

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

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

9 *Attorneys for Plaintiffs*
10 *and all other Aggrieved Employees*

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

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

17 Plaintiffs,

18 v.

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

23 Defendants.
24
25
26
27
28

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

**DECLARATION OF JOHN A. VAN HOOK
IN SUPPORT OF MOTION FOR
APPROVAL OF REPRESENTATIVE
SETTLEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

- **NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
APPROVAL OF REPRESENTATIVE
SETTLEMENT;**
- **NOTICE OF PAGA SETTLEMENT;**
- **[PROPOSED] ORDER**

Date:

Time:

Dept.:

Complaint Filed: April 27, 2022

Trial: None Set

1 I, John A. Van Hook, declare as follows:

2 1. I am a member of the Bar of the State of California (SBN 205067) and am
3 admitted to practice before all courts of the State of California. I am the owner of the Van
4 Hook Law Firm, counsel of record for the named Plaintiffs JOSE ENRIQUE MARTINEZ
5 CAZARES, an individual; and ENRIQUE MARTINEZ FUENTES (“Plaintiffs”) and the
6 allegedly aggrieved employees. I submit this declaration in support of Plaintiffs’ Motion for
7 Approval of Representative Settlement of Private Attorneys General Act of 2004 Cause of
8 Action (the “Motion”). I have personal knowledge of the facts set forth in this declaration and,
9 if called upon to do so, could and would testify competently thereto, except where I make a
10 statement on information and belief, in which case I am informed and believe the statement to
11 be true.

12 2. Along with my co-counsel, Adrian C. Byrne of The Byrne Law Group, I have
13 been lead counsel on behalf of Plaintiffs and the allegedly aggrieved employees throughout
14 this action.

15 3. My co-counsel and I began to investigate potential wage and hour claims by
16 Plaintiffs against Defendants S K S ENTERPRISE, INC. a California corporation; WEN
17 CHANG SU, an individual; ADOLFO GOMEZ, an individual, doing business as ADOLFO
18 GOMEZ FARM LABOR CONTRACTOR (“Defendants”) in or about January 2022. After
19 investigation and evaluation of potential claims, on February 9, 2022, Plaintiffs filed a notice
20 of potential claims with the Labor and Workforce Development Agency (“LWDA”) pursuant
21 to PAGA, in which Plaintiffs identified all of Defendants non-exempt employees in California
22 from February 9, 2021 through to the present (the “PAGA Claim Period”) as putative
23 “Aggrieved Employees” for purposes of their PAGA claims. On April 27, 2022, after waiting
24 the statutorily-required 65-day notice period, Plaintiffs filed a complaint in the Superior Court
25 of California, County of San Joaquin, Case No. CV-40E-2022-3076, entitled *Jose Enrique*
26 *Martinez Cazares, an individual and Enrique Martinez Fuentes, an individual, on behalf of*
27 *themselves and all Aggrieved Employees v. S K S Enterprise, Inc., a California Corporation;*

Wen Chang Su, an individual, Adolfo Gomez, an individual, doing business as Adolfo Gomez Farm Labor Contractor; and Does 1-50, inclusive.

4. The Parties scheduled a full-day private mediation for December 2, 2022, with Judge Patrick O'Hara (Ret.), a highly experienced mediator and former Tulare County Superior Court Judge. In advance of that mediation, Defendants provided Plaintiffs with substantial informal discovery, including Plaintiff's personnel, payroll records, and timekeeping. In addition, with respect to data concerning the Plaintiffs' representative claims, Defendants also provided headcounts, and pay period data for the allegedly Aggrieved Employees during the PAGA claim period (i.e., beginning on February 9, 2021).

5. In further preparation for mediation and to facilitate analysis of Defendants' PAGA exposure, my co-counsel and I conducted our own investigation, conducting extensive interviews with the Plaintiffs, and reviewing relevant policies and procedures applicable to the claims at issue, including overtime pay, meal and rest breaks, among other pertinent issues.

6. On December 2, 2022, the Parties participated in an all-day mediation with Judge O’Hara. The Parties exchanged substantial information through the mediation, including legal authority regarding disputed legal issues, additional information regarding relevant policies and procedures, and additional information regarding the relevant pay periods of the Aggrieved Employees. Through this mediation, the Parties reached an agreement in principle to resolve this matter on a PAGA representative basis (the “PAGA Settlement”) in addition to reaching a confidential agreement for the resolution of all of Plaintiffs’ individualized claims, including their claims for retaliation, wrongful termination in violation of public policy, intentional infliction of emotional distress, as well as Plaintiffs’ individual Labor Code claims. Plaintiffs will lodge the confidential settlement agreement pertaining to Plaintiffs’ individual claims with the Court for *in camera* review.

7. Following the mediation, the Parties' engaged in substantial negotiation of a long-form PAGA Settlement Agreement. The Parties fully executed the PAGA Settlement

1 Agreement as of January 31, 2023. Attached hereto as **Exhibit 1** is a true and correct copy of
2 the PAGA Settlement Agreement and Limited Release (the “PAGA Settlement Agreement”).

3 8. As required by PAGA, concurrently with the filing of this Motion, I have
4 submitted the Settlement Agreement to the Labor and Workforce Development Agency
5 (“LWDA”) for its review.

6 9. The PAGA Settlement Agreement provides that Defendants will pay a total of
7 \$100,000 (the “Gross PAGA Settlement Fund”), as a non-reversionary settlement fund to settle
8 the representative PAGA claims in this action. From the Gross Settlement Fund of \$100,000,
9 the following amounts will be paid, subject to this Court’s approval:

- 10 a. Plaintiffs’ Counsel’s attorney’s fees of 1/3 of the Gross PAGA
11 Settlement Fund (\$33,333.33) in connection with the PAGA claims;
- 12 b. Plaintiffs’ Counsel’s out-of-pocket litigation expenses of \$2,800 arising
13 out of the PAGA Claims; and
- 14 c. PAGA Settlement administration expenses of \$3,500.
- 15 d. This results in an estimated Net PAGA Settlement Fund of Sixty
16 Thousand Three Hundred and Sixty-Six Dollars and Sixty-Six Cents
17 (\$60,366.66) (comprised of the Gross PAGA Settlement Fund, minus
18 requested fees, costs, and PAGA settlement administration expenses).

19 10. As required by PAGA, 75% of the Net PAGA Settlement Fund will be paid to
20 the LWDA and the remaining 25% of the Net PAGA Settlement Fund will be distributed
21 among the Aggrieved Employees on a pro-rata basis according to their pay periods during the
22 relevant time period. Data as of December 2, 2022, indicates approximately 250 current and
23 former Aggrieved Employees and a total of approximately 2,611 pay periods. These figures
24 will necessarily increase somewhat through to the date of Court approval of this PAGA
25 settlement (the end of the settlement period). The Parties agreed that the 2,611 weekly pay
26 periods shall be subject to a 15% buffer, meaning that no additional consideration shall be
27 necessary if the total number of weekly pay periods in the PAGA Member List is not greater
28

1 than 3,003 (115% of 2,611). If the total number of weekly pay periods is greater than 3,003,
2 then Defendants agree to pay the Gross PAGA Settlement Amount which shall be increased by
3 a pro-rata amount for those pay periods greater than 3,003. *See Exhibit 1, ¶ 7.*

4 11. Payments will be made to the Aggrieved Employees by check to their last
5 known home address, and Aggrieved Employees will not be required to submit a claim form or
6 take any other steps to receive their payment. As this is a PAGA-only settlement, non-PAGA
7 individualized claims (such as claims for alleged unpaid wages, or wrongful termination) of
8 other Aggrieved Employees are not being released by virtue of the PAGA Settlement. *Ibid.*

9 12. Subject to the Court's approval, the settlement administration, including
10 calculation and issuance of payments, will be performed by Simpluris Settlement
11 Administrators, a nationally recognized settlement administrator. *See Exhibit 1, ¶¶ 5 and 24.*

12 13. The PAGA Settlement Agreement releases all claims for civil penalties under
13 PAGA arising from the same facts and/or claims alleged in the Action, or related to claims that
14 were pled or that could have been pled under PAGA in the Action, that accrue through the date
15 the Court enters its order approving this PAGA Settlement. *See Exhibit 1, ¶ 22.*

16 14. The PAGA Settlement Agreement provides for prompt payment of the
17 settlement amounts. On or before the Effective Date, Defendants will provide the PAGA
18 Settlement Administrator with the PAGA Member List, which shall be used solely for the
19 administration of this PAGA Settlement and for no other purpose, and which shall not be
20 shared with any persons or entity not employed by the PAGA Settlement Administrator and
21 working on the administration of this PAGA Settlement. *See Exhibit 1, ¶ 6.*

22 15. Within 15 days after the Effective Date, Defendants shall deposit the Gross
23 PAGA Settlement Fund with the Settlement Administrator (the "Funding Date"). Within 10
24 days after the Funding Date, the Settlement Administrator shall cause all Settlement Payments
25 to be paid, including the payment to the LWDA, the payment to the Aggrieved Employees, and
26 the payments to Plaintiff's Counsel for the approved attorney's fees and costs. *See Exhibit 1,*
27 *¶¶ 9-12.* Accompanying the payments to the Aggrieved Employees the PAGA Settlement

1 Administrator will mail a Notice of Settlement of PAGA Representative Action. Attached
2 hereto as **Exhibit 3** is a true and correct copy of the Notice of Settlement of PAGA
3 Representative Action.

4 16. Concurrent with the filing of this Motion, Plaintiffs have submitted the PAGA
5 Settlement Agreement to the LWDA for its review.

6 17. As set forth in the Motion, the PAGA Settlement Agreement here was the result
7 of extensive arm's-length negotiations between the Parties. Given the risks and challenges that
8 Plaintiffs' claims would face in extended litigation, and the vigorous substantive and
9 procedural defenses that Defendants would present, my co-counsel and I believe that this is a
10 fair and reasonable settlement, and an excellent outcome for the LWDA and for the Aggrieved
11 Employees. In negotiating this PAGA Settlement my co-counsel and I applied various risk
12 discounts to account for the perceived strengths and weaknesses of each claim, as well as
13 Defendants' anticipated defenses, including manageability issues should the Parties continue
14 litigating.

15 18. Throughout this litigation, Defendants steadfastly argue that Plaintiffs would
16 lose their PAGA claims if they were tried because Defendants complied with their obligations
17 under the Labor Code. As to Plaintiffs' claims for unpaid wages and overtime, Defendants
18 have argued that they had lawful timekeeping and payroll policies, that they had a valid
19 rounding policy, and that any unpaid wages were *de minimis*. Defendants also argue that they
20 provided meal periods and authorized and permitted employees to take rest periods, and that
21 any non-compliant meal and rest periods were the result of decisions by the employees
22 themselves, and not the result of Defendants' actions. Further, Defendants also argue that their
23 wage statements are accurate and complete, arguing that Plaintiffs' theories of recovery on
24 wage statement penalties are factually and legally unsupported.

25 19. Defendants vigorously argued that these PAGA claims could not be manageably
26 tried on a representative basis, given the various different positions at issue, and the multitude
27 of substantive legal issues underlying the PAGA claims.

20. While Plaintiffs, my co-counsel and I remained confident that we could overcome these arguments and defenses, and ultimately prevail, these issues created a substantial risk that Plaintiff would not prevail on a representative basis.

21. Additional uncertainties existed with respect to the valuation of Plaintiffs' PAGA claims. In addition to Defendants' defenses on the underlying claims, there is conflicting and developing case law regarding PAGA and its calculation of penalties, including the availability of "stacked" PAGA penalties and the Court's discretion to reduce PAGA penalties under Labor Code § 2699(e)(2), which created further uncertainties as to the amounts of PAGA penalties that Plaintiffs might recover, even if they did prevail. While Plaintiffs certainly dispute this statutory interpretation, Plaintiffs recognize the lack of certainty, including the lack of appellate authority, as to how trial Courts would interpret the statute and the amount of penalties, if any, that may be awarded.

22. In light of these potential issues, and in my experience settling and obtaining court approval of PAGA and other wage-and-hour settlements, this is an outstanding result for the State of California (which will receive 75% of the Net Settlement Fund) and the Aggrieved Employees (which will receive the remaining 25% on a pro-rata basis).

23. The following is a brief description of my legal background. I have been practicing law in the State of California for more than 20 years and I have practiced labor and employment law almost exclusively for the past 17 years. I graduated from Harvard Law School in 1999 and was admitted to the California State Bar in December 1999. I have practiced employment law almost exclusively since May 2003, including approximately 14 years at in the Labor and Employment departments of two leading national law firms, during which handled wage and hour class actions, FLSA collective actions, and representative PAGA actions, among other wage and hour litigation. I also provided clients with employment advice and counsel, including on wage and hour issues. I estimate that I handled more than 65 class, collective, and PAGA representative cases during this time, including many involving banking and financial industry employees.

24. In June 2019, I started my own practice focusing on representing workers in employment litigation, including wage and hour, class and PAGA representative actions. I am currently handling multiple putative class and PAGA representative actions on behalf of workers in California courts.

25. In reaching the settlement, my co-counsel and I assessed and advised Plaintiffs on all of the risks of continued pursuit of this litigation and the factors in valuing these claims. Based on my knowledge of the facts of this case, my evaluation of the strengths and challenges of Plaintiff's claims and Defendant's defenses, I believe the PAGA Settlement Agreement represents a fair, reasonable, and adequate settlement of these claims. I, along with Mr. Byrne and the Plaintiffs, fully support this settlement.

26. This PAGA Settlement Agreement provides for reimbursement of Plaintiffs' litigation costs of up to \$2,800.

Cost Amount	Nature of Cost Incurred
\$ 31.86	Postage (Plaintiffs' Certified Mail Employment Records Requests)
\$75.00	PAGA Notice Filing Fee
\$4.58	Postage (Plaintiffs' Certified Mail PAGA Notice)
\$576.52	Complaint Filing Fees (including court and attorney service fees)
\$1,500.00	Plaintiffs' share of mediation fee for December 2, 2022 mediation with Judge Patrick O'Hara (Ret.)

\$75.15	Court Filing - Notice and Acknowledgement of Receipts
\$72.07	Court Filing – Plaintiffs’ Case Management Statement
\$72.07	Court Filing – Summons
\$41.18	Service of Process
\$123.54	Service of Process
\$30.89	Court Filing
\$30.89	Court Filing
\$164.72	Service of Process
\$120.00	Estimated Costs of Filing Motion for Approval of PAGA Settlement, Including Service Fee.
\$2,818.47	Costs Total

27. After reaching the settlement in this action, the Parties agreed to use Simpluris Settlement Administrators (“Simpluris”) as the Settlement Administrator, subject to the Court’s approval. Simpluris’ website is located at <https://www.simpluris.com>. Simpluris’ duties will include managing the class member data, calculating and issuing the settlement payments, issuing necessary tax forms, and all necessary reporting to the Parties and to the Court. Simpluris are a highly respected administrator recognized as being competent, reliable, and responsive. I believe that their estimated costs of \$3,500 for these tasks are reasonable. Attached hereto as **Exhibit 2** is a true and correct copy of Simpluris’ quotation in the amount of \$3,500 for administration of the PAGA Settlement [“PAGA Settlement Administration Quotation”].

1 28. Pursuant to Labor Code § 2699(1)(2), a copy of the PAGA Settlement Agreement
2 will be submitted to the LWDA at the same time that the moving papers are submitted to the
3 Court. I will promptly notify the Court of any comment or objection by the LWDA as to the
4 settlement.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct. Executed on February 10, 2023 at Sherman Oaks, California.

7
8 

9 _____
John A. Van Hook

EXHIBIT

1

PAGA SETTLEMENT AGREEMENT AND LIMITED RELEASE

This Private Attorneys General Act Settlement Agreement and Limited Release (“PAGA Settlement”) is by and between JOSE ENRIQUE MARTINEZ CAZARES and ENRIQUE MARTINEZ FUENTES (“Plaintiffs”), for themselves and on behalf of the State of California and all allegedly aggrieved employees, and S K S ENTERPRISE, INC.; WEN CHANG SU; and ADOLFO GOMEZ-CAZARES, individually and doing business as ADOLFO GOMEZ FARM LABOR CONTRACTOR (collectively referred to as “Defendants”) (each, a “Party” and collectively, the “Parties”).

WHEREAS, Plaintiffs sent a notice to the California Labor and Workforce Development Agency (“LWDA”) alleging violations of the Labor Code alleged to have occurred during Plaintiffs’ employment with Defendants on behalf of Plaintiffs and other purported aggrieved employees (“PAGA Notice”). The PAGA Notice defines “Aggrieved Employees” as hourly employees beginning February 9, 2021.

WHEREAS, Plaintiffs filed a complaint in the Superior Court of California, County of San Joaquin, Case No. CV-40E-2022-3076 entitled *Jose Enrique Martinez Cazares, an individual and Enrique Martinez Fuentes, an individual, on behalf of themselves and all Aggrieved Employees v. S K S Enterprise, Inc., a California Corporation; Wen Chang Su, an individual, Adolfo Gomez, an individual, doing business as Adolfo Gomez Farm Labor Contractor; and Does 1-50*, inclusive alleging causes of action for Failure to Pay Minimum Wages; Failure to Pay Overtime Wages; Failure to Provide Meal Periods; Failure to Authorize and Permit Rest Periods; Failure to Provide Itemized Accurate Wage Statements; Failure to Provide Employment Records; Continuing Wages Penalty; Unfair Competition; Civil Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004; Retaliation; Wrongful termination in violation of public policy; and Intentional Infliction of Emotional Distress (the “Complaint”).

WHEREAS, Plaintiffs asserted the PAGA Claims against Defendants on behalf of themselves and other non-exempt employees who were employed by Defendants between February 9, 2021 and the date the Court approves this PAGA Settlement Agreement. These claims are statutorily confined to a one year time period, based on the aforementioned letter to the LWDA. Based on the filing dates of the PAGA Notice and the Lawsuit, the timeframe for alleged PAGA violations at issue in this case is February 9, 2021, through the date the court approves the PAGA Settlement (the “PAGA Period”).

WHEREAS, except for the PAGA Notice, Plaintiffs did not file any claims – written, verbal, or otherwise – with the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the California Department of Labor, the United States Department of Labor, or any other governmental, regulatory, investigative, or enforcement agency of any kind concerning their employment with Defendants.

WHEREAS, the above-referenced PAGA Notice and Complaint and all of the allegations contained within, are referred to herein as the “Action,” all of which are incorporated herein by reference.

WHEREAS, Defendants deny and continue to deny all of the allegations raised by PLAINTIFFS.

WHEREAS, Plaintiffs and Defendants mutually desire to compromise, settle, and release the claims asserted in the Action and any and all other claims whether known or unknown, arising out of or based on any fact, matter, or event which occurred prior to the date of the PAGA Settlement.

WHEREAS, the Parties understand, acknowledge, and agree that the PAGA Settlement constitutes a compromise of Plaintiffs' and/or the Other Employees' PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Action and all representative claims, including the PAGA Claims, that Plaintiffs and/or the Other Employees may have against Defendants. The Parties further acknowledge that the PAGA Settlement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendants of liability.

WHEREAS, the Parties believe and agree that the PAGA Settlement provides for a fair, adequate, and reasonable resolution of the PAGA Claims, and have arrived at the settlement in extensive, arms-length negotiations, including a full day mediation with the Honorable Judge Patrick O'Hara (Ret.), taking into account all relevant factors, present and potential.

NOW, THEREFORE, IT IS HEREBY AGREED, by and between Plaintiffs and Defendants as follows:

A. Definitions

1. "Action" means the case entitled *Jose Enrique Martinez Cazares, et al. v. S K S Enterprise, Inc. et al.*, pending in San Joquin County Superior Court, Case No. CV-40E-2022-3076, and the Operative Complaint in that matter.

2. "Aggrieved Employee Settlement Fund" means twenty-five percent (25%) of the Net Settlement Amount. Individual Settlement Payments to PAGA Members will be made from the Aggrieved Employee Settlement Fund.

3. "Agreement" or "Settlement Agreement" shall mean this Private Attorneys General Act Settlement Agreement and Release.

4. "Attorneys' Fees" means such attorneys' fees as the Court may award to Plaintiffs' Counsel in connection with the PAGA Settlement, and which shall not exceed One Third (1/3) of the Gross PAGA Settlement Amount (\$33,333.33).

5. "Attorneys' Costs" means such litigation costs as the Court may award to Plaintiffs' Counsel for the costs they have incurred and will incur in the investigation, litigation, and resolution of the PAGA Claims, and in the administration of the PAGA Settlement, and which are not expected to exceed Two Thousand Eight Hundred Dollars and 00 Cents (\$2,800.00).

6. “Weekly Value” means the quotient of the Aggrieved Employee Settlement Fund divided by the Total Weekly Pay Periods.

7. “Court” shall mean the San Joaquin County Superior Court, where the Action is venued, and specifically the Hon. Patrick McKinney, or such other judge as (a) may be assigned to the Action or (b) may sit in his stead.

8. “Defense Counsel” or “Defendant’s Counsel” mean Gerardo Hernandez of Littler Mendelson, P.C. and Amanda Heitlinger of Arata, Swingle, Van Egmond & Heitlinger, APC.

9. “Effective Date” means the date this Settlement is approved and the Court’s order granting Settlement Approval and entry of Final Judgment becomes final if no timely objection is filed by the LWDA or other party with standing to object to the terms of this Settlement. If there is no timely objection filed by the LWDA or other party with standing to object to the terms of this Settlement, the “Effective Date” shall mean the date this Settlement is approved and the Court’s order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Settlement, “becomes final and is no longer appealable” shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Settlement may be timely filed and none is filed (i.e., 61 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Settlement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Settlement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Settlement is affirmed. In the event that: (i) the Court does not approve the Settlement; or (ii) the Effective Date does not occur for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions. The Effective Date cannot occur, and Defendant will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent this Settlement Agreement from becoming final and binding.

10. “Final Judgment” means the order entered by the Court granting the entry of judgment in this Action and retaining jurisdiction only as set forth in Paragraph C(4) below.

11. “Funding Date” means the date that is fifteen (15) calendar days after the Effective Date. If the Funding Date falls on a weekend or holiday, it shall be extended to the following business day.

12. “Gross PAGA Settlement Amount” means the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) that Defendant will pay if the Court approves this PAGA Settlement and the Effective Date occurs. The Gross PAGA Settlement Amount will fund: (a) the Aggrieved Employee Settlement Fund; (b) the LWDA Payment; (c) the award of Attorneys’ Fees to Plaintiffs’ Counsel in connection with the PAGA Settlement; (d) the award of Attorneys’ Costs to Plaintiffs’ Counsel in connection with the PAGA Settlement; and (e) the PAGA Settlement

Administration Costs. Under no circumstances will Defendants be required to pay more than the Gross PAGA Settlement Amount in order to settle the PAGA Claims, except as provided in Paragraph C(7). In no event will any PAGA Settlement funds revert to Defendants.

13. “Aggrieved Employee Settlement Payment” means the portion of the Aggrieved Employee Settlement Fund allocated to each PAGA Member, as calculated pursuant to Paragraph C(13) below. One hundred percent (100%) of the Aggrieved Employee Settlement Payments made to PAGA Members shall be deemed miscellaneous income for which a Form 1099-MISC will be issued.

14. “LWDA Payment” means seventy-five percent (75%) of the Net Settlement Amount. The LWDA Payment will be issued to the LWDA.

15. “Net PAGA Settlement Amount” means the Gross PAGA Settlement Amount minus the Attorneys’ Fees and Costs awarded in connection with the PAGA Settlement, and Settlement Administration Costs. Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA and twenty-five percent (25%) will be distributed to PAGA Members.

16. “Notice” means the form of notice that will be sent to each PAGA Member accompanying their Aggrieved Employee Settlement Payments, which shall be substantially in the form attached hereto as **Exhibit A**.

17. “PAGA Members” means Plaintiffs and all current or former non-exempt employees of Defendants in the State of California during the PAGA Period.

18. “PAGA Member List” means the list of full names, most recent mailing addresses, most recent telephone numbers, Social Security numbers, and dates of employment or number of pay periods, as available and calculable, for all PAGA Members, which Defendants will diligently and in good faith compile from their records. To be eligible as a pay period, the PAGA Member must have worked at least one (1) shift during that pay period.

19. “PAGA Period” means the period from February 9, 2021 through the date that the Court enters an order approving the Settlement and entering Final Judgment.

20. “Plaintiffs’ Counsel” means Adrian Byrne of The Byrne Law Group and John Van Hook of the Van Hook Law Firm.

21. “Release” means Plaintiffs’ agreement, in consideration of Defendants’ promises and agreements as set forth herein, to fully release and discharge the Released Parties from any and all Released Claims.

22. “Released Claims” means all claims for civil penalties under PAGA arising from the same facts and/or claims alleged in the Action, or related to claims that were pled or that could have been pled under PAGA in the Action, that accrue through the date the Court enters its order approving this PAGA Settlement. This includes, without limitation: (A) claims under California Labor Code §§ 200-204, 206, 210, 218, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 246, 248,

432, 510, 512, 515, 558, 1174, 1174.5, 1175, 1182, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1198.5, 2753, 2800, 2802, California Code of Regulations, Title 8 section 11050 *et seq.*, and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, for failure to provide employment records, failure to pay for all hours worked, unpaid minimum wages, unpaid overtime, failure to pay unpaid double time, failure to timely pay commission wages, failure to provide meal periods, failure to provide rest breaks, failure to pay meal period premiums, failure to pay rest break premiums, failure to pay meal period and rest break premiums at the proper rate of pay, failure to reimburse for reasonable business expenses, failure to pay all wages owed to discharged or resigned employees in a timely manner, failure to maintain accurate employment records, failure to timely pay wages/failure to pay wages two times per month, failure to maintain itemized records, failure to provide accurate, itemized wage statements, failure to comply with the wage statement requirements of Cal. Labor Code § 226, failure to pay reporting pay, failure to pay split shift premiums, failure to provide notice of paid sick time and accrual, and failure to pay all earned wages in a timely manner, including but not limited to claims under California Labor Code; (B) all claims that Defendants are liable for the attorneys’ fees and costs incurred in the prosecution of this Action on behalf of the PAGA Members; (C) all claims that Defendants are liable for any other remedies, penalties, or interest based on the PAGA claims; and (D) all claims that Plaintiffs and/or the PAGA Members may have against the Released Parties relating to the payment, taxation, and allocation of attorneys’ fees and costs to Plaintiffs’ Counsel pursuant to this PAGA Settlement Agreement. The period of the release shall extend to the limits of the PAGA Period. The *res judicata* effect of the judgment will be the same as that of the Release. Other than Plaintiffs (who have agreed to release their individual claims against Defendants as provided in Section D), “Released Claims” does not include a release of individual claims the PAGA Members may have against the Released Parties. However, “Released Claims” does include a release of all Aggrieved Employee PAGA claims (as defined above in this paragraph) the PAGA Members have against the Released Parties.

23. “Released Parties” means Defendants and their past, present and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, directors, trustees, agents, employees, attorneys, contractors, representatives, benefits plans sponsored or administered by the Released Parties, divisions, units, and branches, and any other persons or entities acting on behalf of or in concert with any of the foregoing or any persons who Defendants have an obligation to indemnify on account of the Released Claims.

24. “PAGA Settlement Administrator” means, *Simpluris*, a third-party settlement administrator agreed upon by the Parties and appointed by the Court for the purposes of administering this PAGA Settlement. The Parties each represent that they have selected a PAGA Settlement Administrator that they do not have any financial interest in or otherwise have a relationship with the PAGA Settlement Administrator that could create a conflict of interest.

25. “PAGA Settlement Administration Costs” means the amount from the Gross PAGA Settlement Amount which shall be allocated, subject to the Court’s approval, to the PAGA Settlement Administrator for services rendered in administering the PAGA Settlement, and which shall not exceed Three Thousand Five Hundred Dollars and 00 Cents (\$3,500.00).

26. “PAGA Settlement Approval” means the settlement approval order and Final Judgment that will be entered by the Court.

27. “PAGA Settlement Fund Account” means the bank account established by the PAGA Settlement Administrator pursuant to the terms of this PAGA Settlement Agreement, from which all monies payable under the terms of this PAGA Settlement shall be paid, as set forth herein.

28. “Total Weekly Pay Periods” means the total number of weekly pay periods worked by all PAGA Members during the PAGA Period.

29. “Void Date” means the 181st day after issuance of Aggrieved Employee Settlement Payment checks to PAGA Members, upon which the Aggrieved Employee Settlement Payment checks will no longer be valid and negotiable.

B. Consideration

1. No Admission of Liability. Defendants have contended and continue to contend that the allegations in the Action have no merit and do not give rise to liability. Defendants specifically deny all of the allegations in the Action. This PAGA Settlement Agreement is a compromise of disputed PAGA claims. Nothing contained in this PAGA Settlement Agreement, no documents referred to herein, and no action taken to carry out the terms of this PAGA Settlement Agreement may be construed or used as an admission by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever.

2. Monetary Settlement Components. Provided that the Court approves the PAGA Settlement and the Effective Date occurs, Defendants will pay the Gross PAGA Settlement Amount. Defendants will deposit the Gross PAGA Settlement Amount into the PAGA Settlement Fund Account, which shall be administered by the PAGA Settlement Administrator. All amounts to be paid pursuant to this PAGA Settlement Agreement shall be paid out of the PAGA Settlement Fund Account.

- a. Attorneys’ Fees. In full satisfaction of all claims Plaintiffs or Plaintiffs’ Counsel may have for attorney’s fees arising out of the PAGA Claims, the Parties agree that in connection with the PAGA Settlement, Plaintiffs’ Counsel will ask the Court for an amount not to exceed one-third (1/3) of the Gross PAGA Settlement Amount, or Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$33,333.33). Defendants will not oppose a request made by Plaintiffs for an award of Attorneys’ Fees within this amount. The PAGA Settlement Attorneys’ Fees to be awarded to Plaintiffs are subject to the approval of the Court and will be paid only from the Gross PAGA Settlement Amount. Any portion of the Attorneys’ Fees not awarded to Plaintiffs’ Counsel will be added to the Net Settlement Amount. Plaintiffs understand and agree that this Settlement Agreement and Release shall remain in full force and effect even if the full amount of Attorneys’ Fees identified herein is not awarded by the Court.

However, Plaintiffs' Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees.

- b. Attorneys' Costs. In full satisfaction of all claims Plaintiffs or Plaintiffs' Counsel may have for litigation costs and expenses arising out of the PAGA Claims, the Parties agree that Plaintiffs' Counsel will ask the Court for an amount not to exceed Two Thousand Eight Hundred Dollars and Zero Cents (\$2,800.00) from the Gross PAGA Settlement Amount as Attorneys' Costs in connection with the PAGA Claims. Defendants will not oppose a request made by Plaintiffs for an award of Attorneys' Costs within this amount. The Attorneys' Costs to be awarded to Plaintiffs in connection with the PAGA Claims are subject to the approval of the Court and will be paid only from the Gross PAGA Settlement Amount. Any portion of the Attorneys' Costs not awarded to Plaintiffs' Counsel will be added to the Net Settlement Amount. Plaintiffs understand and agree that this Settlement Agreement and Release shall remain in full force and effect even if the full amount of Attorneys' Costs identified herein is not awarded by the Court. However, Plaintiffs' Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Costs.
- c. PAGA Settlement Administration Costs. A maximum of Three Thousand Five Hundred Dollars (\$3,500.00) from the Gross PAGA Settlement Amount will be allocated and paid to the PAGA Settlement Administrator. The PAGA Settlement Administration Costs to be paid to the PAGA Settlement Administrator are subject to the Court's approval and will be paid only from the Gross PAGA Settlement Amount.
- d. Net Settlement Amount. Seventy-five percent (75%) of the Net Settlement Amount will be paid to the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the PAGA Complaint in the Action with respect to PAGA Members. The remaining twenty-five percent (25%) of the Net Settlement Amount will be paid to all PAGA Members pursuant to the calculation method set forth in Section C(12), below.

3. PAGA Members' Release. Upon the Effective Date, Plaintiffs, on behalf of themselves, the State of California, and all PAGA Members, release the Released Parties from the Released Claims during the PAGA Period. PAGA Members may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, PAGA Members shall be deemed to have, and by operation of the PAGA Settlement Approval shall have, fully, finally, and forever settled and released any and all of the Released Claims during the PAGA Period, without regard to the subsequent discovery or existence of such different or additional facts. PAGA Members agree not to sue or otherwise make a claim against any of the Released Parties that seeks recovery for any of the Released Claims during the PAGA Period. It is the intent of the Parties that the PAGA Settlement approval order

and Final Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon PAGA Members regarding the Released Claims during the PAGA Period.

C. PAGA Settlement Administration Procedures

1. PAGA Settlement Approval Motion. Following full execution of this PAGA Settlement Agreement, Plaintiffs will promptly request a hearing before the Court to seek approval of the PAGA Settlement on a mutually available date. In conjunction with such hearing, Plaintiffs' Counsel will present this PAGA Settlement Agreement to the Court with a written motion for an order (a) approving and incorporating by reference the terms and conditions of the PAGA Settlement Agreement, (b) retaining jurisdiction over the parties under Code of Civil Procedure Section 664.4 to enforce the PAGA Settlement Agreement, and (c) dismissing the entire Action with prejudice. Plaintiffs' Counsel will be primarily responsible for drafting all documents necessary to obtain the above order, and shall provide drafts of such documents for review by Defendants' counsel prior to the filing of same. Defendants will not oppose Plaintiffs' motion for PAGA Settlement Approval unless the motion is inconsistent with the terms set forth in this PAGA Settlement Agreement.

2. No Right of PAGA Member to Object or Opt-Out. The Parties agree there is no statutory right for any PAGA Member to object, opt-out or otherwise exclude himself or herself from the PAGA Settlement. Nor is there any right for any PAGA Member to dispute the value of the Aggrieved Employee Settlement Payment provided to them under this PAGA Settlement. Except as otherwise stated, Plaintiffs will vigorously defend against any attempt by any PAGA Member or by any entity or agency to intervene in this matter or object to/opt-out of this settlement. The Parties further agree there is no right or opportunity for any PAGA Member to appeal the approval of the PAGA Settlement by the Court. The Parties will jointly defend against any appeal taken by any PAGA Member of the Court's approval of the PAGA Settlement.

3. LWDA Notice. Pursuant to California Labor Code § 2699(l)(2), Plaintiffs will provide a copy of this PAGA Settlement to the LWDA concurrently with the filing of the motion for PAGA Settlement Approval. Plaintiffs will also file a declaration in support of their motion for PAGA Settlement Approval confirming that they have submitted the Settlement to the LWDA in compliance with Labor Code § 2699(l)(2). Pursuant to California Labor Code § 2699(l)(3), a copy of the Court's judgment and any other order issued in connection with this PAGA Settlement Agreement shall be submitted by Plaintiffs to the LWDA within ten (10) calendar days after entry of the judgment or order.

4. Judgment and Continued Jurisdiction. The Parties expressly request that, after entry of Final Judgment, the Court retain continuing and exclusive jurisdiction under Code of Civil Procedure Section 664.6 for purposes of addressing: (a) the interpretation and enforcement of the terms of the PAGA Settlement Agreement; (b) matters relating to the administration of the Settlement; and (c) such post-judgment matters as may be appropriate under Court rules or as set forth in this Settlement Agreement.

5. PAGA Settlement Administrator. The Parties will retain Simpluris as the PAGA Settlement Administrator, subject to approval by the Court, to administer this PAGA Settlement.

The PAGA Settlement Administrator will be responsible for: establishing the PAGA Settlement Fund Account; calculating Aggrieved Employee Settlement Payments; preparing, printing, and mailing the Aggrieved Employee Settlement Checks and accompanying Notice to PAGA Members; disbursing payment of Attorney's Fees and Attorney's Costs to Plaintiffs' Counsel in connection with the PAGA Settlement; disbursing payment to the LWDA consisting of seventy-five percent (75%) of the Net PAGA Settlement Amount; printing and providing PAGA Members, Plaintiffs, and Plaintiffs' Counsel with IRS Forms 1099 as required under this PAGA Settlement Agreement and applicable law; providing a due diligence declaration for submission to the Court upon completion of the terms of the PAGA Settlement; and for such other tasks as the Parties mutually agree or the Court orders. The PAGA Settlement Administrator shall keep the Parties timely apprised of the performance of all PAGA Settlement Administrator responsibilities, and shall not mail any payments to Plaintiffs, the LWDA, Plaintiffs' counsel or any PAGA Member unless and until the PAGA Settlement Administrator receives approval by the Parties to do so. Any legally mandated tax reports, tax filings, or other tax documents required by the administration of this PAGA Settlement shall be prepared by the PAGA Settlement Administrator. Any expenses incurred in connection with such preparation shall be part of the PAGA Settlement Administration Costs.

6. PAGA Member List. On or before the Effective Date, Defendants will provide the PAGA Settlement Administrator with the PAGA Member List, which shall be used solely for the administration of this PAGA Settlement and for no other purpose, and which shall not be shared with any persons or entity not employed by the PAGA Settlement Administrator and working on the administration of this PAGA Settlement. Because PAGA Members' sensitive personal information is included in the PAGA Member List, the PAGA Settlement Administrator shall maintain the PAGA Member List securely and in confidence, maintaining the strictest standards of data privacy. Access to the PAGA Member List shall be limited to employees of the PAGA Settlement Administrator with a need to use the PAGA Member List for administration of this PAGA Settlement. The PAGA Settlement Administrator shall permanently delete and destroy all electronic and hard copies of the PAGA Member List in its possession once the PAGA Settlement Administration is concluded.

7. Number of PAGA Members and Pay Periods. This Settlement is premised on Defendants' representations that, as of the mediation that took place on December 2, 2022, there were approximately 250 PAGA Members and 2,611 weekly pay periods within the PAGA Period. The Parties agree 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 in the PAGA Member List is greater than 3,003, then Defendants agree to pay the Gross Settlement Amount which shall be increased by a pro rata amount for those pay periods greater than 3,003.

8. Funding of the PAGA Settlement. On or before the Funding Date, Defendants shall fund the PAGA Settlement by depositing the Gross PAGA Settlement Amount into the PAGA Settlement Fund Account to be established by the PAGA Settlement Administrator.

9. Payment of Attorneys' Fees and Attorneys' Costs. Within ten (10) calendar days following the Funding Date, the PAGA Settlement Administrator shall pay from the PAGA Settlement Fund Account the Court-approved Attorneys' Fees and Attorneys' Costs to Plaintiffs' Counsel in connection with the PAGA Settlement. Plaintiffs' Counsel agrees to provide the PAGA Settlement Administrator with an executed IRS Form W-9 before such payments for Attorneys' Fees and Attorneys' Costs are issued. The PAGA Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs' Counsel for the payments made pursuant to this Paragraph.

Defendants' payment of the Attorneys' Fees and Attorneys' Costs to Plaintiffs' Counsel in connection with the PAGA Settlement shall constitute full satisfaction of the obligation to pay any and all attorney's fees, expenses, and/or costs pertaining to the PAGA Claims or the PAGA settlement as set forth in this PAGA Settlement Agreement.

10. PAGA Settlement Administration Costs. Within ten (10) calendar days following the Funding Date, the PAGA Settlement Administrator shall pay from the PAGA Settlement Fund Account the Court-approved PAGA Settlement Administration Costs.

11. Payment to LWDA. Within ten (10) calendar days following the Funding Date, the PAGA Settlement Administrator shall issue from the PAGA Settlement Fund Account a check payable to the LWDA for seventy-five percent (75%) of the Net PAGA Settlement Amount.

12. Aggrieved Employee Settlement Payments. Within ten (10) calendar days following the Funding Date, the PAGA Settlement Administrator shall mail the Aggrieved Employee Settlement Payments to the PAGA Members' last known mailing address. Prior to mailing, the PAGA Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the Void Date will be sent promptly via regular First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the PAGA Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or Social Security number of the PAGA Member involved, and will then perform a single re-mailing. Any check re-mailings will not extend the 180-day period to cash a check. Any checks issued to PAGA Members shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their issuance and then shall become void on the 181st day after issuance, *i.e.*, the Void Date. Within fourteen (14) calendar days after the Void Date, any unclaimed funds in the PAGA Settlement Fund Account as a result of the failure to cash Aggrieved Employee Settlement Payment checks prior to the Void Date shall be paid by the PAGA Settlement Administrator to the LWDA.

13. Calculation of Aggrieved Employee Settlement Payments. All PAGA Members will receive an Aggrieved Employee Settlement Payment. The amount of each PAGA Member's Aggrieved Employee Settlement Payment will be calculated based on the total number of weekly pay periods each PAGA Member worked as a non-exempt hourly employee in California during the PAGA Period. The PAGA Member must have worked one (1) or more shifts in order for a weekly pay period to count as "worked." The Weekly Value will be calculated once the Net PAGA Settlement Amount and Aggrieved Employee Settlement Fund are determined based on the

amounts approved by the Court for the Attorneys' Fees and Costs in connection with the PAGA Settlement, and PAGA Settlement Administration Costs. The Weekly Value will be the quotient of dividing the Aggrieved Employee Settlement Fund by the Total Weekly Pay Periods. The Weekly Value will be rounded to the nearest cent. If there are any settlement funds remaining in the PAGA Settlement Fund Account due to rounding the Weekly Value to the nearest cent, those funds will be paid to the LWDA in addition to the LWDA Payment. The Aggrieved Employee Settlement Payment to each PAGA Member will be determined by multiplying the Weekly Value and the total number of weekly pay periods each PAGA Member worked as a PAGA Member in California during the PAGA Period.

14. Tax Treatment of Aggrieved Employee Settlement Payments. One hundred percent (100%) of each Aggrieved Employee Settlement Payment shall be allocated to miscellaneous income for which an IRS Form 1099-MISC will issue, if required by law.

15. Administration of Taxes. The PAGA Settlement Administrator will be responsible for issuing to Plaintiff, PAGA Members, and Plaintiffs' Counsel, IRS Form 1099s or other tax forms as may be required by law for all amounts paid pursuant to this PAGA Settlement, and for forwarding all penalties to the appropriate government authorities.

16. Certification of Completion. Upon completion of administration of the PAGA Settlement, the PAGA Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties. Plaintiffs' Counsel shall file this declaration with the Court within seven (7) calendar days of receipt.

D. Miscellaneous Provisions

1. No Effect on Employee Benefits. Amounts paid to Plaintiffs and other PAGA Members pursuant to this PAGA Settlement Agreement do not count as earnings or compensation for purposes of any benefits (e.g., 401(k) plans or retirement plans) sponsored by Defendants.

2. Tax Liability. The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and the Parties are not relying on any statement, representation, or calculation by any of the Parties or by the PAGA Settlement Administrator in this regard.

3. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX

COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT. Defendants, Defendants' Counsel, Plaintiffs and Plaintiffs' Counsel make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and PAGA Members are not relying on any statement, representation, or calculation by Defendants, Defendants' Counsel, or by the PAGA Settlement Administrator in this regard. Each party understands and agrees that they will each be solely responsible for payment of any taxes they may owe in connection with the payments described herein.

4. Responsibility for Taxes. Each party understands and agrees that they will each be solely responsible for payment of any taxes they may owe in connection with the payments described herein.

5. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

6. Exhibits Incorporated by Reference. The terms of this PAGA Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this PAGA Settlement Agreement are an integral part of the PAGA Settlement.

7. Voiding of PAGA Settlement. Defendants reserve the right to withdraw from this Settlement, upon notice to Plaintiffs' counsel, should the following occur:

- a. The Court does not allow the scope and/or time period of the Released Claims and PAGA Period, respectively, as set forth and defined herein.

8. Entire Agreement. This PAGA Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' PAGA settlement terms, and no oral or written representations, warranties or inducements have been made to any Party concerning this PAGA Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in the PAGA Settlement Agreement and its Exhibits.

9. Amendment or Modification. This Agreement may be amended or modified only by a formal written instrument signed by counsel for all Parties or their successors-in-interest.

10. Authorization to Enter Into PAGA Settlement Agreement. The Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this PAGA Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this PAGA Settlement Agreement to effectuate its terms. The person or persons signing this PAGA Settlement Agreement on behalf of Defendants represent and warrant that he/she/they are authorized to sign this PAGA Settlement Agreement on behalf of Defendants. Plaintiffs represent and warrant that they are authorized to sign this PAGA Settlement Agreement and that they have not assigned any claim covered by this PAGA Settlement to a third party.

11. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this PAGA Settlement, and further intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

12. Binding on Successors and Assigns. This PAGA Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

13. California Law Governs. All terms of this PAGA Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

14. Execution and Counterparts. This Agreement is subject only to the execution of all Parties. However, the PAGA Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile, scanned, and e-mailed copies of the signature page, will be deemed to be one and the same instrument.

15. Acknowledgement that the PAGA Settlement is Fair, Adequate and Reasonable. The Parties believe this Agreement is a fair, adequate and reasonable settlement of the PAGA Claims and have arrived at this PAGA Settlement after arm's-length negotiations facilitated by an experienced wage and hour PAGA mediator, and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness, adequacy and reasonableness of this PAGA Settlement.

16. Waiver of Certain Appeals. In the event the Court grants Approval of this PAGA Settlement, the Parties agree to waive appeals concerning this PAGA Settlement except as to the right to appeal Attorneys' Fees and/or Costs in the event it is not approved as described above.

17. Captions. The captions and paragraph numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

18. Waiver. 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.

19. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiffs and Plaintiffs' Counsel warrant and represent that there are no liens on the Agreement.

20. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the PAGA Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this PAGA Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

21. Publicity. The Parties agree that Plaintiffs will not communicate the fact of, or the terms of, this Settlement to members of the press, including to Verdicts and Settlements. The Parties and their attorneys also agree not to publish the fact of, or terms of, this Settlement or any related information on their website, for advertising purposes and/or in publication materials generally available to the public.

22. Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be: (a) in writing; (b) deemed given on the third business day after mailing; and (c) sent via United States registered or certified mail, return receipt requested, addressed as follows:

Amanda J. Heitlinger
ARATA, SWINGLE, VAN EGMOND & HEITLINGER, APC
1207 I Street
Modesto, California 95354
AHeitlinger@arata-law.com

and

Gerardo Hernandez
LITTLER MENDELSON
5200 North Palm Avenue, Suite 302
Fresno, California 93704
GHernandez@littler.com

PLEASE READ CAREFULLY BEFORE SIGNING. THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS INCLUDES A GENERAL RELEASE OF ALL KNOWN AND/OR UNKNOWN CLAIMS.

I HAVE READ THIS AGREEMENT AND I AGREE WITH ALL OF ITS TERMS. I UNDERSTAND THAT I AM GIVING UP IMPORTANT RIGHTS. I SIGN THIS AGREEMENT FREELY AND VOLUNTARILY, WITHOUT DURESS OR COERCION.

01/31/23
Dated: December ____, 2022


José Enrique (Jan 31, 2023 18:28 PST)
JOSE ENRIQUE MARTINEZ CAZARES

01/31/23
Dated: December ____, 2022


Enrique (Jan 31, 2023 18:23 PST)
ENRIQUE MARTINEZ FUENTES

Dated: December ____, 2022

ADOLFO GOMEZ-CAZARES in his individual capacity

Dated: December ____, 2022

ADOLFO GOMEZ-CAZARES doing business as
ADOLFO GOMEZ FARM LABOR
CONTRACTOR

Dated: December ____, 2022

WEN CHANG SU in his individual capacity

Dated: December ____, 2022

WEN CHANG SU in his capacity as a representative
of S K S Enterprise, Inc.

PLEASE READ CAREFULLY BEFORE SIGNING. THIS CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS INCLUDES A GENERAL RELEASE OF ALL KNOWN AND/OR UNKNOWN CLAIMS.

I HAVE READ THIS AGREEMENT AND I AGREE WITH ALL OF ITS TERMS. I UNDERSTAND THAT I AM GIVING UP IMPORTANT RIGHTS. I SIGN THIS AGREEMENT FREELY AND VOLUNTARILY, WITHOUT DURESS OR COERCION.

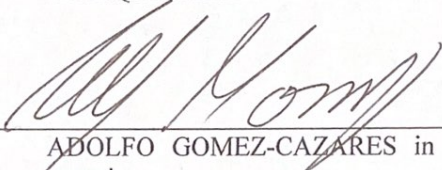
Dated: December ____, 2022

JOSE ENRIQUE MARTINEZ CAZARES

Dated: December ____, 2022

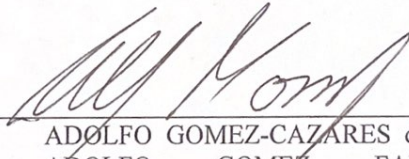
ENRIQUE MARTINEZ FUENTES

Dated: December ____, 2022



ADOLFO GOMEZ-CAZARES in his individual capacity

Dated: December ____, 2022



ADOLFO GOMEZ-CAZARES doing business as
ADOLFO GOMEZ FARM LABOR
CONTRACTOR

Dated: December ^{Jan 30, 2023} ____, 2022

wenchangsu

wenchangsu (Jan 30, 2023 13:40 PST)

WEN CHANG SU in his individual capacity

Dated: December ^{Jan 30, 2023} ____, 2022

wenchangsu

wenchangsu (Jan 30, 2023 13:40 PST)

WEN CHANG SU in his capacity as a representative
of S K S Enterprise, Inc.

EXHIBIT

2



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #: 15485V2 Prepared By: Kimberly Sutherland
Estimate Date: 1/11/2023 Direct Dial #: 321-223-5065
Email: ksutherland@simpluris.com

Attorney/Client: **Adrian C. Byrne, Esq.**
Firm: THE BYRNE LAW GROUP
Email: adrian@thebyrnelawgroup.com

Attorney/Client:
Firm:
Email:

Case Name: *Cazares, et al. v. SKS Enterprise Inc., et al. PAGA/ Distribution*

Capped Fee* **\$3,500**

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	250	Undeliverable Rate:	10%
Response Rate:	N/A	Call Rate:	N/A
Mailing Document Language:	English	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	One
Unclaimed Funds:	(LASC)	State(s):	CA
		Tax Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$250.00	1	\$250.00
1		Total	\$500.00

Distribution

Setup a Disbursement Account.

Print & Mail Checks with 4 pg Letter to Class Members: W2's & 1099's

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$125.00	1	\$125.00
QSF Set Up/Bank Fee	\$250.00	1	\$250.00
Print & Mail-Check & 1099	\$0.75	250	\$187.50
Postage	\$0.63	250	\$157.50
Process Returned Checks	\$0.50	25	\$12.50
Skip Trace Search Undeliverable Checks	\$1.00	25	\$25.00
Remail Checks	\$1.00	25	\$25.00
Postage	\$0.63	25	\$15.75
Individual Federal/State Tax Reporting	\$250.00	1	\$250.00
QSF Reporting / Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee-One Year	\$1,350.00	1	\$1,350.00
Disbursement Manager	\$125.00	1	\$125.00
		Total	\$2,963.25



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$140.00	1	\$140.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
		Total	\$265.00

Postage \$157.50 Total Case Costs \$3,728.25

EXHIBIT

3

***NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE
ACTION***

***Jose Enrique Martinez Cazares, et al. v. S K S Enterprise, Inc. a
California corporation, et al.***

**Superior Court for the State of California, County of San Joaquin,
Case No. STK-CV-UOE-2022-0003076**

Administrator ID

Aggrieved Employee Address

Address

Address

You are receiving this notice in connection with a Court-approved settlement (the “Settlement”) in a lawsuit brought on a representative basis under the Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. (“PAGA”). The Plaintiffs in the lawsuit are Jose Martinez Cazares, and Enrique Martinez Fuentes (“Plaintiffs”) and the Defendants are S K S Enterprise, Inc., Wen Chang Su, and Adolfo Gomez doing business as Adolfo Gomez Farm Labor Contractor (“Defendants”). The Settlement provides for recovery of civil penalties for purported violations of the California Labor Code on behalf of all individuals who worked for Defendants in California as hourly-paid non-exempt employees during the PAGA Period (February 9, 2021, through to the date of Court Approval of the PAGA Settlement) (“Aggrieved Employees”). The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California, and that 25% of any recovery be paid to the “Aggrieved Employees” group.

Defendants deny all claims and allegations in the lawsuit, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code and Wage Order provisions. Nevertheless, to avoid further costs and time in defending the lawsuit, Defendants have settled the lawsuit. By settling the lawsuit, Defendants are not admitting that they have done anything wrong.

The settlement resolves all claims seeking the civil penalties available to the California Labor and Workforce Development Agency (“LWDA”) under the California Labor Code predicated on the PAGA claims that were alleged or could have been alleged in the lawsuit based on the facts alleged therein, during the PAGA Period, against Defendants and the Released Parties, including all PAGA claims under California Labor Code sections 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1191.1, 1194, 1197, 1199, and 1199(c), and under the IWC Wage Orders (the “Released PAGA Claims”). This Settlement excludes all other legal claims.

By an Order dated [REDACTED], the Superior Court for the County of San Joaquin approved the Settlement of the PAGA claims. By approving the Settlement, the Court did not decide in favor of either Plaintiffs or Defendants.

According to Defendants’ records, you are entitled to a share of the Settlement based upon the Court-approved allocation. Enclosed with this Notice is your check for your share. The

settlement check shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law in the name of, and for the benefit of, the Aggrieved Employee that did not cash his or her settlement check.

Please Note: One hundred percent (100%) of the payment you are receiving in connection with the Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your settlement payment. Neither Plaintiffs nor Defendants have made any representations or warranties regarding the taxation of your settlement payment. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

Simpluris Settlement Administrators

ADDRESS

Telephone:

**NOTIFICACIÓN DE ACUERDO DE ACCION REPRESENTANTE DE
PAGA**

***Jose Enrique Martinez Cazares, et al. v. S K S Enterprise, Inc. a
California corporation, et al.***
**Superior Court for the State of California, County of San Joaquin,
Case No. STK-CV-UOE-2022-0003076**

Administrator ID

Aggrieved Employee Address

Address

Address

Está recibiendo esta notificación en relación con un acuerdo aprobado por el Tribunal (el "Acuerdo") en una demanda presentada de manera representativa en virtud de la Ley de Abogados Generales Privados del Código Laboral de 2004, Código Laboral de California §§ 2698, et seq. ("PAGA").

Los Demandantes en la demanda son José Martínez Cazares y Enrique Martínez Fuentes ("Demandantes") y los Demandados son S K S Enterprise, Inc., Wen Chang Su, y Adolfo Gómez que hacen negocios como Adolfo Gómez Farm Labor Contractor ("Demandados"). El Acuerdo prevé la recuperación de multas civiles por supuestas violaciones del Código Laboral de California en nombre de todas las personas que trabajaron para el Demandado en California como empleados no exentos pagados por horas durante el Período de PAGA (del 9 de febrero de 2021 hasta la fecha de Aprobación del Tribunal del Acuerdo PAGA). ("Empleados Agraviados"). El estatuto de PAGA establece que el 75% de cualquier recuperación en virtud del Acuerdo se pague al Estado de California, y que el 25% de cualquier recuperación se pague al grupo de "Empleados Agraviados".

Los demandados niegan todos los reclamos y alegaciones en la demanda, niegan que deban multas y afirman que han cumplido en su totalidad con todas las disposiciones aplicables del Código Laboral y la Orden de Salarios. Sin embargo, para evitar más costos y tiempo en la defensa de la demanda, los Demandados han resuelto la demanda. Al resolver la demanda, los Demandados no admiten que hayan hecho nada mal.

El acuerdo resuelve todos los reclamos que buscan sanciones civiles disponibles para la Agencia de Desarrollo Laboral y de la Fuerza Laboral de California ("LWDA") en virtud del Código Laboral de California basados en los reclamos de PAGA que se alegaron o podrían haberse alegado en la demanda en función de los hechos alegados en el mismo, durante el Período de PAGA, contra los Demandados y las Partes Liberadas, incluidas todas las reclamaciones de PAGA en virtud de las secciones del Código Laboral de California 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1191.1, 1194, 1197, 1199 y 1199(c), y bajo las Órdenes de Salario de la IWC (las "Reclamaciones de PAGA Liberadas"). Este Acuerdo excluye todos los demás reclamos legales.

Mediante una Orden de fecha [REDACTED], el Tribunal Superior del Condado de San Joaquín aprobó el Acuerdo de las reclamaciones de PAGA. Al aprobar el Acuerdo, el Tribunal no decidió a favor de los Demandantes ni de los Demandados.

Según los registros de los Demandados, usted tiene derecho a una parte del Acuerdo en función de la asignación aprobada por el Tribunal. Adjunto a esta Notificación se encuentra su cheque con su parte. El cheque del acuerdo tendrá una vigencia de ciento ochenta (180) días. A partir de entonces, todos los cheques no cobrados se distribuirán al Contralor del Estado de California para que los retenga de conformidad con la Ley de Propiedad No Reclamada a nombre y en beneficio del Empleado Agraviado que no cobró su cheque del acuerdo.

Tenga en cuenta: El cien por ciento (100 %) del pago que está recibiendo en relación con el Acuerdo se considerará multas y puede estar sujeto a retenciones de impuestos locales, estatales o federales y se informará al IRS y a las autoridades fiscales estatales. Debe confiar en sus propios asesores fiscales en cuanto a las consecuencias fiscales de su pago del acuerdo. Ni los Demandantes ni los Demandados han hecho ninguna representación o garantía con respecto a los impuestos de su pago del acuerdo. Nada en esta Notificación o cualquier otra comunicación constituirá o se interpretará o se considerará como asesoramiento fiscal.

POR FAVOR NO LLAME NI ESCRIBA AL TRIBUNAL NI A LA OFICINA DEL SECRETARIO PARA HACER PREGUNTAS SOBRE EL ACUERDO. SI TIENE ALGUNA PREGUNTA, PUEDE LLAMAR O ESCRIBIR AL ADMINISTRADOR DEL ACUERDO A:

Simpluris Settlement Administrators

ADDRESS

Telephone: