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14 *and all other Aggrieved Employees*

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 JOSE ENRIQUE MARTINEZ CAZARES, an
15 individual; and ENRIQUE MARTINEZ
16 FUENTES, an individual; on behalf of
17 themselves and all Aggrieved Employees,

18 Plaintiffs,

19 v.

20 S K S ENTERPRISE, INC. a California
21 corporation; WEN CHANG SU, an individual;
22 ADOLFO GOMEZ, an individual, doing
23 business as ADOLFO GOMEZ FARM
24 LABOR CONTRACTOR; and
25 DOES 1-50, inclusive,

26 Defendants.

Case No.: STK-CV-UOE-2022-0003076

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR APPROVAL OF
REPRESENTATIVE SETTLEMENT OF
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA") CAUSE OF ACTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

- **DECLARATION OF JOHN A. VAN HOOK;**
- **NOTICE OF PAGA SETTLEMENT;**
- **[PROPOSED] ORDER**

Date: MAR 15 2023
Time: 9:00 AM
Dept.: 10-B

Complaint Filed: April 27, 2022
Trial: None Set

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

2 PLEASE TAKE NOTICE THAT on March 15, 2023 at 9:00 a.m.,
3 or as soon thereafter as the matter may be heard in Department 10-B of the above-entitled
4 Court, located at 180 E. Weber Ave. Stockton, CA 95202, Plaintiffs, on behalf of themselves
5 and all other Aggrieved Employees and the State of California as private attorneys general,
6 will and hereby do move the Court for an Order approving the Parties' Representative
7 Settlement under the Private Attorneys General Act 2004, Labor Code section 2698, *et seq.*
8 ("PAGA").

9 The Motion is based on this Notice of Motion and Motion; the accompanying
10 Memorandum of Points and Authorities, the Declaration of John A. Van Hook and exhibits
11 thereto (including Exhibit 1, the executed PAGA Settlement Agreement and Release); and on
12 such further oral and documentary evidence which may be submitted or the Court may receive,
13 and on the complete files and records in this action.

14
15 Dated: February 10, 2023

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

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19 John A. Van Hook
20 Adrian C. Byrne
21 *Attorneys for Plaintiffs*
22 *and all other Aggrieved Employees*
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1 **I. INTRODUCTION**

2 Plaintiffs JOSE ENRIQUE MARTINEZ CAZARES and ENRIQUE MARTINEZ
3 FUENTES (“Plaintiffs”) and Defendants S K S ENTERPRISE, INC. a California corporation
4 (“SKS”); WEN CHANG SU, an individual (“SU”); and ADOLFO GOMEZ, an individual,
5 doing business as ADOLFO GOMEZ FARM LABOR CONTRACTOR (“GOMEZ”)
6 (“Defendants”) (collectively, the “Parties”) negotiated a One Hundred Thousand Dollars
7 (\$100,000.00) representative settlement of this matter under the California Labor Code Private
8 Attorneys General Act 2004, Labor Code section 2698, *et seq.* (“PAGA”). This is PAGA
9 settlement was reached through hard fought and extensive arms-length negotiations, including a
10 private mediation before a highly experienced employment mediator Judge Patrick O’Hara,
11 (Ret.). It is a reasonable and beneficial outcome for the State of California and for the allegedly
12 Aggrieved Employees.

13 For the reasons discussed herein, the Parties respectfully request that this Court grant
14 approval of the PAGA Settlement Agreement and Limited Release (the “PAGA Settlement
15 Agreement”) and Order the Parties to take all steps necessary to effectuate the settlement.

16 **II. PROCEDURAL BACKGROUND**

17 On February 9, 2022, Plaintiffs filed a notice of potential claims with the Labor and
18 Workforce Development Agency (“LWDA”) pursuant to the California Labor Code Private
19 Attorneys General Act of 2004 (“PAGA”). *See* Declaration of John. A Van Hook [“Van Hook
20 Decl.”], ¶ 3.

21 On April 27, 2022, after waiting the statutorily-required 65-day notice period, Plaintiffs
22 filed a complaint in the Superior Court of California, County of San Joaquin, Case No. CV-40E-
23 2022-3076, entitled *Jose Enrique Martinez Cazares, an individual and Enrique Martinez*
24 *Fuentes, an individual, on behalf of themselves and all Aggrieved Employees v. S K S Enterprise,*
25 *Inc., a California Corporation; Wen Chang Su, an individual, Adolfo Gomez, an individual,*
26 *doing business as Adolfo Gomez Farm Labor Contractor; and Does 1-50, inclusive* alleging
27 causes of action for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3)

1 Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to
2 Provide Itemized Accurate Wage Statements; (6) Failure to Provide Employment Records; (7)
3 Continuing Wages Penalty; (8) Unfair Competition; (9) Civil Penalties Pursuant to the Labor
4 Code Private Attorneys General Act of 2004; (10) Retaliation; (11) Wrongful termination in
5 violation of public policy; and (12) Intentional Infliction of Emotional Distress (the
6 “Complaint”). *Id.*

7 The parties engaged in an informal exchange of information with a view to participating
8 in early mediation. Defendants produced certain information and documentation relating to the
9 Plaintiffs, including their personnel, payroll, and time records, as well as information regarding
10 the aggrieved employees and the relevant pay periods during the PAGA period. *See* Van Hook
11 Decl., ¶ 4.

12 **III. FACTUAL OVERVIEW**

13 SKS owns and operates a poultry and egg farm in Lodi, California. Plaintiffs allege that
14 SU not only owned SKS, but also was directly involved in the day-to-day operations of SKS,
15 including making decisions about pay, work hours, and other terms and conditions of
16 employment of SKS’s workers.

17 Most of SKS’s employees are not direct employees. Instead, they are provided through
18 labor contractors, including GOMEZ, doing business as “Adolfo Gomez Farm Labor
19 Contractor.” While GOMEZ was the employer listed on Plaintiffs’ pay checks and wage
20 statements, Plaintiffs allege that SU and SKS’s supervisors controlled the day-to-day working
21 conditions of Plaintiffs and the other farm workers, including employees’ pay rates, schedules,
22 working hours, and breaks.

23 Plaintiffs began working for Defendants on or about January 6, 2021. Plaintiffs worked at
24 SKS’s Lodi facility as “egg processors,” sorting and packaging eggs in a large factory-type
25 setting. Plaintiffs’ employment with GOMEZ and SKS ended in late-January 2022. The
26 circumstances of Plaintiffs’ separation, while disputed, are largely irrelevant to their PAGA
27 claims and to the parties’ PAGA settlement.

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1 authority regarding disputed legal issues, additional information regarding relevant policies and
2 procedures, and additional information regarding the relevant pay periods of the Aggrieved
3 Employees. Through this mediation, the Parties reached an agreement in principle to resolve this
4 matter on a PAGA representative basis (the “PAGA Settlement”) in addition to reaching a
5 confidential agreement for the resolution of all of Plaintiffs’ individualized claims, including
6 their claims for retaliation, wrongful termination in violation of public policy, intentional
7 infliction of emotional distress, as well as Plaintiffs’ individual Labor Code claims. Plaintiffs
8 will lodge the confidential settlement agreement pertaining to Plaintiffs’ individual claims with
9 the Court for *in camera* review. *See* Van Hook Decl., ¶ 6.

10 Following the mediation, the Parties’ engaged in substantial negotiation of a long-form
11 PAGA Settlement Agreement. The Parties fully executed the PAGA Settlement Agreement as of
12 January 31, 2023. Attached as **Exhibit 1** to Van Hook Decl. is a true and correct copy of the
13 PAGA Settlement Agreement and Limited Release (the “PAGA Settlement Agreement”). *See*
14 Van Hook Decl., ¶ 7, Ex. 1 [PAGA Settlement Agreement].

15 As required by PAGA, concurrently with the filing of this Motion, Plaintiffs’ counsel
16 submitted the Settlement Agreement to the Labor and Workforce Development Agency
17 (“LWDA”) for its review. *See* Van Hook Decl., ¶ 8.

18 **B. Summary of Settlement Terms**

19 The PAGA Settlement Agreement provides that Defendants will pay a total of \$100,000
20 (the “Gross PAGA Settlement Fund”), as a non-reversionary settlement fund to settle the
21 representative PAGA claims in this action. From the Gross Settlement Fund of \$100,000, the
22 following amounts will be paid, subject to this Court’s approval:

- 23 • Plaintiffs’ Counsel’s attorney’s fees of 1/3 of the Gross PAGA Settlement Fund
- 24 (\$33,333.33) in connection with the PAGA claims;
- 25 • Plaintiffs’ Counsel’s out-of-pocket litigation expenses of \$2,800 arising out of the
- 26 PAGA Claims; and
- 27 • PAGA Settlement administration expenses of \$3,500.

- This results in an estimated Net PAGA Settlement Fund of Sixty Thousand Three Hundred and Sixty-Six Dollars and Sixty-Six Cents (\$60,366.66) (comprised of the Gross PAGA Settlement Fund, minus requested fees, costs, and PAGA settlement administration expenses). *See* Van Hook Decl., ¶ 9.

As required by PAGA, 75% of the Net PAGA Settlement Fund will be paid to the LWDA and the remaining 25% of the Net PAGA Settlement Fund will be distributed among the Aggrieved Employees on a pro rata basis according to their pay periods during the relevant time period. Data as of December 2, 2022, indicates approximately 250 current and former Aggrieved Employees and a total of approximately 2,611 pay periods. These figures will necessarily increase somewhat through to the date of Court approval of this PAGA settlement (the end of the settlement period). The Parties agreed that the 2,611 weekly pay periods shall be subject to a 15% buffer, meaning that no additional consideration shall be necessary if the total number of weekly pay periods in the PAGA Member List is not greater than 3,003 (115% of 2,611). If the total number of weekly pay periods is greater than 3,003, then Defendants agree to pay the Gross PAGA Settlement Amount which shall be increased by a pro-rata amount for those pay periods greater than 3,003. *See* Van Hook Decl., ¶ 10; Ex. 1 [PAGA Settlement Agreement], ¶ 7.

Payments will be made to the Aggrieved Employees by check to their last known home address, and Aggrieved Employees will not be required to submit a claim form or take any other steps to receive their payment. As this is a PAGA-only settlement, non-PAGA individualized claims (such as claims for alleged unpaid wages, or wrongful termination) of other Aggrieved Employees are not being released by virtue of the PAGA Settlement. *See* Van Hook Decl., ¶ 11; Ex. 1 [PAGA Settlement Agreement], ¶ 7.

Subject to the Court's approval, the settlement administration, including calculation and issuance of payments, will be performed by Simpluris Settlement Administrators, a nationally recognized settlement administrator. *See* Van Hook Decl., ¶ 12; Ex. 1 [PAGA Settlement Agreement], ¶ 24.

Attached as **Exhibit 2** to Van Hook Decl. is a true and correct copy of Simpluris'

1 quotation in the amount of \$3,500 for administration of the PAGA Settlement. *See* Van Hook
2 Decl., ¶ 27; Ex. 2 [“PAGA Settlement Administration Quotation”].

3 The PAGA Settlement Agreement releases all claims for civil penalties under PAGA
4 arising from the same facts and/or claims alleged in the Action, or related to claims that were
5 pled or that could have been pled under PAGA in the Action, that accrue through the date the
6 Court enters its order approving this PAGA Settlement. *See* Van Hook Decl., ¶ 13.

7 The PAGA Settlement Agreement provides for prompt payment of the settlement
8 amounts. On or before the Effective Date, Defendants will provide the PAGA Settlement
9 Administrator with the PAGA Member List, which shall be used solely for the administration of
10 this PAGA Settlement and for no other purpose, and which shall not be shared with any persons
11 or entity not employed by the PAGA Settlement Administrator and working on the
12 administration of this PAGA Settlement. *See* Van Hook Decl., ¶ 14.

13 Within 15 days after the Effective Date, Defendants shall deposit the Gross PAGA
14 Settlement Fund with the Settlement Administrator (the “Funding Date”). Within 10 days after
15 the Funding Date, the Settlement Administrator shall cause all Settlement Payments to be paid,
16 including the payment to the LWDA, the payment to the Aggrieved Employees, and the
17 payments to Plaintiff’s Counsel for the approved attorney’s fees and costs. *See* Van Hook Decl.,
18 ¶ 15. Accompanying the payments to the Aggrieved Employees the PAGA Settlement
19 Administrator shall mail a Notice of Settlement of PAGA Representative Action. Attached as
20 **Exhibit 3** to Van Hook Decl. is a true and correct copy of the Notice of Settlement of PAGA
21 Representative Action. *See* Van Hook Decl., ¶ 15; Ex. 3.

22 Concurrent with the filing of this Motion, Plaintiffs have submitted the PAGA Settlement
23 Agreement to the LWDA for its review. *See* Van Hook Decl., ¶ 16.

24 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND SHOULD BE APPROVED**

25 **A. Legal Standard**

26 Under PAGA, an Aggrieved Employee may bring a civil action personally and on behalf
27 of other current or former employees to recover civil penalties for Labor Code violations.

1 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of
2 any penalties recovered go to the LWDA, leaving the remaining 25% for the employees. *Id.*
3 Labor Code § 2699 (l) provides that “[t]he superior court shall review and approve any penalties
4 sought as part of a proposed settlement agreement pursuant to” PAGA. “[T]here is no
5 requirement that the Court certify a PAGA claim for representative treatment” as in a class
6 action. *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No.
7 CV122615PSGJEMX), 2015 WL 12732709 at *5.

8 Settlement of a PAGA claim requires that the “Court shall review and approve any
9 penalties sought as part of a proposed settlement agreement pursuant to this part.” Cal. Lab.
10 Code § 2699(1)(2). In contrast to class settlements, there is little case law addressing the standard
11 for approving a PAGA settlement. Courts have found that the PAGA settlement must be
12 reasonable in light of the potential verdict value. *See O’Connor v. Uber Technologies, Inc.* (N.D.
13 Cal. 2016) 201 F.Supp.3d 1110, 1135 (rejecting settlement of less than one percent of the
14 potential verdict). However, PAGA settlement may be substantially discounted given the
15 uncertainties that the plaintiff would prevail, and because courts often exercise their discretion to
16 award PAGA penalties below the statutory maximum, even where a claim succeeds at trial. *See*
17 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
18 5907869 at **8-9. *See also Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (affirming
19 a judgment which only provided for a PAGA penalty of \$5 per violation, as opposed to the \$100
20 maximum awardable penalty).

21 **B. The Settlement Is The Product Of Extensive, Arm’s-Length Negotiations.**
22

23 While PAGA settlements do not need to satisfy the same requirements for class action
24 settlements, in the context of class action settlements, a “presumption of fairness exists where:
25 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
26 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
27 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.* (2008)

1 168 Cal.App.4th 116, 128. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53
2 and *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390.

3 Notwithstanding that PAGA settlements are not treated as class action settlements, the Parties
4 use the class action settlement standard here because of the dearth of guidance for PAGA
5 settlements approval.

6 Here, with the exception of the percentage of objectors (which is not a factor in the
7 PAGA settlement context) all of these factors are present. The PAGA Settlement Agreement
8 here was the result of extensive arm’s-length negotiations between experienced employment law
9 attorneys who are familiar with the substantive legal issues and with complex representative
10 PAGA litigation. *See Van Hook Decl.*, ¶ 23. The Parties participated in a full-day, private
11 mediation with a highly experienced Judge and mediator. *See Van Hook Decl.*, ¶ 6. Following
12 the general terms of the agreement reached at the mediation, the Parties engaged in several
13 weeks of further negotiations regarding the terms of the PAGA Settlement Agreement. *See Van*
14 *Hook Decl.*, ¶ 7.

15 In addition, Plaintiffs’ Counsel are experienced in the litigation and settlement of
16 complex wage-and-hour cases, including representative PAGA actions. Based on their
17 experience litigating similar cases, Plaintiffs’ Counsel are of the opinion that the PAGA
18 Settlement Sum is fair, reasonable, and adequate and is in the best interests of all Parties, the
19 LWDA, and the Aggrieved Employees, in light of all known facts and circumstances and the
20 risks inherent in litigation. *See Van Hook Decl.*, ¶ 25.

21 **C. Calculation of Maximum Potential Civil Penalty Exposure.**

22 Based on the data provided by Defendants, the Parties estimated at mediation that there
23 were a total of 2,611 pay periods for all putative Aggrieved Employees from February 9, 2021,
24 through December 2, 2022 (the date of the mediation).

25 For purposes of Plaintiffs’ calculations of the total potential exposure for PAGA
26 penalties, the “*initial*” penalty rate of \$100 per pay period was applied for all pay periods.

1 The following calculations assume a 100% violation rate, no discretionary reduction of
2 penalties by the Court, and “stacking” of penalties of the three primary predicate violations
3 advanced by Plaintiffs, for unpaid overtime, meal period violations, and rest period violations.

4 Using this methodology, the maximum PAGA penalty for each distinct violation would
5 be: **\$261,100** (2,611 pay periods x \$100 “initial” penalty rate).

6 Unpaid Overtime Violations (Lab. Code § 510): \$261,100

7 Wage Statement Violations (Lab. Code § 226): \$261,100

8 Meal Period Violations (Lab. Code §§ 512, 226.7): \$261,100

9 Total: **\$783,300¹**

10 The settlement here is \$100,000, or 12.76% of this estimated PAGA exposure. Based on
11 an estimated 2,611 pay periods, the settlement provides for almost \$39 per pay period.

12 **D. The Risks of Further Litigation Are Substantial and the PAGA Settlement**
13 **Provides Significant Relief for the State and the Putative Aggrieved Employees.**

14 Given the risks and challenges that Plaintiffs’ claims would face in extended litigation,
15 and the vigorous substantive and procedural defenses that Defendants would present, Plaintiffs
16 and their counsel believe that this is a fair and reasonable settlement, and an excellent outcome
17 for the LWDA and for the Aggrieved Employees. Plaintiffs applied various risk discounts to
18 account for the perceived strengths and weaknesses of each claim, as well as Defendants’
19 anticipated defenses, including manageability issues should the Parties continue litigating. *See*
20 *Van Hook Decl.*, ¶ 17.

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23 ¹ Plaintiffs contend that they could theoretically pursue PAGA penalties for every Labor
24 Code provision that was allegedly violated. However, even if PAGA did permit “stacked”
25 penalties, many of these violations would be derivative of each other, and provide arguably
26 redundant penalties. It is quite likely, therefore, that despite the maximum theoretical recovery
27 that might be available from “stacked” penalties, that the Court would exercise its discretion to
28 reduce penalties that appeared redundant or excessive. Accordingly, for purposes of settlement,
and as discussed further below, Plaintiffs believe that this is a proper method to calculate
potential PAGA penalty exposure.

1 **E. Uncertainties Regarding Calculation of PAGA Penalties**

2 Plaintiffs took into account various risk factors and uncertainties in negotiating the
3 PAGA Settlement, including the following:

4 **1. The Availability of “Stacked” PAGA Penalties**

5 Plaintiffs believe that PAGA allows for a separate penalty to be assessed for each pay
6 period *for each violation*. For example, if an employee suffered five separate Labor Code
7 violations in a single pay period, five penalties in the same pay period may be assessed. Some
8 trial court decisions have supported this interpretation. See, e.g., *Schiller v. David’s Bridal, Inc.*
9 (E.D. Cal. July 14, 2010) 2010 WL 2793650 at *6 (finding that PAGA penalties may be stacked
10 in determining the amount in controversy); *Smith v. Brinker Intern., Inc.* (N.D. Cal. May 5,
11 2010) No. 10-CV-213-VRW, 2010 WL 1838726, at *2-6 (stacking PAGA penalties in
12 determining the amount in controversy in an individual action and granting motion to remand);
13 *Pulera v. F & B, Inc.* (E.D. Cal. Aug. 19, 2008) No. 2:08-CV-275-MCE, 2008 WL 3863489,
14 at *2-3 (concluding that the amount in controversy was not met despite stacking all PAGA
15 penalties). See Van Hook Decl., ¶ 21.

16 Defendants, however, read the statute very differently and contend that only a single
17 penalty may be assessed per pay period, regardless of the number of different Labor Code
18 provisions violated during that pay period. Defendants argue that this reading is supported by,
19 among other things, the language of Section 2699(f)(2): “the civil penalty is one hundred dollars
20 (\$100) for each aggrieved employee for pay period for the initial violation and two hundred
21 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” As
22 the statute does not explicitly state that this amount is multiplied by the number of violations,
23 Defendants contend that only a single penalty may be assessed for each employee for each pay
24 period. While Plaintiffs certainly dispute this statutory interpretation, Plaintiffs recognize the
25 lack of certainty, including the lack of appellate authority, as to how trial Courts would interpret
26 the statute. *Id.*

1 In Plaintiffs’ calculations set forth above, Plaintiff “stacked” three separate penalties
2 representing the primary predicate Labor Code violations advanced by Plaintiffs. However,
3 based on Defendants’ interpretation of the statute, the maximum PAGA penalty that Plaintiffs
4 could recover – no matter the number of violations they could prove at trial – would be
5 **\$261,100**. If that were the case, the settlement of \$100,000 represents *more than 38%* of the total
6 potential PAGA penalties.

7 **2. The Trial Court’s Discretion to Reduce PAGA Penalties**

8 As Defendants have vigorously argued throughout these settlement negotiations, even if
9 Plaintiffs were to prevail on some or all of their claims, PAGA gives trial courts the discretion to
10 reduce the penalties actually awarded. *See* Lab. Code § 2699(e)(2) (allowing reductions of
11 penalties where the full amount would be “unjust, arbitrary and oppressive, or confiscatory”).
12 Moreover, as long as the Court awards some penalties, the statute imposes no limit to the amount
13 a Court can reduce PAGA penalties. Defendants have argued that this Court could (and should)
14 greatly reduce any penalty award against them. While Plaintiffs dispute that significant penalty
15 reductions would be appropriate, the Court’s discretion to reduce penalties, with little statutory
16 or appellate case law to guide the amount of a reduction, is a substantial uncertainty that
17 Plaintiffs and their counsel properly considered in reaching this settlement. *Id.*

18 Likewise, in light of this judicial discretion (and the other uncertainties surrounding
19 PAGA), courts have approved significantly *lower* PAGA settlements involving many more
20 employees and pay periods. *See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.*, 2015
21 U.S. Dist. LEXIS 21374, *2-3 (N.D. Cal. 2015) [approving \$20,000 PAGA settlement]; *Franco*
22 *v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving
23 PAGA penalties in amount of \$10,000 for 2,055 employees asserting wage and hour violations];
24 *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving
25 \$10,000 in PAGA penalties for 1,868 employees in wage and hour case]; *Chu v. Wells Fargo*
26 *Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA
27 penalties of \$7,500 for 2,752 employees in wage and hour action].

1 In light of these potential issues, this PAGA Settlement is an outstanding result for the
2 State of California (which will receive 75% of the Net Settlement Fund) and the Aggrieved
3 Employees (which will receive the remaining 25% on a pro-rata basis). *See* Van Hook Decl., ¶
4 22.

5 **3. Defendants' Legal Defenses**

6 Throughout this litigation, including in the settlement negotiations and in the settlement
7 agreement, Defendants steadfastly argue that Plaintiffs would lose their PAGA claims if they
8 were tried because Defendants complied with their obligations under the Labor Code. As to
9 Plaintiffs' claims for unpaid wages and overtime, Defendants have argued that they had lawful
10 timekeeping and payroll policies, that they had a valid rounding policy, and that any unpaid
11 wages were *de minimis*. Defendants also argue that they provided meal periods and authorized
12 and permitted employees to take rest periods, and that any non-compliant meal and rest periods
13 were the result of decisions by the employees themselves, and not the result of Defendants'
14 actions. Further, Defendants also argue that their wage statements are accurate and complete,
15 arguing that Plaintiffs' theories of recovery on wage statement penalties are factually and legally
16 unsupported. *See* Van Hook Decl., ¶ 18.

17 While Plaintiffs reject these various defenses, they have not been tested in litigation,
18 raising substantial risks and uncertainty that some or all of Plaintiffs' PAGA claims may be
19 defeated on the merit.

20 **4. Defendants' Manageability Arguments**

21 Defendants have argued that Plaintiffs' PAGA claims suffer from manageability
22 problems, which might cause the Court to narrow the scope of claims and/or the scope of the
23 Aggrieved Employees. For example, Defendants argue that the off-the-clock and meal and rest
24 period claims are based on individualized, fact-specific circumstances that are not appropriate for
25 representative adjudication. While Plaintiffs contend that PAGA, unlike class actions, do not
26 have a manageability requirement, Plaintiffs recognize the current uncertainty in the law
27 regarding the application of this defense.

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2 Defendants argued that, if the Court were to award substantial PAGA penalties, they may
3 not have the financial ability to pay the judgment. As a result, this created additional risks and
4 uncertainties that (1) the Court would reduce any amount of PAGA penalties that would be
5 “unjust” or “oppressive”, and (2) Plaintiffs might be unable to collect a judgment if this case was
6 litigated through trial and the maximum penalties were awarded.

7 **D. The Requested Fees and Litigation Costs are Reasonable and Appropriate.**

PAGA allows a prevailing plaintiff to obtain attorneys’ fees and costs. Labor Code § 2699(g). The U.S. Supreme Court has recognized that “a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. *Accord*, *Serrano v. Priest* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys’ fees and costs when a litigation proceeding in a representative capacity secures a substantial benefit); *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. This guidance should equally apply to representative settlements under PAGA.

Plaintiffs' counsel requests an award of attorney's fees of \$33,333, or 1/3 of the PAGA settlement sum, which is typical in class and PAGA settlements. Plaintiffs' counsel's litigation costs are also very reasonable, as Plaintiff seeks only \$2,800 in litigation costs, which includes the fees incurred for the private mediation. Plaintiff's litigation costs are described more fully in the concurrently filed Declaration of John A. Van Hook.

21 **V. CONCLUSION**

For the foregoing reasons, the Parties respectfully request that this honorable Court approve the proposed PAGA Settlement Agreement, and direct the Parties to take all steps necessary to effectuate its terms.

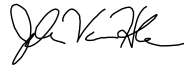
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1 Dated: February 10, 2023

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

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4 _____
John A. Van Hook
Adrian C. Byrne
5 *Attorneys for Plaintiffs*
6 *and all other Aggrieved Employees*