 approved attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the Settlement
19 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
20 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
21 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
22 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members
23 under this formula who timely opt out of the Settlement will be redistributed to Participating Class
24 Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing
25 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all
26 Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to
27 arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved
28 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total

1 Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all
2 Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25%
3 portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

4 5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
5 Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed
6 penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes
7 on the amounts paid to Participating Class Members as wages as well as calculating all required
8 withholdings and deductions from said wage payments. The characterization of Individual Settlement
9 Amounts to Participating Class Members and Aggrieved Employees are as follows:

10 5.9.1 One third (1/3) of each Participating Class Members' Individual Settlement Amount
11 shall be allocated for payment of disputed wages and shall be subject to required employer taxes.
12 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
13 Settlement Amount.

14 5.9.2 Two thirds (2/3) of each Participating Class Members' Individual Settlement
15 Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted
16 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
17 which the Participating Class Members shall receive an IRS Form 1099-MISC.

18 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
19 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
20 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
21 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

22 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
23 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
24 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Respondent's
25 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
26 including the treatment of such payments as not subject to withholding or deduction for payroll and
27 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
28 any payments pursuant to this Agreement, including the payments to Participating Class Members, the

1 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
2 Representatives, the payroll tax liability of Respondent, or the allocation of the Net Settlement Amount or
3 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
4 implications of any provision of this Agreement.

5 5.11 No Additional Contribution by Respondent: Respondent's monetary obligation under this
6 Agreement is limited to the Gross Settlement Amount. All other costs and expenses arising out of or in
7 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
8 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
9 described in Section 3 because the Court or Arbitrator, in its independent determination, finds that the
10 Agreement does not meet the standards for settlement approval, then Respondent and Claimant shall be
11 equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement
12 was executed and the date of such event.

13 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
14 only, certification of the class as defined in Sections 1.7, 1.8 and 4.1 is appropriate and the requisites for
15 establishing class certification have been met and are met.

16 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
17 of settlement only, Class Counsel, Claimant, Miguel Villarruel and Jose Galvan are adequate
18 representatives for Class Members and Aggrieved Employees.

19 6. **RELEASE**

20 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
21 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
22 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
23 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
24 Class Claims against any of the Released Parties.

25 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
26 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
27 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
28

1 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
2 Claims against any of the Released Parties.

3 **7. SETTLEMENT ADMINISTRATION**

4 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:

5 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
6 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
7 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
8 any individual Class Members and Aggrieved Employee whose address or contact information as provided
9 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
10 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
11 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
12 consultation with Class Counsel and Respondent's Counsel) from Class Members or Aggrieved Employees,
13 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
14 and serving on Class Counsel, Respondent's Counsel, and the Arbitrator, copies of any written objections,
15 and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and
16 requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining
17 a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution
18 of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs,
19 PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the
20 inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes
21 or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any
22 residual funds from uncashed checks; 12) reporting to Class Counsel and Respondent's Counsel regarding
23 the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the
24 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the
25 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
26 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced
27 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the
28 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration regarding the

1 final statistics of the administration and compliance with all payment obligations under the Agreement; 14)
2 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
3 Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as
4 necessary to effectuate the terms of this Agreement and any Order of the Arbitrator or Court. All disputes
5 relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the
6 Arbitrator, if necessary, which will have continuing jurisdiction over the terms and conditions of this
7 Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

8 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will be sent
9 to Class Members in English and Spanish. The Notice of Settlement will provide Class Members and
10 Aggrieved Employees with a summary of the terms and conditions of the Agreement, how to participate
11 in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks,
12 and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and
13 Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees
14 and costs allocations, any proposed Enhancement Payments, proposed Settlement Administrator Cost
15 allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the
16 released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees
17 and costs. The Notice of Settlement shall include information regarding Class Member's and Aggrieved
18 Employee's estimated Individual Settlement Amount. The Notice of Settlement will provide information
19 on how to access electronic copies online of the Notice of Settlement, any motions for approval of the
20 Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the
21 Arbitrator directs.

22 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
23 Preliminary Approval Date, Respondent shall provide the Settlement Administrator with the name, last
24 known mailing address, last known telephone number, Social Security Number, start and end date of
25 employment (if any) of each Class Member and Aggrieved Employee, and any other information the
26 Settlement Administrator needs to effectuate notice to Class Members and Aggrieved Employees as
27 outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying
28 Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days

1 after receipt of such address information, the Settlement Administrator will perform a national change of
2 address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the
3 Notice of Settlement, substantially in the form attached as Exhibit I, to each Class Member and Aggrieved
4 Employee by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information
5 received from Respondent confidential to itself, and Respondent's Counsel. However, Class Counsel shall
6 be able to review the breakdown of Qualified Workweeks and estimated Individual Settlement Amounts
7 for Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal
8 identifying information is redacted and/or omitted.

9 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
10 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
11 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
12 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
13 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
14 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
15 five (5) calendar days to any more recent address found as a result of the search. Following each search
16 that does not result in a corrected address, for those Class Members who appear to be current employees
17 of Respondent at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
18 Respondent's Counsel for assistance and Respondent shall cooperate in good faith with the Settlement
19 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
20 are active employees of Respondent. In the event the Notice of Settlement is forwarded to a new address
21 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
22 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
23 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
24 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
25 be bound by all terms of the Agreement, including the releases contained in Section 6.

26 7.5 Responses to Notice of Settlement:

27 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
28 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The

1 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
2 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
3 excluded from the settlement; (c) identify the case name and number (*i.e.*, *Gonzalez v. General Produce*
4 *Co.*, Case No. A298161) (d) be signed; and (e) be post-marked no later than the conclusion of the Notice
5 Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request
6 to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the
7 postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request
8 to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will
9 not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal
10 or comment thereon. The name of any Class Member who submits a valid and timely opt out request will
11 be specifically identified in any proposed order granting final approval. Class Members who fail to submit
12 a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final
13 judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member, they
14 will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this
15 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

16 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
17 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
18 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
19 Respondent's Counsel. The Notice of Settlement shall make clear that the Arbitrator can only approve or
20 deny the Agreement, not change the terms of the Agreement. The objection must (a) state the Class
21 Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member;
22 (c) state the reasons for the objection(s), including any supporting documentation; (d) identify the case
23 name and number (*i.e.*, *Gonzalez v. General Produce Co.*, Case No. A298161) (e) be signed; and (f) be
24 post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section
25 7.4. The Notice of Settlement will inform the Class Member that they should also file a notice of intent to
26 appear with the Arbitrator and serve the notice on Class Counsel and Respondent's Counsel, if they intend
27 to appear at the final approval hearing.

1 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
2 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
3 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
4 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
5 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
6 business days) forward all such disputes to Respondent's Counsel and request that Respondent review the
7 dispute. Respondent's records shall presumptively control unless the Class Member can produce
8 documentation evidencing other periods of employment worked. If Respondent agrees with submitted
9 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
10 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
11 Class Member's Individual Settlement Amount. If Respondent disagrees with the submitted information,
12 Respondent's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
13 documentation submitted by the Class Member as part of the dispute. Respondent's Counsel and Class
14 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
15 Counsel being advised of the dispute. Each dispute that Respondent's Counsel and Class Counsel cannot
16 timely resolve shall be resolved by the Settlement Administrator, subject to Arbitrator review.

17 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
18 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
19 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
20 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
21 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
22 letter, whichever is later.

23 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
24 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
25 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
26 Counsel or Respondent's Counsel to provide notice of the proposed Agreement.

27 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
28 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class

1 Counsel and Respondent's Counsel with a signed declaration under penalty of perjury providing a complete
2 and detailed report regarding the statistics and responses of settlement administration to date and all the
3 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

4 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and

5 Claimant: Within seven (7) calendar days after the Effective Date and the Arbitrator's determination of
6 the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payments payable to
7 Claimant, Miguel Villarruel and Jose Galvan, the PAGA Payment, and Settlement Administrator Costs,
8 the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual
9 Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes
10 thereon, and report the results of these calculations Class Counsel and Respondent's Counsel. Respondent
11 shall wire the Gross Settlement Amount to fund the Settlement as described in Section 5.1 to the Settlement
12 Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a
13 QSF. Within seven (7) calendar days after Respondent fund the settlement, the Settlement Administrator
14 shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payments payable to
15 Claimant, Miguel Villarruel and Jose Galvan, the 75% portion of the PAGA Payment payable to the
16 LWDA, Settlement Administrator Costs, and payment to Participating Class Members and/or Aggrieved
17 Employees as required under this Agreement and approved by Arbitrator or Court.

18 7.8.1 The Settlement Administrator shall wire the Arbitrator-approved attorneys' fees and
19 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
20 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
21 after the Final Approval Date.

22 7.8.2 The Settlement Administrator shall send a check by mail for the Arbitrator-approved
23 Enhancement Payment to the Class Representatives, care of Class Counsel unless another method is
24 requested by Class Counsel.

25 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
26 Individual Settlement Amount.

27 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
28 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this

1 Agreement. Respondent agree to reasonably cooperate with the Settlement Administrator to the extent
2 necessary to determine the amount of the payroll tax payment required.

3 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
4 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
5 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
6 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
7 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
8 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
9 cashing deadline.

10 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
11 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
12 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
13 Counsel and Respondent's Counsel with a signed declaration under penalty of perjury providing a complete
14 and detailed report regarding the settlement administration documenting that all payments under the
15 Agreement have been made, that the Arbitrator's final approval order has been complied with, and that all
16 the obligations of the Settlement Administrator have been completed.

17 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

18 8.1 The schedule may be modified depending on whether and when the Arbitrator grants
19 necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings.
20 The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement
21 as described above. In the event of such modification, the Parties shall cooperate to complete the settlement
22 procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and
23 payment procedures carrying out the Agreement is as follows:

Last day for Respondent to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
--	---

1 2 3	Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Respondent
4 5 6	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
7 8	Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
9 10 11 12 13	Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Respondent's Counsel	Within 7 calendar days after the Effective Date
14 15	Last day for Respondent to fund settlement	Within 21 calendar days after the Effective Date
16 17 18 19	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Respondent has funded the settlement
20 21 22	Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
23 24	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
25 26 27	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

1 **9. DUTIES OF THE PARTIES**

2 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
3 motions to be filed as soon as reasonably practicable, an order from the Arbitrator preliminarily approving
4 this Agreement at the earliest possible date concurrently with the Arbitrator's certification of the Action as
5 a class action for settlement purposes, and order from the Court approving the PAGA settlement. The
6 Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings
7 reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Arbitrator or
8 Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement
9 and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval
10 of, and implementation of this Agreement. The Parties will submit this Agreement to the Arbitrator for
11 preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval.
12 Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval
13 Motion and PAGA Approval Motion to Respondent's Counsel. Respondent's Counsel will provide
14 comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval
15 Motion and PAGA Approval Motion from Class Counsel. With regard to the final approval documents, a
16 similar one-week maximum review and response time shall be observed by the Parties. The Parties will
17 request that the Arbitrator's preliminary approval of this Agreement be embodied in an Order Granting
18 Preliminary Approval of Class Action Settlement.

19 9.1.1 Claimant's motion to the Arbitrator shall seek an order: 1) Preliminarily approving
20 the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the
21 mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4)
22 Preliminarily appointing Claimant and Class Counsel as representatives of Class Members; 5)
23 Preliminarily approving settlement administration services to be provided by the Settlement Administrator;
24 6) Preliminarily approving the proposed Enhancement Payments to Claimant, Miguel Villarruel and Jose
25 Galvan; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and
26 reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the
27 question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate
28 as to the Class Members.

1 9.1.2 Respondent shall not oppose Claimant's motions for approval of the proposed
2 Agreement.

3 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
4 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
5 appropriate to assure effective communication to individual Class Members of information about their
6 rights and obligations under this Agreement.

7 9.2 Final Approval and Fairness Hearing: On a date approved by the Arbitrator and set forth in
8 the Notice of Settlement, the Arbitrator shall hold the Final Approval and Fairness Hearing where
9 objections, if any, may be heard. Class Counsel shall provide the Arbitrator as part of the motion for final
10 approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of
11 mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the
12 delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts. The
13 names of any Class Members who opt out of participating in the class settlement shall be identified in the
14 Final Approval Order

15 9.2.1 Class Counsel and Respondent shall work in good faith to draft a mutually agreeable
16 Proposed Order Granting Final Approval of Class Action Settlement and Final Judgment. The Proposed
17 Order Granting Final Approval of Class Action Settlement and Final Judgment shall include findings and
18 orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and
19 directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement
20 Payment to the Class Representatives; 3) Approving Class Counsel's application for an award of attorneys'
21 fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement Administrator
22 Costs; and 5) Providing that the Arbitrator will retain jurisdiction to oversee administration and
23 enforcement of the terms of the Agreement and the Arbitrator's orders.

24 9.2.2 Following entry of the Arbitrator's order granting final approval of the Agreement,
25 the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
26 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
27 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
28 Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and

1 locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement
2 and assuring delivery of such payments; 3) Class Counsel and Respondent's Counsel will cooperate with
3 each other and assist the Settlement Administrator as needed or requested in completing the distribution of
4 any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction
5 with the Settlement Administrator, will certify to the Arbitrator completion of all payments required to be
6 made by this Agreement.

7 9.3 Final Judgment: If the Arbitrator approves this Agreement at the final approval and fairness
8 hearing, the Parties will request that the Arbitrator enter an Order Granting Final Approval of Class Action
9 and Settlement and Final Judgment.

10 9.4 Notice to LWDA: Claimant will provide notice to the Labor and Workforce Development
11 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(I)(2).

12 **10. MISCELLANEOUS TERMS**

13 10.1 Respondent's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
14 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
15 with the provisions of the Agreement, Respondent may rescind the Agreement and all actions taken in its
16 furtherance will be thereby null and void. Respondent must exercise this right of rescission, in writing, to
17 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the
18 total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs
19 shall be paid by Respondent. Respondent has represented that as of the date of the mediation there were
20 no more than 23,000 workweeks during the Class Period. In the event the number of workweeks during
21 the Class Period is more than 25,300 (*i.e.*, greater than 10% more than 23,000), then the Gross Settlement
22 Amount shall be increased proportionally by the workweeks in excess of 23,000, multiplied by the
23 workweek value. For example, if there were 11,900 workweeks represented to exist during the Class
24 Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is
25 \$5.00 per workweek, Respondent would have to increase the Gross Settlement Amount by \$15,500.00
26 (15,000 workweeks - 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

27 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
28 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT

1 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
2 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
3 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
4 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
5 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
6 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
7 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
8 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
9 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
10 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
11 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
12 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
13 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
14 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
15 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
16 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
17 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
18 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
19 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
20 THIS AGREEMENT.

21 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
22 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
23 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
24 and discharged in this Agreement.

25 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
26 signing this Agreement Respondent is waiving any rights to appeal from the Arbitrator's or Court's
27 approval of the settlement unless the Arbitrator or Court materially modifies the settlement. Furthermore,
28

1 by signing this Agreement Claimant, Miguel Villarruel and Jose Galvan are waiving any right or ability to
2 opt out of this Agreement during the Notice Period or otherwise.

3 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
4 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
5 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

6 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
7 be entered according to this Agreement. The Parties stipulate and agree that the Arbitrator shall have
8 continuing jurisdiction to enforce the terms of the Agreement and that the prevailing party any action
9 necessary to enforce the terms of the Agreement after default by the other party may recover reasonable
10 attorney's fees and costs related thereto. The Parties stipulate and agree that the Court shall have continuing
11 jurisdiction to enforce the terms of the PAGA settlement pursuant to Civil Procedure Code section 664.6
12 and that the prevailing party any action necessary to enforce the terms of the Agreement after default by
13 the other party may recover reasonable attorney's fees and costs related thereto.

14 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
15 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
16 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
17 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
18 contemplated by this Agreement and any other efforts that may become necessary by Arbitrator or Court
19 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

20 10.8 No Admission of Liability: Neither the acceptance nor the performance by Respondent of
21 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
22 be, construed as, or deemed to be, an admission by Respondent of the truth of any of the allegations in the
23 Complaint, the representative character of the Action, the validity of any of the claims that were or could
24 have been asserted by Claimant and/or Class Members in the Action, or of any liability or guilt of
25 Respondent in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
26 Respondent of any liability, culpability, negligence, or wrongdoing toward Claimant, the Class Members,
27 or any other person, and Respondent specifically disclaim any liability, culpability, negligence, or
28

wrongdoing toward Claimant, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation.

10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States certified mail, return receipt requested, addressed as follows:

To Claimant and the Class:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Respondent:

Larry Kazanjian
Palmer Kazanjian Wohl Hodson LLP
2777 Fair Oaks Blvd., Suite 455
Sacramento, California 95825

10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Claimant, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement.

10.12 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and

1 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
2 to effectuate its terms and to execute any other documents required to effectuate the terms of this
3 Agreement.

4 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
5 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
6 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
7 may be executed on behalf of all Class Members by the Class Representatives.

8 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
9 undersigned. Claimant, Class Counsel, Respondent and Respondent's Counsel may execute this
10 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
11 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
12 same force and effect of originals.

13 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
14 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
15 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
16 and governed by, the substantive laws of the State of California without giving effect to that State's choice
17 of law principles.

18 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
19 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
20 this Agreement, or any provision thereof.

21 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
22 construed as retaliation against any Class Members for participating or seeking to participate in this class
23 action settlement. The Parties will not discourage any class member from participating or seeking to
24 participate in this class action settlement. This is a material term of the Agreement and non-breaching
25 Parties will seek Arbitrator or Court intervention if this provision is breached.

26 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
27 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
28 Each party acknowledges that there is no representation, inducement, promise or agreement which has been

1 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
2 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
3 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

4 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
5 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

6 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
7 Arbitrator or Court will first attempt to construe the provision as valid to the fullest extent possible
8 consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and
9 enforceable.

10 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
11 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
12 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

13 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
14 attorneys, as of the day and year herein set forth.

15 **For Claimant & Class Representatives:**

16 Date: _____

17 Luis Gonzalez

18 Date: _____

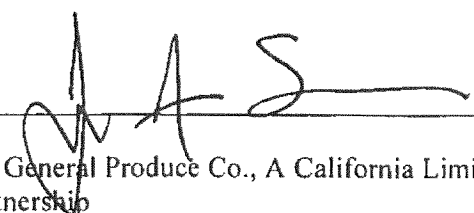
19 Miguel Villarruel

20 Date: _____

21 Jose Galvan

22 **For Respondent:**

23 Date: 1/12/2023

24 By: 
25 For General Produce Co., A California Limited
26 Partnership
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APPROVED AS TO FORM

Dated: 1/13/23_____

Shimoda & Rodriguez Law, PC

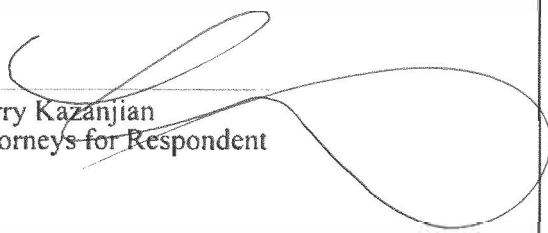
By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Claimant, Miguel Villarruel,
Jose Galvan and Aggrieved Employees

APPROVED AS TO FORM

Dated: Jan 12, 2023

**PALMER KAZANJIAN WOHL HODSON
LLP**

By: 

Larry Kazanjian
Attorneys for Respondent

made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

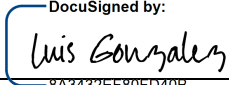
10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Arbitrator or Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Claimant & Class Representatives:

Date: 1/12/23

DocuSigned by:

 8A3432EF80FD40B...
 Luis Gonzalez

Date: _____

 Miguel Villarruel

Date: _____

 Jose Galvan

For Respondent:

Date: _____

 By:
 For General Produce Co., A California Limited
 Partnership

made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

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10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Claimant & Class Representatives:

Date: _____

Luis Gonzalez

Date: 1/13/2023

DocuSigned by:
Miguel Villarruel

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Miguel Villarruel

Date: _____

Jose Galvan

For Respondent:

Date: _____

By:
For General Produce Co., A California Limited Partnership

made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

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10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Claimant & Class Representatives:

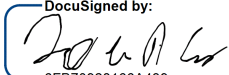
Date: _____

Luis Gonzalez

Date: _____

Miguel Villarruel

Date: 1/17/2023

DocuSigned by:


Jose Galvan

For Respondent:

Date: _____

By:
For General Produce Co., A California Limited
Partnership

EXHIBIT 1

NOTICE OF SETTLEMENT

LUIS GONZALEZ, individually and on behalf of all other similarly situated employees,

Claimant,

vs.

GENERAL PRODUCE CO., A CALIFORNIA LIMITED PARTNERSHIP, a California Partnership; and DOES 1 to 100, inclusive,

Respondents.

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT, AND HEARING DATE FOR FINAL APPROVAL OF SETTLEMENT

ATTENTION: All non-exempt employees, who have, or continue to, work for General Produce Co., A California Limited Partnership, except for any employees who only worked in the job position driver with a Class A or B driver's license, from January 4, 2020 up to [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an arbitration order granting Claimant Luis Gonzalez ("Claimant")'s motion for preliminary approval of a class action settlement as fair, reasonable, and adequate. This notice also contains information about a settlement of Private Attorneys General Act ("PAGA") claims for civil penalties that is subject to Court approval. The Joint Stipulation Regarding Class Action and PAGA Settlement Release ("Agreement" or "Settlement") was entered into between Claimant, Miguel Villarruel, and Jose Galvan ("Class Representatives"), and Respondent General Produce Co., A California Limited Partnership ("Respondent") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Respondent's records indicate you fall within the definition of "Class Member." Respondent's records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Arbitrator's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On November 10, 2021, Miguel Villarruel and Jose Galvan filed a wage and hour class action against Respondent in the Sacramento County Superior Court alleging class action claims for failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, and unfair competition. On November 30, 2022, Claimant initiated a class arbitration through Judicate West alleging class action claims for failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, and unfair competition ("Class Action"). On March 22, 2022, Claimant filed an action against Respondent in the Sacramento County Superior Court seeking civil penalties pursuant to the Private Attorneys General Act ("PAGA") for Labor Code violations ("PAGA Action").

In the Class Action, Claimant sought to obtain unpaid wages, interest, statutory penalties, fees, and costs on behalf of himself and Class Members. In the PAGA Action Claimant sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Claimant alleged that Respondent violated California law by 1) failing to incorporate the value of nondiscretionary remuneration, such as bonuses and incentives, into Class Members' regular rates of pay for the purpose of paying overtime and paid sick time; 2) failing to provide Class Members with meal periods beginning before their fifth hour of work; 3) failing to provide Class Members with second meal periods when they worked shifts over 12 hours; 4) failing to provide Class Members with meal periods altogether in some instances; and 5) failing to provide all rest periods. Respondent has denied all of Claimant's, Miguel Villarruel's and Jose Galvan's allegations. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. This Settlement was the result of a joint effort to resolve the class action and PAGA claims by Claimant, Miguel Villarruel, and Jose Galvan. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Respondent continues to deny all allegations and

claims. Respondent has entered into this Settlement to fully, finally, and forever resolve the Class Action and PAGA Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees, who have, or continue to, work for Respondent, except for any employees who only worked in the job position driver with a Class A or B driver's license, from January 4, 2020 up to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees, who have, or continue to, work for Respondent, except for any employees who only worked in the job position driver with a Class A or B driver's license, from November 9, 2020 up to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Respondent has agreed to pay a total sum of Nine Hundred Thousand Dollars and No Cents (\$900,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Arbitrator for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$25,000, employer taxes, Settlement Administrator Costs estimated not to exceed \$15,000, Class Representatives' Enhancement Payment of \$15,000 each, and the sum of \$50,000 approved by the Court for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$50,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Arbitrator. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Respondent will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as November 9, 2020 to [REDACTED]. Respondent's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Respondent's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Respondent's records. Respondent's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Respondent's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Respondent's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint in the Class Action, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint in the Class Action, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the LWDA letter or Complaint in the PAGA Action and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the LWDA letter or Complaint in the PAGA Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Respondent, as well as Respondent's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Arbitrator Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Arbitrator will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.*, *Gonzalez v. General Produce Co.*, Case No. [redacted]); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount.

Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Arbitrator rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Arbitrator to deny approval by filing an objection. You cannot ask the Arbitrator to order a larger settlement; the Arbitrator can only approve or deny the settlement. If the Arbitrator denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.*, *Gonzalez v. General Produce Co.*, Case No. [redacted]) (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Claimant and Respondent at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Arbitrator and serve the notice on counsel for Claimant and Respondent.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Arbitrator grants final approval of the Settlement, the Arbitrator will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Respondent and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Respondent in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Respondent and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Arbitrator, the PAGA Payment is not approved by the Court, or the Settlement does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Arbitrator will hold a hearing at [redacted] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Arbitrator also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Arbitrator at the Settlement Administrator's website: [admin web address]. You can also contact Class Counsel or Respondent's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Claimant

Larry Kazanjian
Palmer Kazanjian Wohl Hodson LLP
2777 Fair Oaks Blvd., Suite 455
Sacramento, California 95825
Telephone: (916) 442-3553
On behalf of Respondent

PLEASE DO NOT TELEPHONE THE ARBITRATOR OR THE ARBITRATOR'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE ARBITRATOR

EXHIBIT D



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

January 5, 2022

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Villarruel, et al. v. General Produce Company, et al.,*

Dear Labor Commissioner,

Our office previously filed a notice with the Labor and Workforce Development Agency on behalf of Plaintiffs Miguel Villarruel and Jose Galvan on November 9, 2021. In this letter we seek to amend our prior notice to include an additional named Plaintiff, Luis Gonzalez (Miguel Villarruel, Jose Galvan and Luis Gonzalez are referred to as "Plaintiffs" herein). Accordingly, we are providing you and the following "employers" notice pursuant to California Labor Code section 2699.3:

General Produce Company
1330 North B Street
Sacramento, California 95811

General Produce Co., A California Limited Partnership
1330 North "B" Street
Sacramento, California 95814

General Produce II, L.P.
1330 North B Street
Sacramento, California 95802

General Produce Company Ltd
1330 North B Street
Sacramento, California 95811

Genpro, Inc.
1330 North "B" Street
Sacramento, California 95814

Daniel W. Chan
1330 North B Street
Sacramento, California 95811



Thomas Chan
1330 North B Street
Sacramento, California 95811

Jeff Sacchini
1330 North B Street
Sacramento, California 95811

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against General Produce Company, General Produce Co., A California Limited Partnership, General Produce II, L.P., General Produce Company Ltd, Genpro, Inc., Daniel W. Chan, Thomas Chan and Jeff Sacchini (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiffs and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have, or continue to, work for Defendants in California from one (1) year prior to the submission of this letter to the present. Plaintiffs are clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Defendants operate a business that packages and transports produce. Plaintiff Miguel Villarruel worked for Defendants from approximately 1996 to 2002 and then again from 2003 June 2021. Plaintiff Miguel Villarruel was a non-exempt, hourly employee until approximately June 2020 when Defendants misclassified him as salaried, exempt. Defendants did not change Plaintiff Miguel Villarruel’s job duties, schedule or authority when they reclassified him as a salaried employee. Plaintiff Miguel Villarruel had no authority to hire, fire or provide write ups to Defendants’ employees and he spent the majority of his time doing manual labor alongside of the hourly employees. Plaintiff Jose Galvan worked for Defendants from approximately 2008 to September 2021 as an hourly, non-exempt employee. Plaintiff Luiz Gonzalez worked for Defendants from approximately May 11, 2020 to August 9, 2021 as an hourly, non-exempt employee.

Plaintiffs and Aggrieved Employees regularly worked ten (10) to twelve (12) hours in a day or more and/or over forty (40) hours in a week. Plaintiffs and Aggrieved Employees were



also paid non-discretionary remuneration, such as incentives and bonuses for arriving on time to work, packing a certain number of boxes of produce per day, and getting trucks out quickly with produce without any delays. Defendants failed to incorporate the value of this non-discretionary remuneration into Plaintiffs' and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages and paid sick time.

Defendants did not authorize and permit Plaintiffs and Aggrieved Employees to take all meal and rest periods owed to them. Plaintiff and Aggrieved Employees did not receive all uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction thereof. Defendants required Plaintiffs and Aggrieved Employees to clock out before their fifth hour of work for meal periods regardless of whether they were able to take a meal period at that time or not. Sometimes Plaintiffs and Aggrieved Employees were able to take a meal period later in the day and other times meal periods were missed entirely or did not last a full thirty (30) minutes. Additionally, Plaintiffs and Aggrieved Employees worked over ten (10) or twelve (12) hours in a day without being authorized and permitted to take a second meal period or third rest period. Defendants did not pay Plaintiffs and Aggrieved Employees missed meal or rest period premiums.

As a result of Defendants' failure to pay Plaintiffs and Aggrieved Employees all overtime wages, paid sick time, and meal and rest period premiums owed, the wage statements Defendant issued were inaccurate. The paystubs Defendants issued did not itemize accurate regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. As a result, Plaintiffs and Aggrieved Employees were not able to determine the total wages owed to them from their paystubs alone.

As of this date of this letter, Defendants have not paid Plaintiffs and Aggrieved Employees all overtime wages, paid sick time, and meal and rest period premiums owed to them.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 13, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiffs and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week



and were not paid all overtime wages owed. Plaintiffs and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 13, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 13, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Three – Violation of Labor Code § 226.7 and Wage Order No. 13, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 13, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Four – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For



the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiffs and Aggrieved Employees. This is in violation of the law.

Count Five – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime wages, meal and rest premiums, and paid sick time be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiffs and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Six – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants' agents, violated Plaintiffs and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Daniel W. Chan, Thomas Chan and Jeff Sacchini were officers, directors, shareholders, and/or managing agents of General Produce Company, General Produce Co., A California Limited Partnership, General Produce II, L.P., and General Produce Company LTD responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Seven – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of



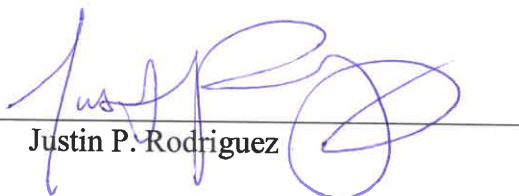
three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiffs and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiffs will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By:


Justin P. Rodriguez

JPR:bb

cc: Clients via e-mail

Villarruel, et al. v General Produce Company, et al.

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Erika F. Collazo, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On January 6, 2022, I served the following documents on the party below:

- Amended Private Attorney General Act Letter

General Produce Company 1330 North B Street Sacramento, California 95811	General Produce Co., A California Limited Partnership 1330 North "B" Street Sacramento, California 95814
General Produce II, L.P. 1330 North B Street Sacramento, California 95802	General Produce Company Ltd 1330 North B Street Sacramento, California 95811
Genpro, Inc. 1330 North "B" Street Sacramento, California 95814	Daniel W. Chan 1330 North B Street Sacramento, California 95811
Thomas Chan 1330 North B Street Sacramento, California 95811	Jeff Sacchini 1330 North B Street Sacramento, California 95811

[XXX] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct, and that this declaration was executed on January 6, 2022, at Elk Grove,
3 California.

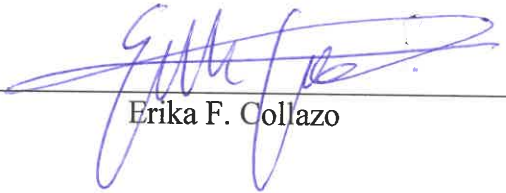
4 
5 _____
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EXHIBIT E

NOTICE OF SETTLEMENT

LUIS GONZALEZ, individually and on behalf of all other similarly situated employees,

Claimant,

vs.

GENERAL PRODUCE CO., A CALIFORNIA LIMITED PARTNERSHIP, a California Partnership; and DOES 1 to 100, inclusive,

Respondents.

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT, AND HEARING DATE FOR FINAL APPROVAL OF SETTLEMENT

ATTENTION: All non-exempt employees, who have, or continue to, work for General Produce Co., A California Limited Partnership, except for any employees who only worked in the job position driver with a Class A or B driver's license, from January 4, 2020 up to [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an arbitration order granting Claimant Luis Gonzalez ("Claimant")'s motion for preliminary approval of a class action settlement as fair, reasonable, and adequate. This notice also contains information about a settlement of Private Attorneys General Act ("PAGA") claims for civil penalties that is subject to Court approval. The Joint Stipulation Regarding Class Action and PAGA Settlement Release ("Agreement" or "Settlement") was entered into between Claimant, Miguel Villarruel, and Jose Galvan ("Class Representatives"), and Respondent General Produce Co., A California Limited Partnership ("Respondent") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Respondent's records indicate you fall within the definition of "Class Member." Respondent's records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Arbitrator's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On November 10, 2021, Miguel Villarruel and Jose Galvan filed a wage and hour class action against Respondent in the Sacramento County Superior Court alleging class action claims for failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, and unfair competition. On November 30, 2022, Claimant initiated a class arbitration through Judicate West alleging class action claims for failure to pay overtime wages, meal period violations, rest period violations, wage statement violations, waiting time penalties, and unfair competition ("Class Action"). On March 22, 2022, Claimant filed an action against Respondent in the Sacramento County Superior Court seeking civil penalties pursuant to the Private Attorneys General Act ("PAGA") for Labor Code violations ("PAGA Action").

In the Class Action, Claimant sought to obtain unpaid wages, interest, statutory penalties, fees, and costs on behalf of himself and Class Members. In the PAGA Action Claimant sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Claimant alleged that Respondent violated California law by 1) failing to incorporate the value of nondiscretionary remuneration, such as bonuses and incentives, into Class Members' regular rates of pay for the purpose of paying overtime and paid sick time; 2) failing to provide Class Members with meal periods beginning before their fifth hour of work; 3) failing to provide Class Members with second meal periods when they worked shifts over 12 hours; 4) failing to provide Class Members with meal periods altogether in some instances; and 5) failing to provide all rest periods. Respondent has denied all of Claimant's, Miguel Villarruel's and Jose Galvan's allegations. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. This Settlement was the result of a joint effort to resolve the class action and PAGA claims by Claimant, Miguel Villarruel, and Jose Galvan. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Respondent continues to deny all allegations and

claims. Respondent has entered into this Settlement to fully, finally, and forever resolve the Class Action and PAGA Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees, who have, or continue to, work for Respondent, except for any employees who only worked in the job position driver with a Class A or B driver's license, from January 4, 2020 up to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees, who have, or continue to, work for Respondent, except for any employees who only worked in the job position driver with a Class A or B driver's license, from November 9, 2020 up to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Respondent has agreed to pay a total sum of Nine Hundred Thousand Dollars and No Cents (\$900,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Arbitrator for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$25,000, employer taxes, Settlement Administrator Costs estimated not to exceed \$15,000, Class Representatives' Enhancement Payment of \$15,000 each, and the sum of \$50,000 approved by the Court for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$50,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Arbitrator. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Respondent will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as November 9, 2020 to [REDACTED]. Respondent's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Respondent's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Respondent's records. Respondent's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Respondent's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Respondent's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint in the Class Action, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint in the Class Action, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the LWDA letter or Complaint in the PAGA Action and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the LWDA letter or Complaint in the PAGA Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Respondent, as well as Respondent's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Arbitrator Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Arbitrator will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.*, *Gonzalez v. General Produce Co.*, Case No. [redacted]); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount.

Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Arbitrator rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Arbitrator to deny approval by filing an objection. You cannot ask the Arbitrator to order a larger settlement; the Arbitrator can only approve or deny the settlement. If the Arbitrator denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.*, *Gonzalez v. General Produce Co.*, Case No. [REDACTED]) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Claimant and Respondent at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Arbitrator and serve the notice on counsel for Claimant and Respondent.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Arbitrator grants final approval of the Settlement, the Arbitrator will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Respondent and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Respondent in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Respondent and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Arbitrator, the PAGA Payment is not approved by the Court, or the Settlement does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Arbitrator will hold a hearing at [REDACTED] on [REDACTED] at [REDACTED] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Arbitrator also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Arbitrator at the Settlement Administrator's website: [admin web address]. You can also contact Class Counsel or Respondent's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Claimant

Larry Kazanjian
Palmer Kazanjian Wohl Hodson LLP
2777 Fair Oaks Blvd., Suite 455
Sacramento, California 95825
Telephone: (916) 442-3553
On behalf of Respondent

PLEASE DO NOT TELEPHONE THE ARBITRATOR OR THE ARBITRATOR'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE ARBITRATOR

EXHIBIT F

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff LUIS GONZALEZ
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 LUIS GONZALEZ,

11 Plaintiff,

12 vs.

13 GENERAL PRODUCE CO., A
14 CALIFORNIA LIMITED PARTNERSHIP, a
15 California Limited Partnership; and DOES 1 to
16 100, inclusive,

17 Defendants.
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Case No. 34-2022-00317208

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. 2705050

Date: April 5, 2023

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: March 22, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on April 5, 2023, at 9:00 a.m., in Department 54 before the
4 Honorable Christopher E. Krueger, presiding. Plaintiff Luis Gonzalez (“Plaintiff”) filed this Private
5 Attorneys General Act (“PAGA”) action on March 22, 2022. The operative Complaint alleges a single
6 cause of action against General Produce Co., A California Limited Partnership (“Defendant”) under the
7 PAGA for violations of the California Labor Code, including the failure to pay overtime wages, the
8 failure to provide meal periods or premiums in lieu thereof, the failure to provide rest periods or
9 premiums in lieu thereof, the failure to provide accurate wage statements, the failure to pay final wages,
10 and the failure to comply with provisions regulating hours and days of work in any industrial welfare
11 commission order pursuant to California Labor Code section 558. More specifically, Plaintiff alleges
12 these violations arise from Defendant failing to incorporate the value of nondiscretionary remuneration,
13 such as bonuses and incentives, into Aggrieved Employees’ regular rates of pay for the purpose of
14 paying overtime and sick time, failing to provide Aggrieved Employees with meal periods beginning
15 before their fifth hour of work, failing to provide Aggrieved Employees with second meal periods when
16 they worked shifts over 12 hours, failing to provide Aggrieved Employees with meal periods altogether
17 in some instances, and failing to authorize and permit Aggrieved Employees to take all rest periods. The
18 Complaint seeks recovery of civil penalties under the PAGA as a result of the alleged violations.
19 Defendant has denied all of Plaintiff’s allegations. Plaintiff sought attorneys’ fees and costs as part of
20 this litigation.

21 The parties have agreed to a settlement of the PAGA claim. However, the settlement of the
22 PAGA claim forms only a part of an overall class action and PAGA settlement entered into between the
23 parties in connection with a pending class arbitration. Plaintiff filed a petition to compel class arbitration
24 in this Court (Case No. 34-2022-00316218), which was granted on May 3, 2022. The class arbitration
25 is pending with Judicate West (Case No. A298161) and approval proceedings for the class action
26 settlement on all matters other than the PAGA allocation and waiver are pending. Pursuant to the Joint
27 Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) and
28 California Labor Code section 2699(1)(2), the parties are seeking Court approval of the PAGA

1 settlement allocation and waiver applicable to the PAGA claim through this Court action. All remaining
2 issues regarding approval of the Agreement and notification procedures relating thereto are being
3 addressed through this class arbitration pursuant to the governing arbitration agreement, the Agreement,
4 and the May 3, 2022, order by the Court granting Plaintiff's petition to compel class arbitration.

5 Any capitalized terms herein shall have the same meaning as set forth in the Agreement. The
6 Court, having received and considered Plaintiff's Motion, the declarations in support, the Agreement,
7 the Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS
8 AS FOLLOWS:

9 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
10 **EMPLOYEES**

11 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
12 PAGA claim asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and
13 Workforce Development Agency ("LWDA") with respect to the PAGA claim being released under the
14 Agreement. The Court finds the scope of Aggrieved Employees subject to the terms and conditions of
15 the Agreement as it relates to PAGA include the following:

16 All non-exempt employees, who have, or continue to, work for Defendant,
17 except for any employees who only worked as drivers with a Class A or B
driver's license, from November 9, 2020, up to March 18, 2023.

18 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
19 purposes only and is not intended to capture the claims at issue or limit or alter the released PAGA claim
20 under the Agreement.

21 **II. APPROVING THE AGREEMENT**

22 The Court has reviewed the \$50,000.00 PAGA allocation and PAGA waiver under the
23 Agreement, which was submitted with Plaintiff's Motion as Exhibit C. The Court finds that the
24 allocation and waiver is fair, reasonable, and adequate with respect to the PAGA claim, and, therefore, is
25 approved as required under California Labor Code sections 2698 *et seq.* Based on the potential amount
26 of penalties at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay
27 period as to each individual as required by statute for damages purposes, and the Court's statutorily
28 authorized discretion to reduce penalties, the Agreement represents a substantial recovery for Aggrieved

1 Employees and the LWDA to further the LWDA's purpose in enforcing the California Labor Code. The
2 Court also finds that the Agreement provides a recovery that creates an effective, substantial deterrent to
3 any potential future non-compliance, furthering the purpose of the California Labor Code and LWDA.

4 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
5 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
6 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

7 **III. IMPLEMENTATION SCHEDULE**

8 Because further administrative timelines related to the notice and payment of funds under the
9 Agreement is within the scope and jurisdiction of the class arbitration and dependent on the completion
10 of approval procedures and rulings in the class arbitration, Plaintiff is directed to file a dismissal with
11 prejudice of this case within thirty (30) after the completion of final approval proceedings in the class
12 arbitration. To the extent that preliminary and/or final approval is not granted, the parties are directed to
13 notify the Court and request a case management conference to discuss the continued litigation of the
14 PAGA claim. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the
15 terms of this order and the approved Agreement as it relates to the PAGA claims pursuant to California
16 Civil Procedure Code section 664.6.

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18 IT IS SO ORDERED.

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20 Date: _____

By: _____

21 Judge of the Superior Court
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1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
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4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff LUIS GONZALEZ
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7
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9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 LUIS GONZALEZ,
12 Plaintiff,

13 vs.

14 GENERAL PRODUCE CO., A
15 CALIFORNIA LIMITED PARTNERSHIP, a
16 California Limited Partnership; and DOES 1 to
17 100, inclusive,
18 Defendants.
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Case No. 34-2022-00317208

PROOF OF SERVICE

Reservation No. 2705050

Date: April 5, 2023

Time: 9:00 a.m.

Dept.: 54

Judge: Hon. Christopher E. Krueger

Filed: March 22, 2022

Trial Date: None Set

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On March 10, 2023, I served the following documents on the party below:

- 9
- 10 • Plaintiff's Notice Of Motion And Motion To Approve Private Attorneys General Act Settlement
 - 11 • Memorandum Of Points & Authorities In Support Of Plaintiff's Motion To Approve Private Attorneys General Act Settlement
 - 12 • Declaration Of Brittany V. Berzin In Support Of Motion To Approve Private Attorneys General Act Settlement
 - 13 • Declaration Of Luis Gonzalez In Support Of Motion To Approve Private Attorneys General Act Settlement
 - 14 • Exhibit List And Exhibits In Support Of Plaintiff's Motion To Approve Private Attorneys General Act Settlement
 - 15 • Proposed Order Granting Plaintiff's Motion To Approve Private Attorneys General Act Settlement

16 Larry Kazanjian (SBN: 71441)
17 Cynthia Cervantes
18 Palmer Kazanjian Wohl Hodson LLP
19 2277 Fair Oaks Blvd., Ste. 455
20 Sacramento, CA 95825
21 Telephone: (916) 442-3552
22 Facsimile: (916) 640-1521
23 Email: lkazankian@pkwhlaw.com
24 cjohnson@pkwhlaw.com
25 ccervantes@pkwhlaw.com

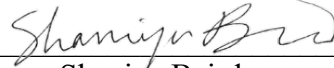
26 [] [By Mail] I am familiar with my employer's practice for the collection and
27 processing of correspondence for mailing with the United States Postal
28 Service and that each day's mail is deposited with the United States Postal
29 Service that same day in the ordinary course of business. On the date set forth
30 above, I served the aforementioned document(s) on the parties in said action
31 by placing a true copy thereof enclosed in a sealed envelope with postage
32 thereon fully prepaid, for collection and mailing on this date, following
33 ordinary business practices, at Elk Grove, California, addressed as set forth
34 above.

35 [] [By Personal Service] By personally delivering a true copy thereof to the
36 office of the addressee above.

37 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
38 above. No error was reported by the e-mail service that I used.

39 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
40 personally delivered via the following overnight courier service: UPS.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct, and that this declaration was executed on March 10, 2023, at Salt Lake City, Utah.

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6 Shaniya Baird
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