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GREEN ISLAND PRODUCE (erroneously sued as SJC Produe, Inc.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARIO RACHO, an individual, and on behalf of other members of the general public similarly situated, Plaintiff, vs. SJC PRODUE, INC. D.B.A. GREEN ISLAND PRODUCE, INC., a California Corporation; and DOES 1 through 10, inclusive, Defendant.	Case No. 22AHCV00611 Assigned for All Purposes to: Hon. Colin Leis / Dept. 3 **NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITES IN SUPPORT THEREOF** [*Filed concurrently with Declarations of Jeff Liu and Jacqueline Beaumont and (Proposed) Order*] **Reservation ID No. 534727599557** Date: May 23, 2023 Time: 8:30 a.m. Place: Dept. 3 Complaint Filed: August 26, 2022 Trial Date: January 22, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on May 23, 2023, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Dept. 3 of the above-referenced Court, the Hon. Colin Leis, presiding, Defendant SJC Produce, Inc. d/b/a Green Island Produce (erroneously sued as SJC Produe, Inc.) ("SJC") will and hereby does move the Court for an order approving the settlement and release of disputed claims of putatively aggrieved employees under the California Private Attorneys General Act, Cal. Lab. Code § 2699, *et seq.* ("PAGA") claim alleged against SJC in this action.

This Motion to approve the PAGA settlement is based on the following grounds: Plaintiff's Complaint in this case alleges generalized wage-and-hour claims on behalf of himself and other non-exempt employees during the PAGA period at issue. SJC disputes the claims and is a tiny family-owned company with limited funds. SJC has good relations with its employees and the putative scope of the claims is very small. Accordingly, SJC has proposed settlement of this matter directly to the putative aggrieved employees and to the State of California Labor and Workforce Development. The proposed settlement was offered in a clear, open, and detailed method of communication; in an arms-length negotiation to both current and former employees; and provides an amount per potentially recoverable pay period which is targeted to fairly, equitably, and reasonably constitute a compromise of the alleged claims and the risks of litigating them to both sides. Out of the 18 putatively aggrieved employees, 16 of these employees (equally divided amongst current and former employees of the company) have directly signed and agreed to settlement on the terms set forth in this Motion, and to step in as a substitute named plaintiff for purposes of effectuating the settlement if required; the only employees not to sign the agreement are the plaintiff in this case and one employee who is believed to be unavailable to review the agreement. Likewise, the State of California, real party in interest in this case to whom 75% of any PAGA settlement funds are to be allocated by statute, was provided notice of this settlement and has not objected to it. The settlement assigns a generous value of $20.96 per pay period (25% of which will go to the employees), which is higher than the typical range for a case of this nature, and particularly in cases litigated by SJC's defense counsel, and therefore represents a fair and more-than-adequate settlement value. SJC therefore requests that the Court approve this settlement of PAGA claims on behalf of all putative aggrieved employees covered by this action, and enter it as the judgment of the Court in a binding settlement and release upon the putative aggrieved employees, the State of California, and SJC.

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Jeff Liu and Jacqueline Beaumont, the accompanying exhibits, the Proposed Order and Judgment and the accompanying exhibits, the pleadings on file in this action, and all other evidence that may be appropriately considered by this Court after argument and hearing.

Dated: April 20, 2023

CALL & JENSEN
A Professional Corporation
Jacqueline Beaumont
Anurita S. Varma

By: Jacqueline Beaumont
Jacqueline Beaumont

Attorneys for Defendant SJC Produce, Inc. dba Green Island Produce, Inc. (erroneously sued as SJC Produe, Inc.)

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendant SJC Produce, Inc. d/b/a Green Island Produce (erroneously sued as SJC Produe, Inc.) ("SJC") seeks approval of settlement in the amount of $19,663.64 for the settlement and release of disputed claims under the California Private Attorneys General Act, Cal. Lab. Code § 2699, *et seq.* ("PAGA") for 18 Aggrieved Employees who worked a total of 938 workweeks in the potential recovery period through the date of the motion filing, based on Plaintiff Mario Racho ("Racho")'s Complaint filed in this matter on August 26, 2022, through the date of the Court's approval of this settlement.

Plaintiff Mario Racho's Complaint in this case alleges generalized wage-and-hour claims on behalf of himself and other non-exempt employees during the PAGA period at issue in this case (June 20, 2021 through present) ("Aggrieved Employees"). However, SJC is a tiny family-owned company which distributes produce locally, only to grocery stores within approximately 5 miles from its location. (Declaration of Jeff Liu ("Liu Dec.") ¶ 5.) SJC is so small that it has only 18 putative Aggrieved Employees, and only 9 of them are current employees. (*Id.* ¶ 6) There are only a total of 938 PAGA pay periods at issue in this action as of April 20, 2023, which is double what this number would be in a typical case, since SJC pays its employees weekly. (*Id.* ¶ 7.)

SJC denies Racho's allegations, and has good relations with its employees both current and former. SJC reached out to Aggrieved Employees, and offered a Settlement and Release Agreement to release their PAGA claims in exchange for consideration that SJC could afford. (*Id.* ¶ 8.) In order to make the release agreement as fair, adequate, and reasonable as possible, SJC offered a set amount of consideration of $5.24 per released workweek, ranging from $50.00 to $467.11 to each employee on a sliding scale based on their tenure of employment with the company, other than the five shortest-tenured employees who would have recovered less than $50 and therefore were trued up to an offer of $50 consideration each. (*Id.* ¶ 14.) The average payout to each putative aggrieved employee was $273.11 for a potential PAGA period of less than two years at its maximum point. (*Id.* ¶ 15.)

In its settlement offer and communication, SJC provided employees with full disclosure of the claims at issue in this lawsuit that were proposed to be settled through the release agreement, including: (1) a full copy of the 23-page Complaint filed by Racho including Racho's 5-page notice

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letter to the LWDA, (2) contact information for Racho's attorneys, (3) a cover letter which provided additional explanation of the claims in the Complaint in simple and clear language, (4) a discussion of the PAGA settlement amount and how it would be distributed between the employees and the State of California, a clear explanation regarding the effect of signing the proposed release agreement, (5) an explanation that the decision to sign the release belonged to the employee alone and would be completely voluntary whether the employee wished to sign the agreement or not and that there would be no retaliation against any employee who chose not to sign the agreement, (6) a written encouragement to the employee that they were free to contact legal counsel of their choice or even Racho's attorneys (whose contact information was provided) to ask questions about the lawsuit or release prior to deciding to sign it, (7) notifying the employees that they were free to communicate further with SJC about the terms of the settlement and release, and (8) Spanish translation. (Liu Dec. ¶¶ 9, 12, Exs. B, C, E.)

SJC provided this Notice Packet and Settlement and Release Agreement to all of the other putative PAGA aggrieved employees that Racho is making claims on behalf of in this case other than himself, and 16 of the 17 such employees signed the agreement, with only one employee believed to have not signed because he is not available. (Liu Dec. ¶ 10, Ex D.) SJC did not engage in additional discussion with employees regarding the agreements besides delivering it to them, other than to answer any questions the employees chose to ask after the employee had already received written notice that they could contact Racho's attorneys (for whom contact information was provided) or an attorney of their own choice prior to agreeing to sign. (*Id*. ¶ 13.)

In short, every single employee (current and former) aside from Racho and one employee who is not reachable at his last known address, has agreed to settle their PAGA claims and move on. The 16 employees who signed the individual release agreements also represented and affirmed that they were willing to serve as the representative for the California Labor and Workforce Development Agency if necessary for purposes of securing the Court's approval of the settlement agreement and release of claims in this action. (Liu Dec. ¶ 11, Exs. C, D.) In addition, SJC provided notice of this settlement to the California LWDA, and the settlements are valid for approval by the court and release of the claims that match the scope of what is set forth in the Complaint filed in this acton. (Liu Dec. ¶¶ 16-18, Ex. F.) SJC therefore requests the Court issue approval of this settlement.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Civil Action

On June 20, 2022, Plaintiff Mario Racho submitted a notice letter to SJC and the California Labor and Workforce Development Agency (LWDA), alleging PAGA claims against SJC based on his time as an employee there, on behalf of himself "and all current and former non-exempt employees employed by [SUJ]" during the relevant time period of one year prior to the notice letter. (Liu Dec., ¶¶ 3-4, Ex. A.)

On August 26, 2022, based on the allegations in the LWDA notice letter, Plaintiff Mario Racho filed a Complaint on behalf of himself and all other "Members of the General Public Similarly Situated", in the matter of *Mario Racho v. SJC Produe, Inc.*, Case No. 22AHCV00611, in the Superior Court of California, County of Los Angeles, (the "Lawsuit") alleging PAGA claims based on the following alleged violations of law: (1) Minimum Wage Violations Pursuant to Cal. Lab. Code § 2698 *et. seq*., (2) Overtime Violations Pursuant to Cal. Lab. Code § 2698 *et seq*., (3) Wage Statement Violations Pursuant to Cal. Lab. Code § 2698 *et seq*. (4) Meal and Rest Period Violations Pursuant to Cal. Lab. Code § 2698 *et seq.* (5) Failure to Reimburse Pursuant to Cal. Lab. Code § 2698 *et seq*. (6) Failure to Timely Pay Wages Pursuant to Cal. Lab. Code § 2698 *et seq.* and (7) Failure to pay Wages Upon Separation Pursuant to Cal. Lab. Code § 2698 *et seq*. (*See* Complaint, on file with Court and contained in Ex. B of Liu Dec.)

B. The Settlement Agreements and Release Terms

SJC obtained executed Settlement and Release Agreements from 16 of the 18 the employees that Plaintiff Mario Racho seeks to represent via his representative PAGA claim. (Liu Dec. ¶¶ 9-10 Ex. C, D.) Roughly half the group are current employees and half are former employees. (*Id.* ¶¶ 6, 10.) SJC provided notice in a Spanish translation packet for Spanish-speaking employees. (Liu Dec. ¶ 12, Ex E.) The only two employees who did not sign the Settlement and Release Agreement were Racho (to whom the agreement was not offered), and one former employee who SJC believes to be unavailable to sign the agreement or unreachable. (Liu Dec. ¶¶ 10.)

These Settlement and Release Agreements resolved and released (amongst other claims) any and all claims for civil penalties under PAGA, including claims asserted in the Lawsuit. (Liu Dec. ¶ 11, Ex. C.)

Per the Settlement and Release Agreements, the employees:

- agreed to settle and release all claims for civil penalties under PAGA, in exchange for a specified amount of consideration to be paid as an IRS Form 1099 payment, upon approval by this Court of the settlement. (Liu Dec., Ex. C, Sec. (a)(1)-(2).)
- were informed that by signing the agreement, they are releasing SJC and related entities from any all claims for civil penalties under PAGA based on whether the employee was paid properly and timely for all hours worked (including minimum wage and overtime), and whether the employee is owed any premiums, payments, damages, liquidated damages, unreimbursed business expenses, interest, penalties, attorneys' fees, or any other claims or damages as a result of the employee's work for SJC, as claimed in the Lawsuit filed by Racho (and the employee was provided a full copy of the Complaint so they could fully review such claims). (Liu Dec., Ex. C, Sec. (a)(1)-(3).)
- were informed that by signing the settlement agreement, the employee represents and affirms that the employee is willing to serve as the representative for the California Labor and Workforce Development Agency if necessary for purposes of securing the Court's approval of the settlement agreement and release of claims in the Lawsuit. (Liu Dec., Ex. C, Sec. (a)(1).)

SJC desired to make the release agreement as easy to understand as possible. To that end, SJC provided a full copy of the Complaint and the LWDA notice letter that was filed by Racho detailing his claims. (Liu Dec. ¶ 9, Exs. B, C.) SJC also provided a cover letter along with the release agreement, which included: (1) contact information for Racho's attorneys, (2) additional explanation of the claims in the Complaint in simple and clear language, (3) a discussion of the PAGA settlement amount and how it would be distributed between the employees and the State of California, a clear explanation regarding the effect of signing the proposed release agreement, (4) an explanation that the decision to sign the release belonged to the employee alone and would be completely voluntary whether the employee wished to sign the agreement or not and that there would be no retaliation against any employee who chose not to sign the agreement, (5) a written encouragement to the employee that they were free to contact legal counsel of their choice or even Racho's attorneys (whose contact information was provided) to ask questions about the lawsuit or release prior to deciding to sign it, and (6) notifying the employees that they were free to communicate further with SJC about the terms of the settlement and release. (*Id.*)

Six of the employees to whom the agreement was offered (five of whom signed) use Spanish as their primary language of communication and therefore SJC used a professional translator to translate the Cover Letter and the Release Agreement into Spanish for those employees. (Liu Dec. ¶ 12, Ex. E.) The settlement packet containing the cover letter, copy of complaint, and release agreement was provided in person to current employees, and mailed or made available for pickup by former employees. (Liu Dec. ¶ 13.) SJC did not engage in any additional discussion with employees regarding the agreements besides delivering it to them, other than to answer any questions the employees chose to ask after the employee had already received written notice that they could contact Racho's attorneys (for whom contact information was provided) or an attorney of their own choice prior to agreeing to sign. (*Id.*)

SJC also desired to make the release agreement as fair, adequate, and reasonable as possible. To that end, SJC offered its employees the same amount of consideration per workweek that was released, so that the employees were offered consideration on a sliding scale based on their tenure of employment with the company (and purported potential recovery). SJC offered employees a set amount of **$5.23 per workweek** that the employee had worked for SJC prior to the date the release was offered to the employee, other than to four shortest tenured-employees who had only worked for less than 10 weeks each for SJC during the relevant release period and who were therefore trued up to be offered a total of $50 consideration each. (*Id.* ¶ 14.) The amounts offered to employees in exchange for this release ranged **from $50.00 (provided to the afore-mentioned four employees) to $467.71**, with **the average payout to each putative aggrieved employee being $273.11** for a potential PAGA period that was less than two years at its maximum point. (*Id.* ¶ 15.)

SJC provided notice of this settlement to the California LWDA, and the settlements are valid for approval by the court and release of the claims that match the scope of what is set forth in the Complaint filed in this action. (Liu Dec. ¶¶ 16-18, Ex. F.)

II. ARGUMENT

A. PAGA Settlement Approval Requirements Were Met

The California Private Attorneys General Act of 2004 (PAGA) establishes civil penalties for certain alleged violations of the California Labor Code. *See* Cal. Lab. Code § 2699 *et seq*. The Lawsuit contends that Plaintiff was owed certain such PAGA penalties due to alleged violations occurring while he was employed by SJC. Unless the Labor Code provides otherwise, civil penalties recovered by an aggrieved employee on a PAGA claim (whether by judgment or settlement) shall be distributed with 75% of the civil penalty to the Labor Workforce Development Agency and 25% to the aggrieved employee. *See* Cal. Lab. Code § 2699(i).

Pursuant to PAGA under Cal. Lab. Code § 2699(l)(2), "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency [LWDA] at the same time that it is submitted to the court." The purpose of this submission requirement is clearly to enable the LWDA to intervene, object, oppose, or appear at the settlement approval hearing if there are terms in the settlement agreement with which it does not agree.

The PAGA statute does not require that any specific party (i.e. employer or employee) be the one to provide notice to the LWDA or submit a request for approval to the Court. *See* Cal. Lab. Code § 2699(l)(2). Moreover, the PAGA statute does not require that all putative aggrieved employees specifically agree to or sign-off on a settlement in order to be bound by it, nor does it even require that all putative aggrieved employees receive any notice or opt-out/exclusion procedure period such as for class actions. *See Id*. Rather, putative aggrieved employees are bound by any settlement agreement that is approved by the Court, even if they do not necessarily agree with all its terms, since the agreement is reached between the employer and the State of California as the real party in interest.

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Here, since Racho was not agreeable to terms of settlement offered by SJC – but all other available putative aggrieved employees in the Lawsuit were – SJC is the party who has submitted a request for approval of the settlement with such employees to the Court, and who submitted notice of the settlement to the LWDA at the same time, as required by statute. (Liu Dec. ¶¶ 16-18, Ex. F.)

B. The PAGA Settlement Is Fair, Reasonable, And Compliant

A standard requiring a trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate. *Moniz v. Adecco USA, Inc.,* 72 Cal. App. 5th 56, 77 (2021). In determining whether a PAGA settlement is reasonable, it is not necessary that the proposed amount be equal to the maximum PAGA penalties; the Court must determine that the settlement terms are fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes. *Jordan v. NCI Group, Inc.*, Case No. EDCV 16-1702, 2018 WL 1409590 at *3 (C.D. Cal. January 5, 2018.).

C. California Law Permits Settlement Of PAGA Claims That Encompass And Date Back To Plaintiff Racho's PAGA Period, Even If They Are Asserted Later

Extending the PAGA settlement period to June 20, 2021 (to encompass Plaintiff Racho's PAGA claim) is permissible under California law. First, the current and former employees who signed the settlement agreement specifically agreed to release the claims as outlined by the scope of Racho's Complaint (which attached and alleged claims dating back to their LWDA notice letter filed on June 20, 2022 and the one-year PAGA penalties limitations period prior to that date extending back to June 20, 2021), so this is exactly the scope of what the parties reviewed and agreed to release by signing the agreement. (Liu Dec. ¶ 11, Ex. C, Sec.(a).)

Such employees are putative Aggrieved Employees in the Racho complaint, and they may agree to release their claims against SJC upon the court's approval, and/or serve as a named plaintiff to assert and allege duplicative claims against SJC which release claims dating back to Racho's LWDA PAGA notice letter, even if these employees filed or asserted a notice letter after Racho did, or even if they did not file any notice letter, so long as the LWDA has been notified of the claims (as discussed further below). This is exactly what the current and former employees agreed to do here, as the settlement agreement specifically provided and set forth the employee's agreement that:

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> "By signing this Release, Employee represents and affirms that Employee is willing to serve as the representative for the California Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, in the Lawsuit or other civil action on behalf of Employee and other current and former employees, if necessary for the purposes of securing the Court's approval of this Release of claims in the Lawsuit, and that Employee is willing to be declared to be such representative upon the Court's approval based on this Release alone without the necessity of any other filing." (Liu Dec. Ex. C, Sec. (a)(1).)

In *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, *review denied* (Dec. 29, 2021), the Court of Appeal held that a PAGA plaintiff who is deemed to have filed a notice later than a one-year PAGA period may release PAGA claims outside/earlier than the limitations period of his/her own PAGA notice by means of a court-approved settlement. *Amaro*, 69 Cal. App. 5th at 543, *review denied* (Dec. 29, 2021). The issue in *Amaro* was whether the plaintiff, who submitted her PAGA notice to the LWDA on February 21, 2017, could release PAGA claims dating back to December 5, 2010 (rather than only being able to release PAGA claims arising on or after February 21, 2016, pursuant to PAGA's 1-year statute of limitations). The Court held that nothing in the PAGA statute prohibits a plaintiff from releasing PAGA claims outside the limitations period of his/her own claim; nor is this practice contrary to PAGA's purposes. *Id.* at 541. The Court reasoned that PAGA's 1-year statute of limitations is an affirmative defense that can be waived by the employer if desired in reaching a settlement agreement; that this did not frustrate PAGA's purpose which is to facilitate the PAGA notice procedure to afford the LWDA the opportunity to decide whether to allocate scarce resources to an investigation, given that the LWDA was notified; and that where a settling employee's Labor Code violations were the same as those identified in an earlier action to which the LWDA was given notice, this did not deprive or interfere with the LWDA's opportunity to investigate the violations asserted in the prior actions or with the employer's opportunity to respond to them. *Id.* at 541–43.

Here, because as discussed above the employees who signed release agreements agreed to settle the exact same scope and length of the claims asserted by Racho, to which the LWDA was given notice both on June 20, 2022 when Racho's notice letter was sent to the LWDA, and again in April 2023 when notice of the settlement of such claims was submitted to the LWDA and this Court as required by statute for approval under the Labor Code, the conditions of notice have been met and cannot act as a bar to approval.

D. Substitution of A New Plaintiff is Permitted under California Law

As an additional basis for settlement if needed, the employees who signed settlement agreements also agreed to substitute in as a named plaintiff asserting their own claims against SJC if such is deemed to be needed by the Court for approval, without the need for any additional filing (Liu Dec. ¶ 11, Ex. C, Sec.(a)(1).) This type of substitution is also permitted under California law because the LWDA has already received notice of both the scope of the claims, via Racho's notice letter and the submission of this motion for approval and related facts about the release agreements to the LWDA at the same time that this motion was submitted to the Court. This type of substitution is expressly permitted under California law.

In *Hutcheson v. Superior Ct.*, 74 Cal. App. 5th 932, 290 (2022), the Court of Appeal decided whether an amended PAGA complaint (<u>with different plaintiff substituting in as the named plaintiff</u>) can relate back to the original PAGA complaint. The Court noted that the "relation back doctrine" requires that the amended complaint rest on the same general set of facts, involve the same injury, and involve the same instrumentality or cause of injury. *Hutcheson*, 74 Cal. App. 5th at 940. The Court also noted that the doctrine may apply to amendments that substitute a plaintiff, as well as amended complaints. *Id.* The Court concluded that PAGA does not bar the application of the relation back doctrine, in a situation where a later PAGA plaintiff substitutes in for an earlier PAGA plaintiff. *Id.* at 941. This conclusion was reached because (1) the substituting PAGA plaintiff was an aggrieved employee and met the standing requirements for an aggrieved employee under Cal. Lab. Code § 2699; (2) the LWDA already had notice of the facts and theories underlying the claims made by the substituting PAGA plaintiff (as the original PAGA plaintiff provided said notice to the LWDA); (3) nothing in the PAGA statute prohibits a PAGA plaintiff to substitute in and take over an earlier PAGA plaintiff's action; and (4) to prohibit such substitution would create a hurdle that impedes the effective prosecution of representative PAGA actions, thereby undermining the Legislature's objectives. *Id.* at 941-42. In reaching its conclusion, the Court also mentioned *Moniz v. Adecco USA, Inc.* which took a similar expansive view of the role of a PAGA plaintiff, by holding that where two PAGA actions involve overlapping claims and settlement is proposed in one of them, the representative plaintiff in the other action make seek to become a party to the settling action and appeal the fairness of the settlement. *Id.* at 942. Accordingly, if the claims in an amended PAGA complaint rest on the same general set of facts, involve he same injury, and refer to the same instrumentality as the claims in the original complaint, the relation back doctrine applies and a PAGA plaintiff can substitute in and assert claims going back to the original complaint. *Id.* at 945.

Such is the case here. The employees that signed settlement agreements are able to substitute in as PAGA plaintiffs to settle PAGA claims going back to Racho's claim period, and have agreed to do so. (Liu Dec. ¶ 11, Ex. C, Sec.(a)(1).) The employees are aggrieved employees as they are employed by SJC, and one or more of the alleged violations were committed against them. The LWDA has already received notice of the claims and theories for Mr. Racho's PAGA claim, which are the exact same claims and theories asserted by the employees that signed the settlement agreements. (Liu Dec., Ex. A, Ex. F).) Indeed, the PAGA claims of the employees rest on the same general set of facts, involve the same injury, and refer to the same instrumentality. (Liu Dec. ¶ 11, Ex. C, Sec.(a).) The relation back doctrine applies, and the employees can indeed substitute in as PAGA plaintiffs and settle PAGA claims covering Mr. Racho's claim.

III. THE RECOVERY TO EMPLOYEES UNDER THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The amount of financial recovery in this settlement is fair, adequate and reasonable. First, the employees are being paid individually and fairly as compared to each other, based on a proportional sliding scale related to the amount of pay periods/workweeks they worked for SJC. (Liu Dec. ¶ 14.) For the five shortest-tenured employees who would have recovered less than $50, they were trued up to an offer of $50 consideration to make the consideration adequate. (*Id.* ¶ 14.) This is a way to allocate a PAGA settlement amount across employees involved in the settlement, as the use of pay periods worked to determine individual employee settlement amounts is likewise the gold standard which is used in virtually all representative wage settlements submitted to and approved by the courts in California. (Declaration of Jacqueline Beaumont ("Beaumont Dec.") ¶ 6.)

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The average total payout to each putative aggrieved employee ranges from $50.00 to $467.11, with an average payout per Aggrieved Employee of $273.11, for a potential PAGA period of less than two years at its maximum point. (Liu Dec. ¶ 15.) This is consistent with, or even more generous than, a typical PAGA recovery in a case of this nature, particularly considering that the employee's portion of the recovery represents only 25% of the penalties payment and the other 75% of the recovery under the settlement is being paid to the State of California per the requirements of the PAGA enforcement scheme. Here, the total amount paid to the 18 Aggrieved Employees under the Settlement will be $4,915.91 (25% of the penalties recovery, and the total amount paid to the State of California under the Settlement will be $14,747.73, for a total settlement amount of $19,663.64 (or $20.96 per weekly pay period). (*Id.*)

The $20.96 total paid per weekly pay period is an adequate, and even generous, settlement amount in a PAGA action of this size, given the types of general claims alleged in this Lawsuit. (Beaumont Decl., ¶ 5.) Lead counsel for SJC is highly experienced in PAGA and class action claims, having litigated extensively in the field, having personally worked on the resolution of more than 75 representative PAGA, collective action, class action, and combined PAGA/class action cases in the past 12 years, and having received accolades for her work in the area of employment litigation defense. (*Id.* ¶¶ 2-3.) In SJC's lead counsel's experience, 938 pay periods is a very small size of aggrieved employees to be pursued in any type of legal action under the Private Attorneys' General Act, and lead counsel has only litigated one other representative case with a size as low as 1,000 pay periods or less. (*Id.* ¶ 4.) Counsel for SJC has never seen the LWDA take interest in pursuing a case involving 1,000 pay periods or less in all her years of experience. (*Id.*)

Viewing PAGA settlements through the lens of dollar amount per pay period (or workweek) worked is an appropriate way to evaluate a value of the settlement, as this is the gold standard used in evaluating the potential value or settlement value of a PAGA or representative wage-and-hour class or collective action. (*Id*. ¶ 5.) In the only case that SJC's counsel has litigated involving as low as 1,000 pay periods or less, the court approved a settlement amount of $20.96 per pay period, which is the same amount that SJC and the aggrieved employees have agreed upon in this case per pay period, even though in this case the aggrieved employees worked twice as many pay periods as in the prior case

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given that SJC employees' pay periods are weekly. (*Id*.) In the other representative wage-and-hour cases which SJC's lead counsel has been lead counsel over the past 15 years, SJC's lead counsel has never resolved a case with a payment as high as $20.96 per pay period, even in cases where class action or other additional claims were asserted in addition to the PAGA claims that set forth by Racho in this Lawsuit. (*Id*.) Instead, the average payment that SJC's lead counsel has resolved such larger cases for is less than half this amount. (*Id*.)

Accordingly, a payment which is (1) higher per workweek than the highest settlement SJC's counsel has *ever* agreed to settle a class or PAGA case for in 15 years of extensive experience; (2) far higher per workweek than the average of the many PAGA cases which courts have *approved* for settlement with SJC's lead counsel; and (3) the same amount per pay period as has been previously *approved* by the court in a similar size PAGA case with SJC's lead counsel, is a fair, adequate and reasonable negotiated value of claims with SJC and its counsel given the risks of moving forward in litigation of such claims and attempting to secure a higher settlement payment with SJC's counsel as opposing counsel, which is an event that has never successfully occurred.

IV. CONCLUSION

For the reasons set forth above, including applicable and controlling California law, SJC respectfully requests that this court approve settlement in the total amount of $19,663.64 (or $20.96 per weekly pay period), with a distribution of $4,915.91 (25% of the penalties recovery) to the Aggrieved Employees, and $14,747.73 to the State of California, in full and final resolution of Plaintiff Mario Racho's Complaint filed in this matter, for PAGA claims from June 20, 2021, through the date of the Court's approval of this settlement; as binding release and settlement of these claims for all Aggrieved Employees, the State of California, and SJC.

Dated: April 20, 2023

CALL & JENSEN
A Professional Corporation
Jacqueline Beaumont
Anurita S. Varma

By: *Jacqueline Beaumont*
Jacqueline Beaumont

Attorneys for Defendant SJC Produce, Inc. dba Green Island Produce, Inc. (erroneously sued as SJC Produe, Inc.)

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Make a Reservation

MARIO RACHO vs SJC PRODUCE, INC.

Case Number: 22AHCV00611 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-08-26 Location: Alhambra Courthouse - Department 3

Reservation

Case Name: MARIO RACHO vs SJC PRODUCE, INC.	Case Number: 22AHCV00611
Type: Motion re: (MOTION TO APPROVE PAGA SETTLEMENT)	Status: RESERVED
Filing Party: SJC Produce, Inc. (Defendant)	Location: Alhambra Courthouse - Department 3
Date/Time: 05/23/2023 8:30 AM	Number of Motions: 1
Reservation ID: 534727599557	Confirmation Code: CR-QCG95HBXPUALKIM46

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			**$61.65**

Payment

Amount: $61.65	Type: Visa
Account Number: XXXX0684	Authorization: 02532G
Payment Date: 1969-12-31	

Print Receipt

Reserve Another Hearing

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