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10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF CONTRA COSTA**

13 MARIA SMEBY, individually, on behalf of
14 herself, those similarly situated, and all
15 Aggrieved Employees,

16 Plaintiff,

17 vs.

18 SEATEL, INC., a California corporation; and
19 DOES 1 through 100, inclusive,

20 Defendants.

Case No.: C22-01360

[Hon. Charles S. Treat]

21 **NOTICE OF MOTION AND MOTION FOR**
22 **APPROVAL OF SETTLEMENT OF**
23 **REPRESENTATIVE PAGA CLAIMS;**
24 **MEMORANDUM OF POINTS AND**
25 **AUTHORITIES IN SUPPORT THEREOF**

Filed concurrently herewith:

- 26 • **DECLARATION OF JOHN A. VAN**
- 27 **HOOK; AND**
- 28 • **[PROPOSED] ORDER**

Date:
Time:
Dept.:

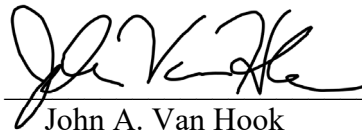
1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 PLEASE TAKE NOTICE THAT on _____, 2023, at _____,¹ or as soon
3 thereafter as the matter may be heard in Department 12 of the above-entitled Court, located at
4 Wakefield Taylor Courthouse, 725 Court Street, Martinez, CA 94553, Plaintiff Maria Smeby,
5 on behalf of herself and all other aggrieved employees and the State of California as a private
6 attorney general, will and hereby does move the Court for an Order approving the Parties'
7 PAGA Settlement Agreement.

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

13
14 Dated: October 2, 2023

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

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17 John A. Van Hook
18 Adrian C. Byrne
19 Attorneys for Plaintiff Maria Smeby and all
20 other Aggrieved Employees
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26 ¹ Plaintiff understands that the Court sets hearing dates after the filing of motions. Therefore,
27 the hearing date and time for this Motion are left blank. Plaintiff requests the earliest available
28 hearing date consistent with the notice requirements for this Motion.

1 **I. INTRODUCTION**

2 Plaintiff Maria Smeby (“Smeby” or “Plaintiff”) and Defendant Seatel, Inc. (“Seatel” or
3 “Defendant”) (together with Plaintiff, the “Parties”) negotiated a representative action
4 settlement of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00), pursuant to the
5 California Labor Code Private Attorneys General Act 2004, Labor Code section 2698, *et seq.*
6 (“PAGA”).

7 As described herein, the settlement is fair, reasonable, and an excellent result for the
8 aggrieved employees and the State of California. Accordingly, Plaintiff respectfully requests that
9 this Court grant approval of the PAGA Settlement Agreement (the “PAGA Settlement”) and
10 Order the Parties to take all steps necessary to effectuate the settlement.

11 **II. FACTUAL OVERVIEW**

12 Defendant SeaTel is a Satellite Communication Engineering and Manufacturing company
13 doing business in Contra Costa County, California.

14 Plaintiff began working for Seatel from approximately November 2007 and separated in
15 December 2021. Plaintiff performed work as an hourly, non-exempt production assembly
16 worker, assembling antennas and other communication technology.

17 The allegedly aggrieved employees in this action include SeaTel’s non-exempt
18 employees from April 25, 2021, through the date of approval (the “Aggrieved Employees”).
19 Defendant represents that, based on its personnel records as of June 15, 2023, there are 43
20 Aggrieved Employees who worked a total of 1,836 pay periods during the relevant time period.
21 *See* Declaration of John. A Van Hook [“Van Hook Decl.”], ¶ 12.

22 **III. PROCEDURAL BACKGROUND**

23 On April 25, 2022, Plaintiff filed a notice of potential claims with the Labor and
24 Workforce Development Agency (“LWDA”), as a prerequisite to filing a claim under PAGA.
25 *See* Van Hook Decl., ¶ 3.

26 On June 30, 2022, Plaintiff filed a complaint titled *Maria Smeby v. SeaTel, Inc.*, in Contra
27 Costa Superior Court, Case No. C22-01360, asserting individual, representative PAGA, and

putative class action claims against in the Superior Court of California, County of Contra Costa, Case No. C22-01360 (the “Complaint”). Plaintiff’s Complaint asserted seven (7) causes of action, including Plaintiff’s sixth (6th) cause of action asserts for civil penalties pursuant to PAGA. *See* Van Hook Decl., ¶ 4. The primary theories supporting Plaintiff’s PAGA claims were the allegations that Plaintiff and other Aggrieved Employees were not provided timely meal periods and that Defendant improperly rounded employees’ time. *See id.*, ¶ 5.

After filing the Complaint, Defendant informed Plaintiff that she had executed a severance agreement upon separation from SeaTel which purported to release Plaintiff's individual claims alleged in the Complaint. As a result of this agreement and purported release, Plaintiff and her counsel determined that she would not be able to adequately represent a class. *See id.*, ¶¶ 6-7.

Consequently, on December 22, 2022, Plaintiff filed a request to dismiss, without prejudice, the individual and putative class claims asserted in the following causes of action: First (Failure to Provide Meal Periods), Second (Failure to Pay All Unused Vested Vacation Time Upon Separation), Third (Failure to Pay Final Wages Due Upon Separation), Fourth (Failure to Provide Accurate Itemized Wage Statements), and Fifth (Unfair Competition) Causes of Action. *See id.*, ¶ 7.

Following that dismissal, Plaintiff's sixth cause of action for PAGA penalties and her seventh cause of action for failure to provide employment records, remained in the case. *See id.*, ¶ 8.

The parties began exchanging legal authority and arguments in support of their respective legal positions regarding the remaining causes of action at issue. Among other things, Defendant argued that Plaintiff had no standing to pursue PAGA claims on account of her released individual claims. Plaintiff argued that she retained standing to pursue PAGA claims for multiple reasons, including that some of her claims arose after execution of the severance agreement, that the release was not legally effective, and that PAGA claims cannot be released absent court approval. *See id.*, ¶ 9.

1 Defendant also provided information that the group of Aggrieved Employees was small.
2 In recognition of the potential risk that protracted litigation of these claims would cause both
3 parties to incur attorney's fees and costs that would far outweigh the potential PAGA penalties at
4 issue, the parties agreed to participate in private mediation and began to focus their efforts on a
5 potential resolution. *See id.*, ¶ 10.

6 The Parties engaged in both formal discovery as well as informal exchanges of
7 information and documents. Defendant responded to Plaintiff's formal written discovery
8 requests. Defendant also produced personnel, payroll and timekeeping documents for Plaintiff
9 and produced certain information and documentation relating to the putative Aggrieved
10 Employees, including information regarding their dates of employment, and relevant pay
11 periods. On August 16, 2023, Defendants provided data for the allegedly Aggrieved Employees
12 which indicated that there were 43 Aggrieved Employees who worked a total of 1,836 pay
13 periods during the PAGA Claim Period. *See id.*, ¶ 12.

14 On September 1, 2023, Defendant also provided a sampling of time and pay data for the
15 Aggrieved Employees. *See id.*, ¶ 13. These records allowed Plaintiff to analyze her allegations
16 regarding the provision of meal periods, rounding of time entries, among other issues.

17 In further preparation for mediation and to facilitate analysis of Defendants' PAGA
18 exposure, Plaintiff's counsel conducted their own investigation, conducting extensive interviews
19 with the Plaintiff, and reviewing the sample data, relevant policies and procedures applicable to
20 the PAGA claims at issue, including meal and rest breaks, among other pertinent issues. *See id.*,
21 ¶ 14.

22 On September 12, 2023, the Parties participated in a full-day private mediation with
23 experienced mediator and retired Superior Court Judge, Patrick J. O'Hara. The parties exchanged
24 additional information regarding the legal and factual issues. At the conclusion of the mediation,
25 the Parties reached an agreement on the principal terms of a settlement of the entire action,
26 including a settlement of Plaintiff's individual claims and a proposed settlement of the
27 representative PAGA claims. *See id.*, ¶¶ 15-16.

1 On or about September 29, 2023, the Parties finalized a long-form agreement with
2 respect to the proposed PAGA Settlement and Plaintiff's individualized claims. Attached as
3 **Exhibit 1** to Van Hook Decl. is a true and correct copy of the PAGA Settlement Agreement. *See*
4 *id.*, ¶ 17.

5 As required by PAGA, concurrently with the filing of this Motion, Plaintiff's counsel
6 submitted the PAGA Settlement Agreement to the LWDA for its review. *See id.*, ¶ 18.

7 **A. Summary of Settlement Terms**

8 The PAGA Settlement Agreement provides that Defendants will pay a total of \$72,500
9 (the "Gross PAGA Settlement Fund"), as a non-reversionary settlement fund to settle the
10 representative PAGA claims in this action. Separately, Defendant will pay a total of \$5,000 as a
11 settlement for Plaintiff's individual claims. *See id.*, ¶ 19.

12 The "Aggrieved Employees" for purposes of the PAGA Settlement consist of all current
13 and former non-exempt employees who worked for SeaTel in California at any time between
14 April 25, 2021, through the date of the Court Order granting approval of the PAGA Settlement
15 (the "PAGA Period"). *See id.*, ¶ 20.

16 From the Gross PAGA Settlement Fund of \$72,500, the following amounts will be paid,
17 subject to this Court's approval:

- 18 • Plaintiff's Counsel's attorney's fees of 1/3 of the Gross PAGA Settlement Fund
19 (\$24,166.00);
- 20 • Plaintiff's Counsel's out-of-pocket litigation expenses of \$3,985.00 arising out of the
21 PAGA Claims (including the mediation fee);
- 22 • PAGA Settlement administration expenses of \$2,000; and
- 23 • Plaintiff's Enhancement Payment of \$2,500 for serving as the representative Plaintiff
24 in the PAGA action.
- 25 • This results in an estimated Net PAGA Settlement Fund of \$39,849.00 (i.e., the Gross
26 PAGA Settlement Fund, minus requested fees, costs, enhancement payment, and
27 PAGA settlement administration expenses).

1 *See id.*, ¶ 21 & Ex. 1 to Van Hook Decl.

2 As required by PAGA, 75% of the Net PAGA Settlement Fund will be paid to the
3 LWDA and the remaining 25% of the Net PAGA Settlement Fund will be distributed among the
4 Aggrieved Employees on a pro-rata basis according to their pay periods during the relevant time
5 period. *See id.*, ¶ 22.

6 The data that Defendant provided for the mediation indicates 43 current and former
7 Aggrieved Employees (including Plaintiff) and a total of 1,836 pay periods. Recognizing that
8 these figures may vary somewhat, and would likely increase through the date of court approval,
9 the Parties agreed that the 1,836 pay periods would be subject to a 15% buffer, meaning that no
10 additional consideration shall be necessary if the total number of weekly pay periods covered by
11 the PAGA Settlement is not greater than 2,111. If the total number of pay periods is greater than
12 2,111, Defendant shall have the option to (i) end the PAGA Period before the date of court
13 approval, to a date that the pay period count does not exceed 2,111, or (ii) increase the Net
14 PAGA Settlement Amount in proportion to the increase in pay periods in excess of 15%. *See*
15 *Van Hook Decl.*, ¶ 23 & Ex. 1.

16 Payments will be made to the Aggrieved Employees by check to their last known home
17 address, and Aggrieved Employees will not be required to submit a claim form or take any other
18 steps to receive their payment. *Van Hook Decl.*, ¶ 24 & Ex. 1.

19 Subject to the Court's approval, the settlement administration, including calculation and
20 issuance of payments, will be performed by Phoenix Settlement Administrators ("PSA"), a
21 nationally recognized settlement administrator. Attached as **Exhibit 2** to the Van Hook
22 Declaration is a true and correct copy of PSA's quote in the amount of \$1,750 for administration
23 of the PAGA Settlement. As described in the Van Hook Declaration, the quote did not include
24 certain

25 Within thirty (30) days of the Court's Judgment and Order approving the PAGA
26 settlement, SeaTel shall deposit the Gross Settlement Amount into a Qualified Settlement
27 Account and agrees to fund the settlement. Within fourteen (14) calendar days of the Settlement

1 being fully funded, the Settlement Administrator shall cause all Settlement Payments to be paid,
2 as follows:

- 3 (1) Twenty-Five percent (25%) of the Net PAGA Fund to the Aggrieved Employees;
 - 4 (2) Seventy-Five percent (75%) of the Net PAGA Fund to the LWDA;
 - 5 (3) Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses;
 - 6 (4) Plaintiff's Court-approved enhancement payment and individual settlement; and
 - 7 (5) Settlement Administrator's Court-approved Settlement administration costs incurred
- 8 in connection with the Settlement. *See* Ex. 1 to Van Hook Decl.

9 Accompanying the payments to the Aggrieved Employees the PAGA Settlement
10 Administrator shall mail copies of the explanatory letter, which has been mutually approved by
11 the Parties and is attached **Exhibit A** to the Settlement Agreement, along with Individual PAGA
12 Payments to all Aggrieved Employees via regular First-Class U.S. Mail. *See* Van Hook Decl., ¶
13 26; Ex. 1-A.

14 Checks will remain negotiable for 180 days. Funds represented by checks returned as
15 undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate
16 an updated address after performing a skip trace, and funds represented by checks remaining un-
17 cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall be tendered to
18 the State Controller's Office, Unclaimed Property Division. *See* Ex. 1 to Van Hook Dec.

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

20 **A. Legal Standard**

21 Under PAGA, an Aggrieved Employee may bring a civil action personally and on behalf
22 of other current or former employees to recover civil penalties for Labor Code violations.
23 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of
24 any penalties recovered go to the LWDA, leaving the remaining 25% for the employees. *Id.*
25 Labor Code § 2699 (l) provides that "[t]he superior court shall review and approve any penalties
26 sought as part of a proposed settlement agreement pursuant to" PAGA. "[T]here is no
27 requirement that the Court certify a PAGA claim for representative treatment" as in a class

1 action. *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No.
2 CV122615PSGJEMX), 2015 WL 12732709 at *5.

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

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

17 While PAGA settlements do not need to satisfy the same requirements for class action
18 settlements, in the context of class action settlements, a “presumption of fairness exists where:
19 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
20 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
21 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.* (2008)
22 168 Cal.App.4th 116, 128. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53
23 and *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390.
24 Notwithstanding that PAGA settlements are not treated as class action settlements, the Parties
25 use the class action settlement standard here because of the dearth of guidance for PAGA
26 settlements approval.

27 Here, with the exception of the percentage of objectors (which is not a factor in the
28

1 PAGA settlement context) all of these factors are present. The PAGA Settlement Agreement
2 here was the result of extensive arm's-length negotiations between experienced employment law
3 attorneys who are familiar with the substantive legal issues and with complex representative
4 PAGA litigation. The Parties participated in a full-day, private mediation with a highly
5 experienced mediator. Through this process, the Parties were able to reach a settlement of the
6 PAGA claims, subject to court approval. *See* Van Hook Decl., ¶¶ 15-16.

7 In addition, Plaintiff's Counsel are experienced in the litigation and settlement of
8 complex wage-and-hour cases, including representative PAGA actions. *See id.*, ¶¶ 32-34. Based
9 on their experience litigating similar cases, Plaintiff's Counsel are of the opinion that the PAGA
10 Settlement is fair, reasonable, and adequate and is in the best interests of all Parties, the LWDA,
11 and the Aggrieved Employees, in light of all known facts and circumstances and the risks
12 inherent in litigation. *See id.*, ¶ 32.

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

14 The data provided by Defendant reflected 43 Aggrieved Employees who worked a total
15 of 1,836 pay periods during the relevant time period between April 25, 2021, through August 16,
16 2023 (the date of Defendant's pre-mediation production).

17 For purposes of Plaintiff's calculations of the total potential exposure for PAGA
18 penalties, the "initial" penalty rate of \$100 per pay period was applied for all pay periods. *See*
19 *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1172-73 (9th Cir. 2021) ("subsequent" penalty rate
20 applies only after an employer is notified by a court or the Labor Commissioner that it is
21 violating the Labor Code).

22 The following calculations assume a 100% violation rate, no discretionary reduction of
23 penalties by the Court, and "stacking" of penalties of the two primary predicate violations
24 advanced by Plaintiff, for meal period, and wage statement violations.

25 Using this methodology, the maximum PAGA penalty for each distinct violation would
26 be: **\$183,600** (1,836 pay periods x \$100 "initial" penalty rate).

Meal Periods: \$183,600

Wage statement violations: \$183,600

Total: **\$367,200²**

The PAGA settlement here is \$72,500, or 19.74% of this estimated PAGA exposure, assuming two separate penalties are assessed for each pay period.

Defendant argued, however, that “stacking” of PAGA penalties is not appropriate, meaning that a plaintiff could recovery only a maximum of \$100 per pay period, regardless of the number of distinct Labor Code violations. Based on this understanding of the law, the PAGA settlement represents 39.49% of the maximum estimated exposure.

Based on an estimated 1,836 pay periods, the settlement provides for \$39.48 per pay period.

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

Given the risks and challenges that Plaintiff’s claims would face in extended litigation, and the vigorous substantive and procedural defenses that Defendants would present, Plaintiff and her counsel believe that this is a fair and reasonable settlement, and a fair and reasonable outcome for the LWDA and for the Aggrieved Employees. Plaintiff applied various risk discounts to account for the perceived strengths and weaknesses of each claim, as well as the substantial risk that protracted litigation would likely result in Plaintiff’s fees and costs rapidly exceeding the underlying penalties at issue. *See Van Hook Decl.*, ¶ 27-31.

² Plaintiff contends that she could theoretically pursue PAGA penalties for every Labor Code provision that was allegedly violated. Even if PAGA did permit “stacked” penalties, however, many of these violations would be derivative of each other, and provide arguably redundant penalties. It is quite likely, therefore, that despite the maximum theoretical recovery that might be available from “stacked” penalties, the Court would exercise its discretion to reduce penalties that appeared redundant or excessive. Accordingly, for purposes of settlement, and as discussed further below, Plaintiff believes that this is a reasonable and appropriate method to calculate potential PAGA penalty exposure.

1 **1. Uncertainties Regarding Plaintiff's Standing**

2 Plaintiff considered various factors in negotiating the PAGA Settlement, including the
3 fact that Plaintiff and a number of the putative Aggrieved Employees had executed severance
4 agreements upon separation from their employment with SeaTel. Plaintiff argued that she
5 retained standing to pursue PAGA penalties, as the California Supreme Court's decision in *Kim*
6 *v. Reins* made clear that PAGA claims are brought on behalf of the State, and therefore cannot be
7 dismissed or compromised without following the procedures outlined by the statute. Conversely,
8 Defendant argued that the court in *Kim v. Reins* was not presented with the instance of a party
9 executing a 1542 release and that such a release deprived her of standing to pursue PAGA
10 penalties.

11 While Plaintiff believes she would have prevailed had these issues been litigated, the
12 Parties recognized the practical reality that both sides' attorneys' fees and costs incurred in
13 litigating this question would likely have exceeded the underlying civil penalties at issue. As
14 such, the Parties adopted a pragmatic approach and agreed to work towards a resolution.

15 **2. Uncertainties Regarding Calculation of PAGA Penalties**

16 Plaintiff also took into account various other risk factors and uncertainties in negotiating
17 the PAGA Settlement, including the following:

18 **a) The Availability of "Stacked" PAGA Penalties**

19 Plaintiff and her counsel believe that PAGA allows for a separate penalty to be assessed
20 for each pay period *for each violation*. For example, if an employee suffered five separate Labor
21 Code violations in a single pay period, five penalties in the same pay period may be assessed.
22 Some trial court decisions have supported this interpretation. See, e.g., *Schiller v. David's Bridal,*
23 *Inc.* (E.D. Cal. July 14, 2010) 2010 WL 2793650 at *6 (finding that PAGA penalties may be
24 stacked in determining the amount in controversy); *Smith v. Brinker Intern., Inc.* (N.D. Cal.
25 May 5, 2010) No. 10-CV-213-VRW, 2010 WL 1838726, at *2-6 (stacking PAGA penalties in
26 determining the amount in controversy in an individual action and granting motion to remand);
27 *Pulera v. F & B, Inc.* (E.D. Cal. Aug. 19, 2008) No. 2:08-CV-275-MCE, 2008 WL 3863489,

1 at *2-3 (concluding that the amount in controversy was not met despite stacking all PAGA
2 penalties).

3 Defendant, however, contends that only a single penalty may be assessed per pay period,
4 regardless of the number of different Labor Code provisions violated during that pay period.
5 Defendant argues that this reading is supported by, among other things, the language of Section
6 2699(f)(2): “the civil penalty is one hundred dollars (\$100) for each aggrieved employee for pay
7 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
8 pay period for each subsequent violation.” As the statute does not explicitly state that this
9 amount is multiplied by the number of violations, Defendant contends that only a single penalty
10 may be assessed for each employee for each pay period. While Plaintiff certainly disputes this
11 statutory interpretation, Plaintiff recognizes the lack of certainty, including the lack of appellate
12 authority, as to how trial Courts would interpret the statute.

13 In Plaintiff’s calculations set forth above, Plaintiff “stacked” two separate penalties
14 representing the primary predicate Labor Code violations advanced by Plaintiff. However, absent
15 the availability of “stacked” penalties, the maximum PAGA penalty that Plaintiff could recover –
16 no matter the number of violations he could prove at trial – would be **\$183,600**. If that were the
17 case, the settlement of \$72,500 represents *more than 39%* of the total potential PAGA penalties.

18 **b) The Trial Court’s Discretion to Reduce PAGA Penalties**

19 As Defendant has vigorously argued throughout these settlement negotiations, even if
20 Plaintiff were to prevail on some or all of her PAGA claims, the statute gives trial courts the
21 discretion to reduce the penalties actually awarded. *See* Lab. Code § 2699(e)(2) (allowing
22 reductions of penalties where the full amount would be “unjust, arbitrary and oppressive, or
23 confiscatory”). Moreover, as long as the Court awards some penalties, the statute imposes no
24 limit to the reduction that a Court can make in a PAGA award. Defendant have argued that this
25 Court could (and should) greatly reduce any penalty award. Among other reasons, Defendant
26 argues that many Aggrieved Employees (including Plaintiff) entered into severance agreements
27 and had received payment for their individual claims, and as a result, PAGA penalties would be
28 redundant. Defendant also argued that any violations were mere technical violations that did not

1 result in any harm to the Aggrieved Employees. While Plaintiff disputes that a substantial
2 discount would be appropriate, Plaintiff recognizes that the Court has wide discretion to reduce
3 penalties. This is a substantial uncertainty that Plaintiff and her counsel properly considered in
4 reaching this settlement.

5 Likewise, in light of this judicial discretion (and the other uncertainties surrounding
6 PAGA), courts have approved significantly *lower* PAGA settlements involving many more
7 employees and pay periods. *See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.*, 2015
8 U.S. Dist. LEXIS 21374, *2-3 (N.D. Cal. 2015) [approving \$20,000 PAGA settlement]; *Franco*
9 *v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving
10 PAGA penalties in amount of \$10,000 for 2,055 employees asserting wage and hour violations];
11 *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving
12 \$10,000 in PAGA penalties for 1,868 employees in wage and hour case]; *Chu v. Wells Fargo*
13 *Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA
14 penalties of \$7,500 for 2,752 employees in wage and hour action].

15 In light of these potential issues, this PAGA Settlement is a reasonable and fair result for
16 the State of California (which will receive 75% of the Net Settlement Fund) and the Aggrieved
17 Employees (which will receive the remaining 25% on a pro-rata basis).

18 **c) Defendants' Legal Defenses**

19 Throughout this litigation, including in the settlement negotiations, Defendants
20 steadfastly argued that Plaintiff has no standing to pursue PAGA penalties, and that even if
21 Plaintiff had standing to do so, Plaintiff would lose her PAGA claims if they were tried because
22 Defendants complied with their obligations under the Labor Code.

23 As to Plaintiff's civil penalty claims for meal period violations, Defendants have argued
24 that they provided meal periods and authorized and permitted employees to take rest periods, and
25 that any non-compliant meal and rest periods were the result of decisions by the employees
26 themselves, and not the result of Defendants' actions. Further, Defendants also argue that their
27 wage statements are accurate and complete, arguing that Plaintiff's theories of recovery on wage

1 statement penalties are factually and legally unsupported. Defendants also argued that even if
2 some violations could be proven, not every aggrieved employee could establish a violation in
3 every pay period, greatly reducing the potential PAGA penalties that Plaintiff could recover. *See*
4 Van Hook Decl., ¶ 31.

5 While Plaintiff rejects these various defenses, they have not been tested in litigation,
6 raising substantial risks and uncertainty that some or all of Plaintiff's PAGA claims might be
7 defeated on the merits if this litigation continued. Further, even if Plaintiff were to prevail on all
8 of her PAGA claims, it is far from certain that Plaintiff could prove that *every aggrieved*
9 *employee* suffered a violation in *every pay period*, as is assumed by Plaintiff's estimate of
10 potential PAGA penalties. *See* Van Hook Decl., ¶¶ 29-30.

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

12 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Labor Code §
13 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund
14 for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
15 from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. *Accord,*
16 *Serrano v. Priest* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys'
17 fees and costs when a litigation proceeding in a representative capacity secures a substantial
18 benefit); *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. This guidance
19 should equally apply to representative settlements under PAGA.

20 Plaintiff's counsel requests an award of attorney's fees of \$24,166, representing 1/3 of
21 the PAGA Settlement sum, which is typical in class and PAGA settlements. Plaintiff's counsel's
22 litigation costs are also reasonable, as Plaintiff seeks \$3,985.00 for reimbursement of out-of-
23 pocket litigation costs, including Plaintiff's share of the mediation fee. *See* Van Hook Decl., ¶
24 35.

25 **V. CONCLUSION**

26 For the foregoing reasons, Plaintiff respectfully requests that this honorable Court
27 approve the proposed PAGA Settlement Agreement, to enter the concurrently submitted

1 proposed order and judgment, and to direct the Parties to take all steps necessary to effectuate its
2 terms.

3
4 Dated: October 2, 2023

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

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7 John A. Van Hook
8 Adrian C. Byrne
9 Attorneys for Plaintiff Maria Smeby and
10 all other Aggrieved Employees
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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY CONTRA COSTA)

I, John A. Van Hook, declare and state as follows:

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to this action. My business address is VAN HOOK LAW FIRM, 14156 Magnolia Blvd., Suite 200, Sherman Oaks, CA 91423. I am a member of the State Bar of California.

On October 2, 2023, the following document:

- **NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT OF REPRESENTATIVE PAGA CLAIMS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

was served on the parties in this action as indicated below:

Rafael Gonzalez
Christina M. Behrman
Mullen & Henzell L.L.P.
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Counsel for Defendant SeaTel,
Inc.

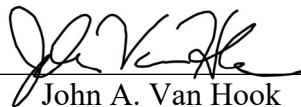
[X] ELECTRONIC MAIL

Adrian C. Byrne
adrian@thebyrnelawgroup.com
THE BYRNE LAW GROUP
[X] BY ELECTRONIC MAIL.

Counsel for Plaintiff Maria
Smeby

[X] STATE. I declare under the penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed this 2nd day of October, 2023 at Sherman Oaks, California.


John A. Van Hook