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8 *Attorney for Plaintiff MARIA CRUZ VASQUEZ*

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12

13 MARIA CRUZ VASQUEZ, an individual;

14 Plaintiff,

15 v.

16 MOHAJERI, INC., a California
17 Corporation; CHANGIZ MOHAJERI, an
18 individual; ANTOJITOS LATINOS
19 MARKET, a business entity form
20 unknown; and DOES 1 through 20,
21 inclusive;

22 Defendants.

Case Number: 30-2022-01261627-CU-OE-CXC

[Honorable William D. Claster; Department CX104]

**PLAINTIFF MARIA CRUZ VASQUEZ'S
NOTICE OF MOTION AND UNOPPOSED
MOTION FOR COURT APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF POINTS
AND AUTHORITIES;**

**DECLARATION OF SARKIS SIRMABEKIAN,
ESQ. IN SUPPORT;**

[Filed concurrently with [Proposed] Judgment]

Hearing:

Date: June 9, 2023

Time: 9:00 AM

Dept.: CX104

Court Reservation number: 74007613

Complaint Filed: May 20, 2022

23 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

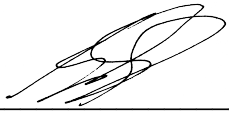
24 PLEASE TAKE NOTICE that, on June 9, 2023, at 9:00 AM or as soon thereafter as the matter
25 may be heard in department CX104 of the Orange County Superior Court-Civil Complex Center,
26 located at 751 W Santa Ana Blvd, Santa Ana, California 92701, the honorable William D. Claster
27 presiding, Plaintiff MARIA CRUZ VASQUEZ ("Plaintiff") will and hereby does apply for a Court
28 order approving the Private Attorneys General Act ("PAGA") settlement in this matter.

1 The basis for this motion is that the Parties have reached and fully executed a settlement of the
2 above-entitled case which includes settlement of the PAGA claims. One aspect of Plaintiff's claim
3 included a prayer for remedies under the PAGA. Pursuant to statute, settlement of PAGA claims
4 requires court approval. *See Labor Code section 2699(l)*. Thus, the Parties seek court approval of the
5 claim to PAGA penalties.

6 This motion is based on this notice, the memorandum of points and authorities, all the
7 declaration in support filed concurrently, and all exhibits attached thereto, as well as all records on file
8 with this Court and the argument that is presented at the time of the hearing.

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11 DATED: May 4, 2023

SIRMABEKIAN LAW FIRM, PC

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13 By: 
14 Sarkis Sirmabekian, Esq.
15 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 20, 2022, Plaintiff MARIA CRUZ VASQUEZ (“Plaintiff”) filed a Complaint against
4 Defendants MOHAJERI, INC., CHANGIZ MOHAJERI, and ANTOJITOS LATINOS MARKET,
5 (collectively “Defendants”) for wage and hour violations under the California Labor Code. See
6 *Declaration of Sarkis Sirmabekian* ¶2. (“*Sirmabekian Decl.*”)

7 **PAGA Notice Letter:**

8 On March 3, 2022, Plaintiff filed with the Labor and Workforce Development Agency
9 (“LWDA”) the PAGA Notice Letter for alleged violations of the California Labor Code and violations
10 of the State’s Private Attorneys’ General Act, California Labor Code § 2698 *et seq.*, (“PAGA” or the
11 “PAGA Claim”) and concurrently therewith, a copy of Plaintiff’s PAGA Notice Letter was served via
12 certified mail to Defendants in this action. *Sirmabekian Decl.* ¶3. Attached to the Declaration of Sarkis
13 Sirmabekian, Esq. as “**EXHIBIT 1**” is a true and correct copy of Plaintiff’s PAGA Notice Letter.

14 Pursuant to *Labor Code* §2698.3(a)(2), a PAGA Plaintiff is required to wait 65-days to allow
15 the LWDA to decide whether they shall investigate and/or handle the matter and §2698.3(a)(2)(A)
16 specifically authorizes the PAGA Plaintiff to pursue the PAGA action after 65-days has elapsed without
17 hearing from the LWDA. Here, after waiting 65-days the LWDA at no time notified PAGA Plaintiff
18 or his counsel that they intend to investigate or handle the matters involved in Plaintiff’s PAGA Notice.
19 A true and correct copy of Plaintiff’s PAGA Notice Letter was also attached with Plaintiff’s operative
20 Complaint in this action as Exhibit A thereto. To date, the LWDA has taken no action against
21 Defendants on the PAGA Notice, has not investigated and has not issued any citations against
22 Defendants on the PAGA Notice and the LWDA has not notified the Parties regarding any intention to
23 investigate, consistent with *Labor Code* section 2699.3 (2) (A) or (2) (B). *Id.* at ¶4.

24 Under *Labor Code* section 2699(l) “[t]he Superior Court shall review and approve any penalties
25 sought” as part of the resolution of a case that involved PAGA claims.” *Labor Code* § 2699(l). Pursuant
26 to *Labor Code* section 2699(l)(2), a copy of Plaintiff’s Unopposed PAGA Approval Motion moving
27 papers, which includes a copy of the Parties’ PAGA Settlement Agreement document, was concurrently
28 filed/served to the LWDA at the time of filing with the Court, per the enclosed proof of service. *Id.* ¶5.

1 Mediation and Settlement Agreement:

2 On January 31, 2023, the Parties participated in a full-day mediation with reputable wage and
3 hour mediator Michael R. Diliberto, Esq. of ADR Services, Inc. In preparation for the mediation,
4 Plaintiff's counsel obtained a sampling of payroll records for all or virtually all of the aggrieved
5 employees, and documents related to the financial health of the Defendants. Plaintiff's counsel analyzed
6 the likelihood to prevail on the merits and to collect upon successful resolution. *Id. at ¶6.*

7 As a result of a series of arms-length negotiations at mediation, on January 31, 2023, the Parties
8 reached a binding agreement and executed a "Confidential Settlement Agreement and Mutual Release"
9 (hereinafter "Settlement Agreement"), regarding the individual and PAGA claims between the Parties
10 in this action. The settlement is to include all twenty-four (24) employees within the PAGA Period
11 (PAGA Period = March 16, 2021 through the date the Court approves the PAGA Settlement), and no
12 more than approximately 1,225 pay periods. This is a successful settlement for the aggrieved
13 employees, who will release only PAGA claims, and retain any and all of their individual claims. A
14 true and correct copy of the Settlement Agreement may be found attached as "EXHIBIT 2" to the
15 Declaration of Sarkis Sirmabekian, Esq. *Id. at ¶7.*

16 **II. ARGUMENT**

17 **A. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT**

18 **1. The Court's duty to review and approve any settlement of PAGA penalties.**

19 PAGA permits an aggrieved employee to sue an employer for civil penalties associated with
20 the employer's violation of various California Labor Code provisions. *Labor Code section 2699(a).*
21 Pursuant to the statute, of the amount paid to settle a claim for PAGA penalties, twenty five percent
22 (25%) is payable to the employee prosecuting the action and seventy-five percent (75%) is payable to
23 the California Labor and Workforce Development Agency ("LWDA"). *Labor Code section 2699(i).*
24 Under *Labor Code section 2699(l)*, "[t]he Superior Court shall review and approve any penalties
25 sought" as part of the resolution of a case that involved PAGA claims." *Labor Code section 2699(l).*

26 The Senate Daily Journal for the 2003-2004 Regular Session, pages 4754-55 contained the
27 following letter dated July 29, 2004, from Senator Joseph L. Dunn, regarding the intent of the PAGA:
28 "The purpose of the court review of penalties in subdivision (l) is to ensure that settlements involving

1 penalties arising under *Labor Code Section 2699* do not undercut the dual statutory purposes of
2 punishment and deterrence, or result in unjust, arbitrary and oppressive, or confiscatory settlements.”

3 **2. The Court should approve the proposed settlement of the PAGA penalties**
4 **because the settlement is fair and reasonable under the circumstances of this**
5 **case.**

6 PAGA Member(s):

7 For purposes of Plaintiff representative claims under PAGA, the alleged aggrieved employees
8 (“PAGA Members”) are defined by Plaintiff to be “All employees of Defendant MOHAJERI, INC. in
9 California, at any time during the PAGA Period”.

10 Defendants represent that they employed twenty-four (24) aggrieved employees from March
11 16, 2021 through the date the Court approves the PAGA Settlement (“PAGA Period”).

12 PAGA Period:

13 The PAGA Period is defined to be “means the period of time between March 16, 2021, and
14 continuing through the date of Court Approval”.

15 Here, PAGA counsel obtained a sampling of payroll records for all or virtually all of the
16 aggrieved employees, and documents related to the financial health of the Defendants. Plaintiff’s
17 counsel analyzed the likelihood to prevail on the merits and to collect upon successful resolution. Based
18 on the data produced pursuant to informal discovery, as well as PAGA Counsel’s own independent
19 investigation and evaluation and the Mediator’s efforts, PAGA Counsel believes that the settlement
20 with Defendants for the consideration and on the terms set forth in the PAGA Settlement Agreement is
21 fair, reasonable, and adequate and is in the best interest of the PAGA Members in light of all known
22 facts and circumstances, including the risk of significant delay and uncertainty associated with
23 litigation, various defenses asserted by Defendants, the risk of not prevailing at trial, and numerous
24 potential appellate issues, etc.

25 Based on careful consideration of the strengths and weakness of this action, the Parties firmly
26 believes that this Settlement is fair and reasonable for Plaintiff, the PAGA workforce, and the LWDA.

1 Settlement Sums and Consideration:

2 Gross Settlement and Plaintiff's Individual Claims:

3 PLAINTIFF and DEFENDANTS agree that in consideration of the terms of this Agreement
4 being fully executed and effective, DEFENDANTS will pay a "Total Settlement Payment" of
5 \$60,000.00 which, for tax purposes will be allocated as follows: (1) \$18,000 to PLAINTIFF'S
6 Counsel, SIRMABEKIAN LAW FIRM, PC and which will not be subject to withholdings, and will be
7 reported on IRS Form 1099; and (2) \$12,000.00, which will be paid directly to PLAINTIFF, and which
8 will be allocated 30% to wages and 70% to penalties and interest. Taxes will be withheld out of the
9 wage portion only and reported on IRS Form W2. The non-wage portion will be reported on IRS Form
10 1099.

11 PAGA Claims:

12 PLAINTIFF and DEFENDANTS agreed that in consideration of the terms of the Settlement
13 Agreement being fully executed and effective, the PAGA gross settlement in the total amount of Thirty
14 Thousand Dollars (\$30,000) ("PAGA Gross Settlement Amount") is a reasonable compromise based
15 on claims of penalties for the twenty-four (24) aggrieved employees from March 16, 2021 through the
16 date the Court approves the PAGA Settlement ("PAGA Period").

17 Of the \$30,000 PAGA Gross Settlement Amount, the Settlement Agreement provides that one-
18 third (33.33%), or \$9,900.00, will be paid to Plaintiff's counsel for attorney's fees. Attorney fees of
19 \$9,900.00 are reasonable. Similar settlements frequently allocate one third of the total to attorney fees.
20 (*See, e.g., Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480.)

21 Up to \$4,000.00 will be paid to cover PAGA Counsel Costs, a reasonable amount will be paid
22 for settlement administration costs, and up to \$1,000.00 will be paid to Plaintiff as an enhancement
23 payment. After subtracting these amounts (totaling \$14,900.00) for attorney's fees, costs, settlement
24 administration costs, and the enhancement fee, \$15,100.00 of the PAGA Gross Settlement Amount
25 remains.

26 Defendants shall pay the total sum of \$15,100.00 (the "PAGA Net Settlement Amount" or
27 "PNSA"), to be classified for tax purposes as civil penalties ("Civil Penalty Allocation"), unless
28 otherwise required by law, and shall be distributed as follows:

1 a. Seventy-Five Percent (75%) of the Civil Penalty Allocation, \$11,325.00, shall
2 be paid to the LWDA, which represents civil penalties payable to the LWDA under the
3 PAGA, *Labor Code section 2698, et seq.*;

4 b. Twenty Five Percent (25%) of the Civil Penalty Allocation, \$3,775.00, (the
5 “Aggrieved Employee Amount”) shall be paid to the PAGA Members, pursuant to *Labor Code*
6 § 2699(i), divided amongst PAGA Members based on each PAGA Member’s respective
7 number of pay periods worked for Defendants in California during the PAGA Period;

8 Settlement Administrator:

9 The Parties have agreed to select “Phoenix - Class Action Administration Solutions” to serve
10 as the PAGA Settlement Administrator.

11 Liability is Contested:

12 The strength of Plaintiff’s PAGA claim is balanced by the fact that liability is contested,
13 Defendants are represented by talented counsel who are prepared to zealously litigate this case, and
14 there is no way to determine what would transpire at trial. In addition, the state of the law regarding
15 PAGA liability continues to evolve, and there could be further changes that could have a detrimental
16 impact on the viability of Plaintiff’s PAGA claim prior to trial. *See ZB, N.A. v. Superior Court of San*
17 *Diego Cty.*, No. S246711, 2019 WL 4309684, Cal. Sept. 12, 2019. In addition to the risks presented
18 by pursuing this matter to trial, there is also the likelihood that the non-prevailing party would appeal
19 any judgment rendered at trial. The Settlement is also in the best interest of judicial efficiency in this
20 case, as it would eliminate a complex representative action, which also alleges individual claims, from
21 this Court’s calendar. (*Id.*) Therefore, based on the aforementioned reasons, the global Settlement
22 presented is fair and reasonable for Plaintiff, the PAGA workforce, and the LWDA.

23 This proposed resolution of the alleged PAGA remedies is fair and reasonable given the facts
24 that:

- 25 a. The core claims asserted by the Plaintiff is independent of any PAGA remedies;
- 26 b. This was not a case where the PAGA penalties represent a significant portion of the
27 amount of damage in dispute. Rather, Plaintiff alleged numerous individual wage
28 and hour claims such as for unpaid wages, rest and meal break premiums, failure to

furnish accurate wage and hour statements, failure to pay wages, upon discharge, failure to indemnify and illegal deductions from wages, etc., and for statutory attorney's fees;

c. A primary claim in this case is for meal and rest break violations, however, Plaintiff understands that establishing break violations under the Labor Code may require the presentation of highly individualized evidence/testimony to establish the reason for any violations.

d. Defendant has only 24 aggrieved employees in the PAGA Period. The release for those 24 employees will be limited only to claims for PAGA penalties. Those employees will not relinquish any other individual claims they may have. Nothing here shall be construed as an admission that any employee has any valid individual claim against Defendants.

e. Defendants vigorously dispute and deny the allegations and various causes of action asserted in the Action, including, without limitation, Plaintiff's individual claims and the Aggrieved Employees' claim for civil penalties pursuant to PAGA.

f. Plaintiff is mindful of the risks involved with pursuing claims against Defendants, the economic future of which is uncertain. Plaintiff, the LWDA, and the aggrieved employees gain much value from settling these PAGA claims at \$30,000 (PAGA Gross Settlement Amount) for 24 employees, which will result in above average distributions to each of them in this time of need.

Moreover, a trial court does not abuse its discretion in approving the settlement of a case involving PAGA claims even when the settlement allocates none of the settlement payment to PAGA claims. *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 589. Nordstrom was a putative wage and hour class action in which the employer agreed to pay up millions in cash plus another \$2.5 million in merchandise vouchers to settle all claims (including PAGA claims). *Nordstrom*, 186 Cal.App.4th at 580. Certain class members objected to the settlement released those claims without any consideration paid to the LWDA pursuant to them. *Id.* at 589. On Appeal, the appellate court held that the trial court did not abuse its discretion in approving the class settlement even though it released

1 PAGA claims without any money paid to the LWDA for those claims. Ibid. (“We find no abuse of
2 discretion in the trial court’s approval of the settlement agreement containing these terms,” even though
3 the agreement released PAGA claims without any consideration paid to the LWDA for those releases).

4 Here, the parties have allocated a reasonable sum of \$30,000 (PAGA Gross Settlement
5 Amount) to the PAGA claim to resolve the PAGA claim. Under the circumstances of this case, this is
6 a fair and reasonable allocation. Thus, the parties request that the Court approve this aspect of the
7 settlement.

8 **3. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

9 The Parties considered a number of risk factors in this action in determining what an acceptable
10 settlement would be after Defendants produced the core timekeeping and payroll documents during
11 settlement negotiations. Although Plaintiff’s counsel believes it is unlikely, Plaintiff faces the potential
12 risk of an adverse ruling at trial and being bound by a decision that awards no penalties on the many
13 claimed violations in light of Defendants’ vigorous dispute and denial of the allegations and various
14 causes of action asserted in the Action, including, without limitation, Plaintiff’s individual claims and
15 the Aggrieved Employees’ claim for civil penalties pursuant to PAGA. Conversely, Defendants face
16 substantial risk and liability if Plaintiff and the Aggrieved Employees are able to prove the underlying
17 violations under the Labor Code, leading to civil penalty liability under PAGA.

18 **4. The PAGA Settlement Furthers the Purposes of the PAGA.**

19 Finally, the Court should not place undue emphasis on the amount of the PAGA allocation since
20 PAGA does not require this focus and, as amended, the statute expressly contemplates the possibility
21 of approval with no penalty payments. The LWDA has the discretion not to assess penalties in favor of
22 other enforcement proprieties. *Scharwartz v. Poizner* (2010) 187 Cal.App.4th 592, 615 [an agency’s
23 decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally
24 committed to the agency’s absolute discretion”]. The PAGA statute grants this Court the same
25 discretion. *See Lab. Code section 2699(e)(2)*.

26 Moreover, some of the top enforcement proprieties of the LWDA are “to vigorously enforce
27 minimum labor standards in order to ensure employees are not required or permitted to work under
28 substandard unlawful conditions...” and “to protect employers who comply with the law from those

1 who attempt to gain a competitive advantage at the expense of their workers by failing to comply with
2 minimum labor standards.” Lab. Code section 90.5(a). The priorities include ensuring that overtime
3 compensation is paid and that unlawful pay practices stop. *See Lab. Code sections 1193.5 and 1194.5*
4 [referenced in the enforcement proprieties set forth in Labor Code section 90.5(b)].

5 Here, the settlement agreement furthers the LWDA’s enforcement of these priorities. Hence,
6 the PAGA settlement payment contributes to the enforcement of the Labor Code and should therefore
7 be approved under PAGA.

8 **5. Notice to Aggrieved Employees**

9 A notice to aggrieved employees will accompany the payment to PAGA members. The notice
10 informs the recipient as to the scope of the released claims, and as to the recipient’s responsibility for
11 any taxes payable on the amount received. *Sirmabekian Decl.* ¶9. A copy of such notice is attached as
12 “EXHIBIT 3” to the Declaration of Sarkis Sirmabekian, Esq., and is also attached as “EXHIBIT 1” to
13 the [Proposed] Judgment filed concurrently herewith.

14 **6. Plaintiff’s Motion for Court Approval of PAGA Settlement moving papers** 15 **(which includes a copy of the Parties’ “Confidential Settlement Agreement and** 16 **Mutual Release”)** **were concurrently filed/served with the LWDA, in** 17 **compliance with Labor Code § 2699(l)(2)**

18 Plaintiff’s Motion for Court Approval of PAGA Settlement moving papers (which includes a
19 copy of the Parties’ “Confidential Settlement Agreement and Mutual Release”) were concurrently
20 filed/served with the LWDA, at the same time that it is submitted to the Court, in compliance with
21 *Labor Code § 2699(l)(2)*, per the attached proof of service document on the last page of the Motion.
22 *Sirmabekian Decl.* ¶9.

23 **7. The Court shall retain jurisdiction to enforce the terms of the PAGA Settlement** 24 **Agreement pursuant to California Code of Civil Procedure Section 664.6.**

25 The Parties agree that the Court shall retain jurisdiction to enforce the terms of the PAGA
26 Settlement Agreement pursuant to California Code of Civil Procedure Section 664.6. *Sirmabekian*
27 *Decl.* ¶11.
28

1 **B. ATTORNEYS' FEES INCURRED ARE REASONABLE**

2 **1. Attorneys' fees**

3 Of the \$30,000 PAGA Gross Settlement Amount, the Settlement Agreement provides that one-
4 third (33.33%), or \$9,900.00, will be paid to Plaintiff's counsel for attorney's fees. Attorney fees of
5 \$9,900.00 are reasonable. Similar settlements frequently allocate one third of the total to attorney fees.
6 (*See, e.g., Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480.). *Sirmabekian Decl.* ¶12. Work
7 done by Plaintiff's counsel commenced with the pre-filing case analysis and research since retaining
8 Plaintiff in or around February 2022, continued through Settlement in January 2023, and will continue
9 until Court Approval of PAGA Settlement and the conclusion of this matter. Plaintiff's counsel's work
10 has been necessary to successfully conclude this matter. Plaintiff's attorneys will continue working on
11 the matter after approval continuing to keep in contact with the Claims Administrator to ensure proper
12 administration of settlement checks. *Sirmabekian Decl.* ¶13. Plaintiff's counsel believes that his hourly
13 rate of \$600.00/hr. is comparable to the rates requested by and awarded to other plaintiffs' attorneys
14 with similar experience, background and levels of success achieved in prosecuting similar types of class
15 actions, and Plaintiff's counsel has been approved at that rate in other complex cases. *Sirmabekian*
16 *Decl.* ¶14.

17 **III. CONCLUSION**

18 Based on the foregoing, the Parties respectfully request that the Court grant the Parties' joint
19 request for approval of the PAGA settlement.

20
21
22 DATED: May 4, 2023

Respectfully submitted,

SIRMABEKIAN LAW FIRM, PC

23
24 By: 
25 Sarkis Sirmabekian, Esq.
26 Attorney for Plaintiff
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1. That I am an attorney at law, duly licensed to practice before all courts of the State of California. I am the attorney representing Plaintiff MARIA CRUZ VASQUEZ (Plaintiff’) in this action. In that capacity, I am familiar with the day-to-day handling of this matter. If called upon to testify, I could and would competently attest to the following, which is submitted of my own personal knowledge, except as to those matters that are stated upon information and belief.

3. On March 3, 2022, Plaintiff filed with the Labor and Workforce Development Agency (“LWDA”) the PAGA Notice Letter for alleged violations of the California Labor Code and violations of the State’s Private Attorneys’ General Act, California Labor Code § 2698 et seq., (“PAGA” or the “PAGA Claim”) and concurrently therewith, a copy of Plaintiff’s PAGA Notice Letter was served via certified mail to Defendants in this action. Attached hereto as “**EXHIBIT 1**” is a true and correct copy of Plaintiff’s PAGA Notice Letter.

4. Pursuant to *Labor Code §2698.3(a)(2)*, a PAGA Plaintiff is required to wait 65-days to allow the LWDA to decide whether they shall investigate and/or handle the matter and §2698.3(a)(2)(A) specifically authorizes the PAGA Plaintiff to pursue the PAGA action after 65-days has elapsed without hearing from the LWDA. Here, after waiting 65-days the LWDA at no time notified PAGA Plaintiff or his counsel that they intend to investigate or handle the matters involved in Plaintiff's

1 PAGA Notice. A true and correct copy of Plaintiff's PAGA Notice Letter was also attached with
2 Plaintiff's operative Complaint in this action as Exhibit A thereto. To date, the LWDA has taken no
3 action against Defendants on the PAGA Notice, has not investigated and has not issued any citations
4 against Defendants on the PAGA Notice and the LWDA has not notified the Parties regarding any
5 intention to investigate, consistent with Labor Code section 2699.3 (2) (A) or (2) (B).

6 5. Under Labor Code section 2699(1) "[t]he Superior Court shall review and approve any
7 penalties sought" as part of the resolution of a case that involved PAGA claims." Labor Code § 2699(1).
8 Pursuant to Labor Code section 2699(1)(2), a copy of Plaintiff's Unopposed PAGA Approval Motion
9 moving papers, which includes a copy of the Parties' PAGA Settlement Agreement document, was
10 concurrently filed/served to the LWDA at the time of filing with the Court, per the enclosed proof of
11 service.

12 6. On January 31, 2023, the Parties participated in a full-day mediation with reputable
13 wage and hour mediator Michael R. Diliberto, Esq. of ADR Services, Inc. In preparation for the
14 mediation, Plaintiff's counsel obtained a sampling of payroll records for all or virtually all of the
15 aggrieved employees, and documents related to the financial health of the Defendants. Plaintiff's
16 counsel analyzed the likelihood to prevail on the merits and to collect upon successful resolution.

17 7. As a result of a series of arms-length negotiations at mediation, on January 31, 2023, the
18 Parties reached a binding agreement and executed a "Confidential Settlement Agreement and Mutual
19 Release" (hereinafter "Settlement Agreement"), regarding the individual and PAGA claims between
20 the Parties in this action. Attached hereto as "**EXHIBIT 2**" is a true and correct copy of the Settlement
21 Agreement.

22 8. A notice to aggrieved employees will accompany the payment to PAGA members. The
23 notice informs the recipient as to the scope of the released claims, and as to the recipient's responsibility
24 for any taxes payable on the amount received. Attached hereto as "**EXHIBIT 3**" is a true and correct
25 copy of the Notice to Aggrieved Employees document.

26 9. Plaintiff's Motion for Court Approval of PAGA Settlement moving papers (which
27 includes a copy of the Parties' "Confidential Settlement Agreement and Mutual Release") were
28 concurrently filed/served with the LWDA, at the same time that it is submitted to the Court, in

1 compliance with Labor Code § 2699(1)(2), per the attached proof of service document on the last page
2 of the Motion.

3 10. The Parties do not know of any other cases that may be impacted by the settlement.

4 11. The Court shall retain jurisdiction to enforce the terms of the PAGA Settlement
5 Agreement pursuant to California Code of Civil Procedure Section 664.6.

6 12. Of the \$30,000 PAGA Gross Settlement Amount, the Settlement Agreement provides
7 that one-third (33.33%), or \$9,900.00, will be paid to Plaintiff's counsel for attorney's fees. Attorney
8 fees of \$9,900.00 are reasonable. Similar settlements frequently allocate one third of the total to
9 attorney fees. (See, e.g., Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480.).

10 13. Work done by Plaintiff's counsel commenced with the pre-filing case analysis and
11 research since retaining Plaintiff in or around February 2022, continued through Settlement in January
12 2023, and will continue until Court Approval of PAGA Settlement and the conclusion of this matter.
13 Plaintiff's counsel's work has been necessary to successfully conclude this matter. Plaintiff's attorneys
14 will continue working on the matter after approval continuing to keep in contact with the Claims
15 Administrator to ensure proper administration of settlement checks.

16 14. I believe that my hourly rate of \$600.00/hr. is comparable to the rates requested by and
17 awarded to other plaintiffs' attorneys with similar experience, background and levels of success
18 achieved in prosecuting similar types of class actions, and Plaintiff's counsel has been approved at that
19 rate in other complex cases.

20
21 I declare under the penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on May 4, 2023, in Los Angeles, California.

23
24 
25 _____
26 Sarkis Sirmabekian, Esq.
27 Declarant, Attorney for Plaintiff
28

EXHIBIT 1



SIRMABEKIAN
LAW FIRM

3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010

6314 San Fernando Rd.
Glendale, CA 91201

T (818) 473-5003
F (818) 476-5619

sarkis@slawla.com
www.slawla.com

March 3, 2022

MOHAJERI, INC.
ANTOJITOS LATINOS MARKET
CHANGIZ MOHAJERI
25381 Alicia Parkway, #N
Laguna Hills, California 92653

via U.S. Certified Mail

MOHAJERI, INC.
ANTOJITOS LATINOS MARKET
CHANGIZ MOHAJERI
26941 La Alameda #4212
Mission Viejo, California 92691

via U.S. Certified Mail

MOHAJERI, INC.
ANTOJITOS LATINOS MARKET
CHANGIZ MOHAJERI
22711 Cottonwood
Mission Viejo, California 92692

via U.S. Certified Mail

Labor and Workforce Development Agency
("LWDA")
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

filed online at:
<http://www.dir.ca.gov/>

**RE: MARIA CRUZ VASQUEZ'S Notice of Labor Code Violations Pursuant to
California Labor Code Section 2699 et seq. ("PAGA")**

Dear Sir or Madam:

Please be advised that MARIA CRUZ VASQUEZ (hereinafter "Plaintiff") has retained the Sirmabekian Law Firm, PC to represent her and other aggrieved employees for various California Labor Code violations including wage and hour claims against MOHAJERI, INC., ANTOJITOS LATINOS MARKET, and CHANGIZ MOHAJERI (hereafter referred to as "Employer," "Defendant," or "You" and/or referred to with "Your" and "Yours", and "EMPLOYER" or "DEFENDANT").

EMPLOYER is hereby on notice that Plaintiff seeks compensation and all other available relief. Pursuant to the procedures specified in California Labor Code Section 2699.3, Plaintiff claims that EMPLOYER has violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code 2698 *et seq.*

The scope of this PAGA letter is intended to include Plaintiff and all other aggrieved employees of all positions against whom the below labor law violations have been committed. The scope includes each employee of each employer named above, whether or not such employee was also employed by any of the remaining employers. Plaintiff and other aggrieved employees engaged in working as a cashier and other positions for Defendants.

The term “aggrieved employees” is broadly defined as all employees of either Defendant, regardless of exempt or non-exempt status, and regardless of whether such employee was also employed by the remaining Defendant. All employees are included in this definition, including positions other than that of Plaintiff.

Defendants describe themselves as a grocery business. Defendants employed Plaintiff as a cashier for approximately 15 years through approximately January 21, 2022 as a cashier.

The following are facts supporting allegations of Defendants’ labor code violations:

- Plaintiff's final check was not paid to her within 72-hours of Plaintiff's separation. Instead, Defendants informed Plaintiff of their "common practice" of requiring signatures from a former employee in order to issue final wages;
- Plaintiff and other employees were not afforded proper meal and rest breaks. For example, Plaintiff worked shifts in excess of 5 hours without a meal break, due to the Defendants' busy schedule. Plaintiff would often eat while working due to this schedule;
- Defendants failed to properly pay out Plaintiff's and other employees' sick leave;
- Defendants communicated work matters to their employees' cell phones without reimbursement;
- Defendants' unfairly rounded employees' hours worked. This resulted in an underpayment of wages to their employees;
- Defendants' timekeeping machine would frequently become out of service and Defendants failed to adequately keep record of employees' time worked, in violation of LC 1174(d) and the applicable wage order(s);

EMPLOYER deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, minimum wage, meal and rest periods, and sick pay and failure to reimburse under Labor Code 2802, among numerous other California Labor Code violations. Many other aggrieved employees were also treated as exempt from those protections.

Plaintiff and other aggrieved employees primarily engage(d) in duties that failed to meet the requirements of the various exemptions. They lacked the requisite discretion and independent judgment required by the labor code and the IWC Orders (without limitation) to qualify as exempt from various labor law protections. By misclassifying aggrieved employees, EMPLOYER deprived them of many protections.

Unlawful Failure to Pay Overtime

EMPLOYER fails to maintain a policy that compensates Plaintiff and other employees for all hours worked, including overtime. Specifically, EMPLOYER only pays employees for the majority of time that they spend at work. Many employees, including Plaintiff, routinely worked work over eight (8) hours per day and/or forty (40) hours per week but are not paid one and one-half their regular rate of pay for overtime work. As a result of violations of California Labor Code §§ 510, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, EMPLOYER has required employees to work hours in excess of eight hours in a day and forty hours in a week as a result of working their regular shifts, but EMPLOYER has not paid these employees overtime compensation. As a result, Plaintiff and other employees have been denied “the unpaid balance of the full amount of this ... overtime compensation” as required by California Labor Code § 1194, and EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Minimum Wage

EMPLOYER has failed to maintain a policy that compensates Plaintiff and other employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. EMPLOYER did not compensate Plaintiff and other employees for time spent working off the clock. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders, for failure to pay minimum wage, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Industrial Welfare Commission Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. Many employees, including Plaintiff, were forced

to skip or take untimely breaks without appropriate compensation. Here, Plaintiff and other employees were not afforded proper meal breaks. To illustrate, Plaintiff would work shifts in excess of five (5) hours without a meal break due to the Defendants' busy schedule and would often eat while working due to this schedule. As a result of violations of California Labor Code §§ 226.7 and 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty rest periods as required by California law. Plaintiff and other employees regularly worked in excess of 3.5 hours or major fraction thereof during work days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and applicable Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. Here, Plaintiff and other employees were not afforded proper rest breaks due to Defendants' busy schedule. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse Expenses

EMPLOYER has failed to indemnify Plaintiff and other employees for all necessary expenditures or losses incurred by Plaintiff. EMPLOYER did not reimburse Plaintiff for various work-related expenses. California Labor Code § 2802 requires the employer to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge their duties. Here, Defendants communicated work matters to their employees by cell phone and failed to reimburse those employees for cell phone expenses in violation of Section 2802. As a result of violations of California Labor Code § 2802, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 2802 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

EMPLOYER has violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other employees with required wage statement information. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of her or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on

a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of her or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Plaintiff and others were deprived of wage statements altogether, or various necessary items of information such as total hours worked, applicable hourly rates, and the employers' address. Moreover, EMPLOYER's employees' work hours, overtime time hours and pay, missed rest or meal break premiums, wages, without limitation, were misreported on their wage statements. Here, Defendants issued inadequate wage statements for, but not limited to, unfair rounding of employees' hours, which resulted in an underpayment of wages to their employees. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

EMPLOYER has failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other employees. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees "" Because EMPLOYER did not keep complete and accurate time records reflecting hours worked for Plaintiff and other employees, including, but not limited to, beginning work prior to the start of their shifts, working after the end of their shifts, and missed/short/late rest and meal breaks, it is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.* Section 6 or 7 of the applicable wage order requires the recording of this time. EMPLOYER would not keep track of action time. Instead, Defendants unfairly rounded employees' hours, which resulted in underpayment of wages to their employees. Further, Defendants' timekeeping machine would frequently become out of service and Defendants failed to adequately keep record of employees' time worked in violation of California Labor Code § 1174(d) and the applicable wage order(s). Defendants also failed to properly pay out Plaintiff's and others' sick leave. To the extent that EMPLOYER's failure to keep accurate payroll records was willful, it is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.*, an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of" the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As

described above, EMPLOYER has required Plaintiff and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)).

Accordingly, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Wages Due Upon Termination

EMPLOYER has violated California Labor Code § § 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other employees at the time employment was terminated, EMPLOYER willfully failed to pay Plaintiff and other employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202 including, but not limited to, missing wages due to inaccurate tracking of employees' time records and failing to properly track their hours works and premium pay for missed/short/late meal and rest breaks. In addition, Defendants failed to pay Plaintiff and other former employees within 24 to 72 hours of separation from employment as required by California Labor Code. Instead, Defendants informed Plaintiff of their "common practice" of requiring signatures from a former employee in order to issue final wages. Plaintiffs and other employees are now also entitled to recover up to thirty (30) days of wages due to EMPLOYER's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

Additionally, because EMPLOYER violated California Labor Code §§ 201, 201and 203 of the Labor Code, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Conclusion

EMPLOYER has violated or has caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,

SIRMABEKIAN LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'Sarkis Sirmabekian', with a stylized flourish at the end.

Sarkis Sirmabekian, Esq.

EXHIBIT 2

CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I. THE PARTIES

This Settlement Agreement and Mutual Release of All Claims (“Agreement”) is made and entered into by and between DEFENDANTS MOHAJERI INC, a California Corporation, d/b/a ANTOJITOS LATINOS MARKET, CHANGIZ MOHAJERI an individual (collectively hereinafter “DEFENDANTS”), on the one hand, and MARIA CRUZ VASQUEZ (“PLAINTIFF”), on the other hand, and is effective upon execution; and

II. RECITALS

WHEREAS, on May 20, 2022, PLAINTIFF filed a putative class action lawsuit in the Superior Court of the State of California, Orange County, Case No. 30-2022-01261627 (the “Action”), for: (1) recovery of minimum wages; (2) recovery of unpaid overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to furnish wage statements; (6) failure to pay all wages at time of separation; (7) failure to keep accurate and complete payroll records; and (8) violations Private Attorney General Act of 2004, CLC 2698 (“PAGA Claims”) (9) Statutory Penalties Cal lab code Section 203.

WHEREAS, after filing her Complaint against defendants parties engaged the services of a mediator, honorable Michael R. Diliberto on January 31, 2023

WHEREAS, DEFENDANTS deny and dispute any and all of PLAINTIFF’S alleged causes of action and allegations in the Action, and specifically deny any and all wrong doing.

WHEREAS, the Parties wish to avoid the expense of further proceedings and desire to resolve any and all claims alleged, or that could have been alleged;

WHEREAS, the Parties desire to settle fully and finally all claims between the PLAINTIFF, on the one hand, and DEFENDANTS on the other. The claims to be resolved include, but are in no way limited to, those made subject of PLAINTIFF’S Claims, but do not include the claims of any individual other than PLAINTIFF;

WHEREAS, PLAINTIFF has reached an agreement with the DEFENDANTS pursuant to which (i) all disputes between PLAINTIFF individually and the DEFENDANTS are fully resolved:

NOW, THEREFORE, FOR GOOD CAUSE AND VALUABLE CONSIDERATION, THE PARTIES EXPRESSLY AGREE AS FOLLOWS:

III. TERMS OF SETTLEMENT

A. PLAINTIFF and DEFENDANTS agree that in consideration of the terms of this Agreement being fully executed and effective, DEFENDANTS will pay a “Total Settlement Payment” of \$60,000.00 which, for tax purposes will be allocated as follows: (1) \$18,000 to PLAINTIFF’S Counsel, SIRMABEKIAN LAW FORM PC and which will not be subject to withholdings, and will be reported on IRS Form 1099; and (2) \$12,000.00, which will be

paid directly to PLAINTIFF, and which will be allocated 30% to wages and 70% to penalties and interest. Taxes will be withheld out of the wage portion only and reported on IRS Form W2. The non-wage portion will be reported on IRS Form 1099. (3) \$30,000 shall be allocated to PAGA Plaintiffs (from which the following shall be paid subject to Court Approval: 33.33% to PAGA Counsel, up to \$4,000 in PAGA Counsel Costs, a reasonable amount to a settlement administrator, up to \$1,000 as an enhancement award for Plaintiff, and after such fees and costs, 75% of the remainder to the LWDA, and 25% to aggrieved employees.)

B. This entire settlement agreement is subject to Court's approval of PAGA claims, and should the Court not approve the PAGA claims this entire Agreement shall be void and null.

C. Distribution of the payment described above will be made as follows:

1. PLAINTIFF will sign this Agreement and return it to DEFENDANTS' Counsel along with: (1) IRS Form W-9 executed by PLAINTIFF'S Counsel; and (2) PLAINTIFF will seek Court Approval of the PAGA Settlement which will include a Notice of the Proposed Settlement to the California Labor and Workforce Development Agency ("LWDA").

2. Once Counsel for DEFENDANTS has received each of the items specified in Section III.C.1, above, DEFENDANTS will then pay the Total Settlement Payment within 10 days. Upon receipt of the settlement amount, Counsel for PLAINTIFF will file the Request Dismissal with the Court with prejudice with respect to all claims including PAGA claims...

3. DEFENDANTS shall issue the appropriate tax reporting forms to PLAINTIFF and her attorneys for the Total Settlement Payment.

D. Dismissal of Claims. PLAINTIFF agrees to dismiss the Action with prejudice as to PLAINTIFF and PAGA claims. By signing this Agreement, PLAINTIFF authorizes her attorney to execute the forms necessary to dismiss the Action as described above, and authorizes her attorney to transmit those forms to DEFENDANTS' Counsel for filing in the Action.

E. Complete Release. In consideration and as a precondition of the payments by DEFENDANTS described in Section III.A & B, PLAINTIFF agrees to all of the remaining terms and conditions contained in this Agreement, including but not limited to the release provisions described in Section IV, below.

F. Confidentiality Obligations.

1. PLAINTIFF and PLAINTIFF'S Counsel expressly agree that as of the date they each sign this Agreement, they have not and will not hereafter act, or disclose, discuss or publish by any means (including electronic media, newspapers, periodicals, websites, etc.) any information concerning the negotiation of this Agreement or the terms of this Agreement to anyone. PLAINTIFF and PLAINTIFF'S

Counsel will not share or disclose this Agreement, or any portion of it, with anyone and will take all reasonable steps to ensure compliance with all of the terms of the confidentiality provisions described herein. This provision will not, however, prohibit any of the following:

- a. Disclosure of the fact that a settlement has been reached. In this regard, if asked, PLAINTIFF and/or PLAINTIFF'S Counsel may state only that "The matter has resolved." Nor shall there be any publication, disclosure or discussion of the settlement discussions, or the terms and conditions of the Parties' settlement or this Agreement, and in no event shall any information be provided to the media other than as provided for herein above, and then, only if asked.
- b. Disclosure, to the extent necessary, of the terms of the Agreement (including filing of the Agreement in its entirety and publicly in State Court) in any proceeding reasonably related to the enforcement of this Agreement, or in connection with obtaining approval of this settlement or any portion thereof.
- c. Disclosure of any monies paid pursuant to this Agreement to the applicable governmental tax authority, or to an attorney or accountant in a necessary, confidential and privileged communication in connection with the tax, or accounting affairs of the party.
- d. Disclosure in response to a lawfully authorized subpoena, provided DEFENDANTS has first been provided reasonable notice of the subpoena. For this purpose "reasonable notice" means sufficient time to permit DEFENDANTS to seek a protective order to obtain a court ruling reviewing whether the facts governed by this Agreement may be released pursuant to the subpoena

2. PLAINTIFF agrees that DEFENDANTS shall be entitled to equitable relief, including injunctive relief, in the event of any breach or threatened breach of Section III.E of the Agreement by PLAINTIFF and/or PLAINTIFF'S Counsel. In addition, because the damages suffered by DEFENDANTS in the event of a breach of Section III.E of the Agreement would be difficult to ascertain, the Parties agree that in the event of a breach of Section III.E of the Agreement by PLAINTIFF and/or PLAINTIFF'S Counsel, PLAINTIFF and/or PLAINTIFF'S Counsel shall be liable to DEFENDANTS for payment in the amount of \$500 as liquidated damages.

IV. RELEASE

A. Release of Claims. For and in consideration of the promises herein contained, PLAINTIFF hereby forever and fully releases and discharges the Released Parties (as defined in Section IV.A.5, herein) of and from any and all sums of money, accounts, claims,

interests, demands, contracts, actions, debts, controversies, agreements, damages, losses and causes of action, whatsoever, of whatever kind or nature, known or unknown, suspected or unsuspected, which she now owns, holds, has or claims to own, hold or have, and any future consequences there and all causes of actions therefore, including, *but not limited to*, any and all matters alleged or referred to in the Action or otherwise arising from PLAINTIFF'S alleged employment with DEFENDANTS.

1. Released Claims. PLAINTIFF understands and agrees that, with the exception of claims which cannot be released as a matter of law, in exchange for the promises contained in this Agreement, PLAINTIFF is releasing and will not pursue all, whether known and unknown, claims, promises, causes of action, suits, or similar rights of any type (in law or in equity) that PLAINTIFF may have ("Released Claims") with respect to any of the Released Parties identified in Section IV.A.5. PLAINTIFF understands that the Released Claims she is releasing might arise under many different laws (including statutes, regulations, other administrative guidance, and common law doctrines), such as, but not limited to, the following:

a. *Antidiscrimination statutes*, such as Title VII of the Civil Rights Act of 1964, Sections 1981 and 1983 of the Civil Rights Act of 1866, and Executive Order 11,246, which prohibit discrimination based on race, color, national origin, religion, or sex; the Equal Pay Act, which prohibits paying men and women unequal pay for equal work; the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination based on disability; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, which prohibits discrimination based on age, and any other federal, state, or local laws prohibiting employment discrimination, such as the California Fair Employment and Housing Act, which prohibits discrimination based on race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, or sexual orientation;

b. *Federal employment statutes*, such as the Employee Retirement Income Security Act of 1974, which, among other things, protects employee benefits; the Fair Labor Standards Act of 1938, which regulates wage and hour matters; the Family and Medical Leave Act of 1993, which requires employers to provide leaves of absence under certain circumstances; and any other federal laws relating to employment, such as veterans' reemployment rights laws.

c. *Other laws*, such as federal, state, or local laws restricting an employer's right to terminate employees, or otherwise regulating employment; any federal, state, or local law enforcing express or implied employment contracts or requiring an employer to deal with employees fairly or in good faith; any other federal, state, or local laws providing recourse for alleged wrongful discharge, tort, physical or personal injury,

emotional distress, fraud, and similar or related claims, any claims related to California Labor Code sections 200 *et seq.* or otherwise concerning compensation, meal and/or rest breaks, benefits and other matters, and any claims concerning any applicable California Industrial Welfare Commission order, and any federal, state or local laws concerning employee leave rights, such as, but not limited to, the California Family Rights Act.

d. *Examples of Released Claims* include, but are not limited to: (i) claims that in any way relate to PLAINTIFF'S employment relationship with DEFENDANTS, compensation for services provided, wage/hour claims, or the termination of that employment relationship, such as claims for compensation, bonuses, commissions, or lost wages; (ii) claims that in any way relate to any of DEFENDANTS' benefit programs; (iii) claims that PLAINTIFF has irrevocable or vested rights to benefits or to post employment health or group insurance benefits; (iv) any claim, such as a benefit claim, that was explicitly or implicitly denied before PLAINTIFF signed this Agreement; (v) any whistleblower claims; or (vi) any claim to attorneys' fees, costs, or other indemnities.

e. PLAINTIFF understands and agrees that if a claim is prosecuted in her name or on her behalf individually, as a group or collectively in whole or in part, in any court or administrative agency, with respect to the Released Claims, that she waives and agrees not to take any award of money or other damages or relief from such action. PLAINTIFF also agrees that if a claim is prosecuted in her name or on her behalf individually, as a group or collectively in whole or in part, with respect to the Released Claims, that she will immediately request in writing that the claim(s) on her behalf be withdrawn.

2. Defendants' Release. Except for the obligations to be performed under this Agreement, the DEFENDANTS, and each of them, for themselves and without limitation to, their predecessors and successors in interest, heirs, parent, subsidiaries, and affiliates, and each of their agents, assigns, members, officers, directors, shareholders, attorneys, vendors, representatives, and, hereby unconditionally releases and forever discharge PLAINTIFF, including, without limitation, his/her predecessors and successors in interest, heirs, parent, subsidiaries, and affiliates, and each of his/her agents, assigns, members, officers, directors, shareholders, attorneys, representatives, and employees of and from any and all past and present charges, claims, complaints, actions, causes of action, liabilities, obligations, promises, agreements, controversies, rights, damages, debts, costs, losses, attorneys' fees, expenses and compensation of any nature whatever, whether based on a tort, contract and/or other theory of recovery, and whether for compensation of punitive or statutory damages, (1) which DEFENDANTS now have, or which may hereafter accrue or otherwise be acquired, arising out of or relating to the Action, including,

without limitation, any claims in any way relating to the Action, to PLAINTIFF'S employment by the DEFENDANTS or the separation of PLAINTIFF from employment; and/or (2) arising in any other way whatsoever prior to the date of execution of this Agreement.

3. **Unknown Claims.** the Parties understand that among their released claims are claims that they may not know about and that they voluntarily intend to include those unknown claims in the released claims, even though the Parties recognize that someday they might learn that some or all of the facts they currently believe to be true are untrue and even though they might then regret having signed this Agreement. Nevertheless, the Parties are assuming that risk and agree that this Agreement shall remain effective in all respects in any such case. The Parties expressly waive all rights they might have under any law that is intended to protect them from waiving unknown claims. The Parties understands the significance of doing so.

The Parties acknowledge that they have been advised of and are familiar with the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.”

Being aware of said Code section, the Parties hereby expressly waive any rights they may have thereunder, as well as under any other statutes or common law principles of similar effect.

4. **Representative PAGA Claims.** PLAINTIFF unconditionally covenants not to institute or continue any claim for civil penalties under PAGA against DEFENDANTS or any of the Released Parties.

5. **Class and Collective Claims.** The Released Claims shall include PLAINTIFF'S right to serve as a class representative in any class or collective action if PLAINTIFF would be barred from participating in any recovery in that class or collective action by virtue of the provisions of section IV.A of this Agreement.

6. **Released Parties.** The Released Parties include the following, individually or collectively: DEFENDANTS and each of their former and present parents, subsidiaries and affiliated corporations, partnerships, limited liability companies, and for each such entity, its former and present officers, directors, employees, managers, partners, shareholders, agents, spouses of Defendants, insurers, and any successors, assigns, or legal representatives of such entity.

7. **Limitations.** The releases contained in Sections IV.A do not extend to (i) enforcement of the obligations, terms and covenants of this Agreement, (ii) any claim

which arises after the date that PLAINTIFF executes this Agreement, (iii) any workers' compensation claim(s), and/or (iv) any claim which cannot be released by private agreement as a matter of law.

V. REPRESENTATIONS AND WARRANTIES

A. No Admission of Liability. This Agreement is the result of a compromise of disputed claims and shall never at any time for any purpose be considered as an admission of correctness, liability or responsibility on the part of any party.

B. Advice of Legal Counsel. The advice of legal counsel has been obtained by all of the Parties prior to the execution of this Agreement. All of the Parties hereby execute this Agreement voluntarily and with full knowledge of its significance and with the express intention of extinguishing any and all obligations and claims owed by the Parties to each other arising out of or connected with the matters specified herein.

C. Non Assignment of Claims. The Parties represent and warrant that no portion of any claim, right, demand, action, or cause of action which they have or might have arising out of the matters referred to herein, nor any portion of any recovery or settlement to which they might be entitled, has been assigned or transferred to any other person, firm or corporation not a party to this Agreement, in any manner, including by way of subrogation or operation of law or otherwise. In the event that any claim, demand, or suit should be made or instituted against any of the Parties because of any such purported assignment, subrogation, or transfer, the other party agrees to indemnify and hold harmless the party subject to such an action against such claim, suit, or demand and to pay and satisfy any such claim, suit, or demand, including necessary expenses of investigation, actual attorneys' fees and costs.

D. Adequate Investigation of Facts. In making and executing this Agreement, the Parties have made such investigation of the facts and the law pertaining to the matters described herein and this Agreement as they deem necessary, and they do not rely and have not relied upon any statement or representation, oral or written, made by any of the other parties to this Agreement with regard to any of the facts involved in any dispute or possible dispute between any of the Parties hereto, or with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement.

E. Understanding of Agreement. Each of the Parties has read and understands the contents of this Agreement.

F. Binding Upon Agents and Representatives. Each and every term of this Agreement shall be binding upon the agents, representatives, insurers, employees, attorneys, heirs, administrators, executors, successors, and assigns of the respective parties hereto and any parent, subsidiary, or affiliated entity of each of such parties.

G. Integration. This Agreement constitutes the entire agreement between PLAINTIFF, on the one hand, and DEFENDANTS, on the other hand, pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions of

their agreement. Any and all prior agreements, representations, negotiations and understandings, oral or written, express or implied, are hereby suspended and merged herein.

H. Cooperation. The Parties hereto agree to execute any and all other documents and instruments in writing which may be reasonably necessary or proper to effectuate and carry out the purposes of this Agreement.

I. Attorneys' Fees and Costs. Each Party shall bear its own costs, expenses and attorneys' fees incurred in connection with the Lawsuit and the completion of this settlement. Notwithstanding the foregoing, in the event that any of the Parties hereto should bring any action, suit or proceeding against any of the other parties hereto or PLAINTIFF'S Counsel to enforce this Agreement, the validity hereof, any of the terms or provisions hereof, or any of the matters released hereby, or should any of the Parties assert this Agreement as an affirmative defense in an action brought by a Party, the prevailing party in such action, suit or proceeding shall be entitled to recover from the other such party reasonable attorney's fees to be fixed by the court and costs incurred in connection therewith, including attorney's fees and costs relating to any and all appeals or petitions taken with respect to any such action, suit or proceeding.

J. Modifications In Writing. The Parties agree that any modifications to this Agreement must be made in writing executed by all the Parties.

K. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

L. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same written agreement. PDF, fax and electronic signatures shall be considered original.

M. Tax Obligations. PLAINTIFF and her attorney(s) hereby acknowledge and agree that they are responsible for all tax obligations, if any, including, but not limited to, all reporting and payment obligations which may arise as a consequence of this Agreement. PLAINTIFF acknowledges that she has not received any tax advice from either of DEFENDANTS, or their Counsel, and has not relied on any advice from either of DEFENDANTS, or their Counsel.

N. No Other Claims. Other than the PLAINTIFF'S claims and the Action, PLAINTIFF represents and warrants that she has never commenced or filed, and agrees and covenants never to commence, file, aid, instigate, or assist or in any way, prosecute, or cause to be commenced or prosecuted against the Released Parties any action, charge, complaint or other proceeding regarding any claim arising prior to the date of execution of this Agreement, and which relates in any way to the Released Claims, except as may be necessary to enforce the provisions of this Agreement or otherwise required by law. Neither PLAINTIFF nor PLAINTIFF'S Counsel are aware of any: (a) unalleged claims against any of the Released Parties in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against any of the Released Parties, except such facts and theories specifically alleged in the First Amended Complaint in this

Action. PLAINTIFF and PLAINTIFF'S Counsel have no current intention of asserting any other claims against any of the Released Parties in any judicial or administrative forum. PLAINTIFF and PLAINTIFF'S Counsel do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against any of the Released Parties. The Parties acknowledge, understand and agree that this Agreement would not have been entered into were it not for the representations in this Section V.N.

O. No Other Injuries. PLAINTIFF further represents that, aside from any payments specifically described in this Agreement, she has been compensated in full for all wages, compensation, commissions, bonuses, or other debts relating to the Released Claims to which she has ever been entitled from any of DEFENDANTS.

P. Enforcement. The Parties and their Counsel agree that if any Party or their Counsel commits a breach or threatens to commit a breach of any of the provisions and/or sections of this Agreement, the non-breaching party shall have the right and remedy to compel enforcement of this Agreement, and that the Court maintains jurisdiction to interpret and enforce the Parties' settlement and this Agreement even after dismissal of the Lawsuit.

Q. Voluntary and Knowing. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of any of the Parties hereto.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the dates indicated below.

Dated: January 31, 2023

By: 
Maria Cruz Vasquez

Dated: January 31, 2023

By: *Changiz Mohajeri*
Changiz Mohajeri, For Himself,
And For Mohajeri Inc, a California Corporation, d/b/a, Antojitos Latinos Market.

APPROVED AS TO FORM

Dated: January 31, 2023

By: Sarkis Sirmabekian
Sarkis Sirmabekian
Attorney For PLAINTIFF

Dated: January 31, 2023

By: Christopher K. Jafari
Christopher K. Jafari
Attorneys for DEFENDANTS

EXHIBIT 3

Re: NOTICE OF SETTLEMENT

**MARIA CRUZ VASQUEZ VS. MOHAJERI, INC., et al.
Superior Court of California for the County of Orange
Case Number: 30-2022-01261627-CU-OE-CXC**

Date:

SIMID
Name
Address

Dear Name:

A settlement was reached between Plaintiff Maria Cruz Vasquez (“Plaintiff”) and Defendants Mohajeri, Inc., Changiz Mohajeri and Antojitos Latinos Market (“Defendants”) (collectively the “Parties”) in *Maria Cruz Vasquez vs. Mohajeri, Inc., et al.*, filed in the Superior Court of California for the County of Orange (Case Number: 30-2022-01261627-CU-OE-CXC) (the “Action”). On , the Superior Court of California for the County of Orange issued an Order approving the Settlement, which was brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”). An action under PAGA is an enforcement action in which an aggrieved employee acts as a private attorney general to collect penalties from employers. In reaching this settlement, Defendants made no admission of liability and denied the truth of the allegations in the Action. However, to avoid additional expense, inconvenience, and interference with Defendants’ business operations, the Parties have concluded that it is in the best interests of the Parties to settle.

This settlement affects certain employees and former employees of Defendants. You are receiving this Notice of Settlement because you worked for Defendants at some point from March 16, 2021 through (the date the Court approved the PAGA Settlement and entered a final order and/or Judgment) (“Claims Period”). Pursuant to the Settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in your name. If you are still employed by Defendants, your decision to cash the check will not affect your employment.

Payment of this settlement includes a release of any and all claims pursuant to the *California Labor Code § 2698*, which were alleged based on the facts in the operative Complaint or notice for the California Labor Workforce Development Agency (“LWDA”) on behalf of Plaintiff and all aggrieved employees during the Claims Period. The release includes all claims, rights, demands, liabilities and causes of action that arose during the period from March 16, 2021 through the date of the final order (the “PAGA Period”), for civil penalties under the PAGA, based on the allegations pled by Plaintiff in the Action: (1) Violation of The Private Attorneys General

Act of 2004 (“PAGA”); (2) Failure to Pay Minimum Wage; (3) Failure to Compensate for All Hours Worked (4) Failure to Pay Overtime Compensation; (5) Failure To Pay Rest Period Compensation; (6) Failure To Pay Meal Period Compensation; (7) Failure To Furnish Accurate Wage and Hour Statements; (8) Failure to Pay Wages Upon Discharge; (9) Statutory Penalties; (10) Failure to Indemnify and Illegal Deductions From Wages; (11) Unfair Competition; including any related claims for attorneys’ fees, costs, penalties or interest resulting there from, during the PAGA Period). This release only waives, and is limited to, the aggrieved employee’s rights to collect civil penalties under PAGA (2698 *et seq.*).

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1.XXX.XXX.XXXX.

PROOF OF SERVICE
(§ 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States of America; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010.

On the below-indicated date, I served the following document:

PLAINTIFF MARIA CRUZ VASQUEZ’S NOTICE OF MOTION AND UNOPPOSED MOTION FOR COURT APPROVAL OF PAGA SETTLEMENT

on the interested parties in said action by placing:

___X, ___ a true and correct copy,

and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL, OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with California Code of Civil Procedure section 1010.6, I caused the document to be sent to the person(s) below at the e-mail address(es) listed below.

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

EXECUTED: May 4, 2023

At Los Angeles, California

Grigor Gregg Sirmabekhian

Grigor Gregg Sirmabekhian

SERVICE LIST

Christopher K. Jafari, Esq., Bar No. 219971 Kiarash Kay Jafari, Esq., Bar No. 299610 C&K LAW GROUP 3525 Hyland Ave., Suite 270 Costa Mesa, CA 92626 Email: chrisjafari@gmail.com Email: kayjafari@gmail.com	<i>Attorneys for Defendants Mohajeri, Inc. dba Antojitos Latinos Market and Changiz Mohajeri</i>
Labor and Workforce Development Agency ("LWDA") Department of Industrial Relations Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, California 94612	<i>Labor and Workforce Development Agency: filed/served online at:</i> <u>https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html</u>