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10 and all Aggrieved Employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF MONTEREY**
13

14 MARIA ELENA VILLALOBOS, an
15 individual; on behalf of herself and all
16 Aggrieved Employees,

17 Plaintiffs,
18 v.

19 PEGGY DAY ENTERPRISES, INC. a
20 California corporation; MARGARET A.
HENEKS, an individual; and
DOES 1-100, inclusive,

21 Defendants.
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Case No.: 22CV002959

[Hon. Carrie M. Panetta]

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

Filed concurrently herewith:

- **DECLARATION OF JOHN A. VAN HOOK (AND EXHIBITS 1-3);**
- **[PROPOSED] ORDER**

Date: December 1, 2023

Time: 8:30am

Dept.: 14

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

2 PLEASE TAKE NOTICE THAT on December 1, 2023 at 8:30am, or as soon
3 thereafter as the matter may be heard in Department 14 of the above-entitled Court, located at
4 Monterey Courthouse, 1200 Aguajito Road, Monterey, CA 93940, Plaintiff Maria Elena
5 Villalobos, on behalf of herself and all other aggrieved employees and the State of California
6 as a private attorney general, will and hereby does move the Court for an Order approving the
7 Parties' 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.

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14 Dated: August 29, 2023

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

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18 John A. Van Hook
19 Adrian C. Byrne
20 Attorneys for Plaintiff Maria Elena Villalobos
21 and all other Aggrieved Employees
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1 **I. INTRODUCTION**

2 Plaintiff Maria Elena Villalobos (“Villalobos” or “Plaintiff”) and Defendants Peggy Day
3 Enterprises, Inc. (“Peggy Day”) and Margaret A. Heneks (“Heneks”) (together, “Defendants”,
4 and collectively with Plaintiff, the “Parties”) negotiated a Fifty Thousand Dollars (\$50,000.00)
5 representative settlement of this matter under the California Labor Code Private Attorneys
6 General Act 2004, Labor Code section 2698, *et seq.* (“PAGA”).

7 For the reasons discussed herein, Plaintiff respectfully requests that this Court grant
8 approval of the PAGA Settlement Agreement (the “PAGA Settlement”) and Order the Parties to
9 take all steps necessary to effectuate the settlement.

10 **II. FACTUAL OVERVIEW**

11 Defendant Peggy Day is a residential care provider based in Monterey county, California.
12 Defendant Heneks is the owner of Peggy Day and Plaintiff alleged that Heneks was also directly
13 involved in personnel decisions for Peggy Day’s employees, including decisions about pay, work
14 hours, and other terms and conditions of employment.

15 Plaintiff began working for Peggy Day in or around September 2021, and was terminated
16 from her employment in or around April 2022. Plaintiff performed work as a caregiver,
17 providing in-home services for Defendants’ clients. Plaintiff was an hourly, non-exempt
18 employee.

19 Defendants’ records reflect that Peggy Day employed 181 non-exempt employees in
20 California (including Plaintiff) during the relevant time period. *See* Declaration of John. A Van
21 Hook [“Van Hook Decl.”], ¶ 15.

22 **III. PROCEDURAL BACKGROUND**

23 On June 16, 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 id.*, ¶ 3.

26 On October 3, 2022, following the statutorily required 65-day notice period, Plaintiff
27 filed her operative Complaint (the “Complaint”) in the Superior Court of California, County of

1 Monterey, Case No. 22CV002959. Plaintiff's Complaint asserts sixteen (16) causes of action of
2 which Plaintiff's ninth (9th) cause of action asserts representative claims for civil penalties
3 pursuant to PAGA. *See id.*, ¶ 4.

4 Shortly after filing the Complaint, the Parties began to discuss potential resolution.
5 Significantly, Defendants argued that they run a small family-owned business upon which the
6 financial burden of protracted litigation would have a devastating effect, jeopardizing the
7 existence of the business. Moreover, protracted litigation of these claims would cause Plaintiff to
8 incur attorney's fees and costs that would far outweigh the potential penalties at issue. Therefore,
9 in the interests of achieving a beneficial result for Plaintiff, the State of California and the
10 potential aggrieved employees, as well as the interests of judicial efficiency, Plaintiff and
11 Defendants began to focus their efforts on a potential resolution. *See id.*, ¶ 5.

12 The Parties engaged in formal discovery as well as information exchanges of information
13 and documents. Defendants responded to Plaintiff's formal written discovery requests, including
14 Requests for Production of Documents, Form Interrogatories (Employment), Form
15 Interrogatories (General), and Special Interrogatories. Defendants responded to this discovery.
16 Defendants also produced personnel, payroll and timekeeping documents for Plaintiff and
17 produced certain information and documentation relating to the allegedly aggrieved employees,
18 including information regarding their dates of employment, and relevant pay periods. On
19 February 17, 2023, Defendants provided data for the allegedly Aggrieved Employees which
20 indicated that there were approximately 181 Aggrieved Employees who worked a total of
21 approximately 2,352 pay periods during the PAGA Claim Period. *See id.*, ¶ 6.

22 In further preparation for mediation and to facilitate analysis of Defendants' PAGA
23 exposure, Plaintiff's counsel also conducted their own investigation, conducting extensive
24 interviews with the Plaintiff, and reviewing relevant policies and procedures applicable to the
25 claims at issue, including overtime pay, meal and rest breaks, among other pertinent issues. *See*
26 *id.*, ¶¶ 7-8.

1 On April 20, 2023, the Parties participated in a full-day private mediation with
2 experienced mediator Brandon McKelvey, Esq., of McKelvey Resolution. In addition to the
3 parties exchanging additional information regarding the legal and factual issues, Defendants
4 shared significant information regarding their financial condition, including both corporate and
5 personal. At the conclusion of the mediation, the Parties reached an agreement on the principal
6 terms of a settlement of the entire action, including a confidential settlement of Plaintiff's
7 individual claims and a proposed settlement of the representative PAGA claims. The Parties
8 executed a memorandum of understanding ("MOU") regarding the settlement. *See id.*, ¶¶ 9-10.

9 On or about June 8, 2023, the Parties executed a long-form agreement with respect to the
10 proposed PAGA Settlement and a separate confidential long-form settlement agreement with
11 respect to Plaintiff's individualized claims. Attached as **Exhibit 1** to Van Hook Decl. is a true
12 and correct copy of the PAGA Settlement Agreement.

13 As required by PAGA, concurrently with the filing of this Motion, Plaintiff's counsel
14 submitted the PAGA Settlement Agreement to the LWDA for its review. *See id.*, ¶ 19.

15 **A. Summary of Settlement Terms**

16 The PAGA Settlement Agreement provides that Defendants will pay a total of \$50,000
17 (the "Gross PAGA Settlement Fund"), as a non-reversionary settlement fund to settle the
18 representative PAGA claims in this action.

19 The "Aggrieved Employees" for purposes of the PAGA Settlement are all of Peggy
20 Day's non-exempt employees that worked in California at any time between June 16, 2021, to
21 April 20, 2023.

22 From the Gross Settlement Fund of \$50,000, the following amounts will be paid, subject
23 to this Court's approval:

- 24 • Plaintiff's Counsel's attorney's fees of 1/3 of the Gross PAGA Settlement Fund
25 (\$16,600.00) in connection with the PAGA claims;
- 26 • Plaintiff's Counsel's out-of-pocket litigation expenses of \$4,336.00 arising out of the
27 PAGA Claims (including the mediation fee); and

- PAGA Settlement administration expenses of \$3,500.
- This results in an estimated Net PAGA Settlement Fund of \$25,664.00 (i.e., the Gross PAGA Settlement Fund, minus requested fees, costs, and PAGA settlement administration expenses).

See Ex. 1 to Van Hook Decl.

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

Defendants' data as of April 20, 2023, indicates approximately 181 current and former Aggrieved Employees (including Plaintiff) and a total of approximately 2,352 pay periods. Recognizing that these figures may vary somewhat, the Parties agreed that the 2,352 pay periods shall be subject to a 10% buffer, meaning that no additional consideration shall be necessary if the total number of weekly pay periods covered by the PAGA Settlement is not greater than 2,587. If the total number of pay periods is greater than 2,587, then the Gross PAGA Settlement Amount shall be increased by a pro-rata amount for those pay periods greater than 2,587. *See* Van Hook Decl., ¶ 13; Ex. 1.

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

Subject to the Court's approval, the settlement administration, including calculation and issuance of payments, will be performed by Phoenix Settlement Administrators ("PSA"), a nationally recognized settlement administrator. Attached as **Exhibit 2** to Van Hook Decl. is a true and correct copy of PSA's quote in the amount of \$3,500 for administration of the PAGA

1 Settlement. *See* Van Hook Decl., ¶ 15; Ex. 2.

2 The PAGA Settlement Agreement releases all claims for civil penalties under PAGA
3 arising from the same facts and/or claims alleged in the Action, or related to claims that were
4 pled or that could have been pled under PAGA in the Action, that accrue through April 20, 2023.
5 *See* Ex. 1 to Van Hook Decl.

6 The PAGA Settlement Agreement provides for payment of the PAGA settlement funds
7 by way of two instalments, as follows:

- 8 • Within One Hundred Fifty (150) days of April 20, 2023 (i.e., September 17, 2023)
9 Defendants shall deposit Twenty-five Thousand Dollars and No/100 Cents
10 (\$25,000.00) with the Settlement Administrator.
- 11 • Within Two Hundred Forty (240) days of April 20, 2023 (i.e., December 16, 2023)
12 (the “Funding Date”), Defendants shall deposit the remaining Twenty-five Thousand
13 Dollars and No/100 Cents (\$25,000.00) with the Settlement Administrator.

14 On December 16, 2023, Defendants will provide the PAGA Settlement Administrator
15 with the PAGA Member List, which shall be used solely for the administration of this PAGA
16 Settlement and for no other purpose, and which shall not be shared with any persons or entity not
17 employed by the PAGA Settlement Administrator and working on the administration of this
18 PAGA Settlement. *See id.*

19 Within 28 days from December 16, 2023 (the date the full amount of the Gross
20 Settlement Amount has been deposited with the Settlement Administrator), the Settlement
21 Administrator shall:

- 22 • Distribute a total of Twenty-Five percent (25%) of the Net PAGA Fund to the
23 Aggrieved Employees, along with the Notice of PAGA Representative Action
24 Settlement (attached hereto as Exhibit B). Aggrieved Employees shall not be
25 required to make claims to receive their share of the PAGA settlement. All
26 settlement payments to Aggrieved Employees will be treated as miscellaneous
27 income for which a 1099 will be issued. The payment checks shall be sent to each

1 Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's last
2 known mailing address. Any checks returned as non-deliverable on or before the
3 check cashing deadline will be sent promptly via regular First-Class U.S. Mail to
4 the forwarding address affixed thereto. If no forwarding address is provided, the
5 Settlement Administrator will promptly attempt to determine the correct address
6 using a skip-trace, or other search using the name, address and/or Social Security
7 number of the Aggrieved Employees involved, and will then perform a single
8 remailing. It will be conclusively presumed that an Aggrieved Employee's
9 individual settlement payment check was received if the payment check has not
10 been returned within thirty (30) days of the original mailing. Funds represented by
11 settlement checks returned as undeliverable and those settlement checks
12 remaining uncashed for more than One Hundred Twenty (120) days after issuance
13 will be distributed pursuant to the State Controller's Office, Unclaimed Property
14 Division.

- 15 • Distribute a total of Seventy-Five percent (75%) of the Net PAGA Fund to the
- 16 LWDA.
- 17 • Distribute PAGA Counsel's fees and costs, as approved by the Court.
- 18 • Distribute General Release Payment to Plaintiff, as approved by the Court.
- 19 • Distribute payment to itself for services as Settlement Administrator, as approved
- 20 by the Court.

21 Within 28 days from December 16, 2023 (the date the full amount of the Gross
22 Settlement Amount has been deposited with the Settlement Administrator), the Settlement
23 Administrator shall cause all Settlement Payments to be paid, including the payment to the
24 LWDA, the payment to the Aggrieved Employees, and the payments to Plaintiff's Counsel for
25 the approved attorney's fees and costs. *See Van Hook Decl.*, ¶ 18.

26 Accompanying the payments to the Aggrieved Employees the PAGA Settlement
27 Administrator shall mail a Notice of Settlement of PAGA Representative Action. Attached as

1 **Exhibit 3** to Van Hook Decl. is a true and correct copy of the Notice of Settlement of PAGA
2 Action. *See* Van Hook Decl., ¶ 18; Ex. 3.

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

4 **A. Legal Standard**

5 Under PAGA, an Aggrieved Employee may bring a civil action personally and on behalf
6 of other current or former employees to recover civil penalties for Labor Code violations.
7 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of
8 any penalties recovered go to the LWDA, leaving the remaining 25% for the employees. *Id.*
9 Labor Code § 2699 (l) provides that “[t]he superior court shall review and approve any penalties
10 sought as part of a proposed settlement agreement pursuant to” PAGA. “[T]here is no
11 requirement that the Court certify a PAGA claim for representative treatment” as in a class
12 action. *Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No.
13 CV122615PSGJEMX), 2015 WL 12732709 at *5.

14 Settlement of a PAGA claim requires that the “Court shall review and approve any
15 penalties sought as part of a proposed settlement agreement pursuant to this part.” Cal. Lab.
16 Code § 2699(1)(2). In contrast to class settlements, there is little case law addressing the standard
17 for approving a PAGA settlement. Courts have found that the PAGA settlement must be
18 reasonable in light of the potential verdict value. *See O’Connor v. Uber Technologies, Inc.* (N.D.
19 Cal. 2016) 201 F.Supp.3d 1110, 1135 (rejecting settlement of less than one percent of the
20 potential verdict). However, PAGA settlement may be substantially discounted given the
21 uncertainties that the plaintiff would prevail, and because courts often exercise their discretion to
22 award PAGA penalties below the statutory maximum, even where a claim succeeds at trial. *See*
23 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
24 5907869 at **8-9. *See also Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (affirming
25 a judgment which only provided for a PAGA penalty of \$5 per violation, as opposed to the \$100
26 maximum awardable penalty).

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

2 While PAGA settlements do not need to satisfy the same requirements for class action
3 settlements, in the context of class action settlements, a “presumption of fairness exists where:
4 (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
5 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
6 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.* (2008)
7 168 Cal.App.4th 116, 128. *See also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53
8 and *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389-1390.
9 Notwithstanding that PAGA settlements are not treated as class action settlements, the Parties
10 use the class action settlement standard here because of the dearth of guidance for PAGA
11 settlements approval.

12 Here, with the exception of the percentage of objectors (which is not a factor in the
13 PAGA settlement context) all of these factors are present. The PAGA Settlement Agreement
14 here was the result of extensive arm’s-length negotiations between experienced employment law
15 attorneys who are familiar with the substantive legal issues and with complex representative
16 PAGA litigation. The Parties participated in a full-day, private mediation with a highly
17 experienced mediator and managed to reach a settlement of Plaintiff’s individual claims and a
18 settlement, in principle, of Plaintiff’s PAGA claims subject to court approval. *See Van Hook*
19 *Decl.*, ¶¶ 9-10.

20 In addition, Plaintiff’s Counsel are experienced in the litigation and settlement of
21 complex wage-and-hour cases, including representative PAGA actions. *See id.*, ¶¶ 26-27. Based
22 on their experience litigating similar cases, Plaintiff’s Counsel are of the opinion that the PAGA
23 Settlement is fair, reasonable, and adequate and is in the best interests of all Parties, the LWDA,
24 and the Aggrieved Employees, in light of all known facts and circumstances and the risks
25 inherent in litigation. *See id.*, ¶¶ 10-12, 28.

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

2 Based on the data provided by Defendants, the Parties estimated in the PAGA Settlement
3 that there were a total of 181 Aggrieved Employees who worked a total of 2,352 pay periods
4 during the relevant time period (June 16, 2021, to April 20, 2023).

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

10 The following calculations assume a 100% violation rate, no discretionary reduction of
11 penalties by the Court, and "stacking" of penalties of the the two primary predicate violations
12 advanced by Plaintiff, for unpaid overtime, and wage statement violations.

13 Using this methodology, the maximum PAGA penalty for each distinct violation would
14 be: **\$235,200** (2,352 pay periods x \$100 "initial" penalty rate).

15 Unpaid overtime: \$235,200

16 Wage statement violations: \$235,200

17 Total: **\$470,400¹**

18 The PAGA settlement here is \$50,000, or 10.6% of this estimated PAGA exposure,
19 assuming two separate penalties are assessed for each pay period. Based on an estimated 2,352
20 pay periods, the settlement provides for \$21.25 per pay period.

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23 ¹ Plaintiff contends that she could theoretically pursue PAGA penalties for every Labor Code
24 provision that was allegedly violated. Even if PAGA did permit "stacked" penalties, however,
25 many of these violations would be derivative of each other, and provide arguably redundant
26 penalties. It is quite likely, therefore, that despite the maximum theoretical recovery that might
27 be available from "stacked" penalties, the Court would exercise its discretion to reduce penalties
28 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 **D. The Risks of Further Litigation Are Substantial and the PAGA Settlement**
2 **Provides Significant Relief for the State and the Putative Aggrieved Employees.**

3 Given the risks and challenges that Plaintiff's claims would face in extended litigation,
4 and the vigorous substantive and procedural defenses that Defendants would present, Plaintiff
5 and her counsel believe that this is a fair and reasonable settlement, and a fair and reasonable
6 outcome for the LWDA and for the Aggrieved Employees. Plaintiff applied various risk
7 discounts to account for the perceived strengths and weaknesses of each claim, as well as the
8 substantial risk of Defendants filing for bankruptcy should the Parties continue litigating. *See*
9 Van Hook Decl., ¶ 20-25, 28.

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

11 Plaintiff took into account various risk factors and uncertainties in negotiating the PAGA
12 Settlement, including the following:

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

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

25 Defendants, however, contend that only a single penalty may be assessed per pay period,
26 regardless of the number of different Labor Code provisions violated during that pay period.
27 Defendants argue that this reading is supported by, among other things, the language of Section
28 2699(f)(2): "the civil penalty is one hundred dollars (\$100) for each aggrieved employee for pay

1 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
2 pay period for each subsequent violation.” As the statute does not explicitly state that this
3 amount is multiplied by the number of violations, Defendants contend that only a single penalty
4 may be assessed for each employee for each pay period. While Plaintiff certainly disputes this
5 statutory interpretation, Plaintiff recognizes the lack of certainty, including the lack of appellate
6 authority, as to how trial Courts would interpret the statute.

7 In Plaintiff’s calculations set forth above, Plaintiff “stacked” two separate penalties
8 representing the primary predicate Labor Code violations advanced by Plaintiff. However, absent
9 the availability of “stacked” penalties, the maximum PAGA penalty that Plaintiff could recover –
10 no matter the number of violations he could prove at trial – would be **\$235,200**. If that were the
11 case, the settlement of \$50,000 represents *more than 21%* of the total potential PAGA penalties.

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

13 As Defendants have vigorously argued throughout these settlement negotiations, even if
14 Plaintiff were to prevail on some or all of her PAGA claims, the statute gives trial courts the
15 discretion to reduce the penalties actually awarded. *See* Lab. Code § 2699(e)(2) (allowing
16 reductions of penalties where the full amount would be “unjust, arbitrary and oppressive, or
17 confiscatory”). Moreover, as long as the Court awards some penalties, the statute imposes no
18 limit to the reduction that a Court can make in a PAGA award. Defendants have argued that this
19 Court could (and should) greatly reduce any penalty award against them on account of the fact
20 that any substantial award would likely result in the closure of Defendants’ business on account
21 of its inability to continue operations. While Plaintiff disputes that a substantial discount would
22 be appropriate, Plaintiff recognizes that Defendants operate a small family business and that the
23 Court’s wide discretion to reduce penalties is a substantial uncertainty that Plaintiff and her
24 counsel properly considered in reaching this settlement.

25 Likewise, in light of this judicial discretion (and the other uncertainties surrounding
26 PAGA), courts have approved significantly *lower* PAGA settlements involving many more
27 employees and pay periods. *See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.*, 2015
28 U.S. Dist. LEXIS 21374, *2-3 (N.D. Cal. 2015) [approving \$20,000 PAGA settlement]; *Franco*

1 *v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, *14 (E.D. Cal. 2012) [approving
2 PAGA penalties in amount of \$10,000 for 2,055 employees asserting wage and hour violations];
3 *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052, *3 (E.D. Cal. 2012) [approving
4 \$10,000 in PAGA penalties for 1,868 employees in wage and hour case]; *Chu v. Wells Fargo*
5 *Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, *1 (N.D. Cal. 2011) [approving PAGA
6 penalties of \$7,500 for 2,752 employees in wage and hour action].

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

10 **c) Defendants' Legal Defenses**

11 Throughout this litigation, including in the settlement negotiations and in the settlement
12 agreement, Defendants steadfastly argue that Plaintiff would lose her PAGA claims if they were
13 tried because Defendants complied with their obligations under the Labor Code. As to Plaintiff's
14 claims for unpaid wages and overtime, Defendants have argued that they had lawful timekeeping
15 and payroll policies, and that they had a valid expense policy that adequately reimbursed all
16 expenses due. Defendants also argue that they provided meal periods and authorized and
17 permitted employees to take rest periods, and that any non-compliant meal and rest periods were
18 the result of decisions by the employees themselves, and not the result of Defendants' actions.
19 Further, Defendants also argue that their wage statements are accurate and complete, arguing that
20 Plaintiff's theories of recovery on wage statement penalties are factually and legally
21 unsupported. Defendants also argued that even if some violations could be proven, not every
22 aggrieved employee could establish a violation in every pay period, greatly reducing the
23 potential PAGA penalties that Plaintiff could recover. *See Van Hook Decl.*, ¶ 21.

24 While Plaintiff rejects these various defenses, they have not been tested in litigation,
25 raising substantial risks and uncertainty that some or all of Plaintiff's PAGA claims might be
26 defeated on the merits if this litigation continued. Further, even if Plaintiff were to prevail on all
27 of her PAGA claims, it is far from certain that Plaintiff could prove that *every aggrieved*

1 employee suffered a violation in *every pay period*, as is assumed by Plaintiff's estimate of
2 potential PAGA penalties. *See* Van Hook Decl., ¶ 21.

3 **d) Defendants' Financial Condition**

4 Based on the information shared during the mediation, Plaintiff and her counsel
5 reasonably believe that Defendants may be unable to pay a substantial verdict if this case were
6 litigated through trial and Defendants were to prevail. Plaintiff and her counsel believe that these
7 financial issues validate the decision to engage in an early settlement and support the
8 reasonableness of the settlement obtained. *See id.*, ¶ 9.

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

10 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Labor Code §
11 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund
12 for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
13 from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. *Accord*,
14 *Serrano v. Priest* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys'
15 fees and costs when a litigation proceeding in a representative capacity secures a substantial
16 benefit); *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. This guidance
17 should equally apply to representative settlements under PAGA.

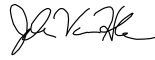
18 Plaintiff's counsel requests an award of attorney's fees of \$16,500, less than 1/3 of the
19 PAGA settlement sum, which is typical in class and PAGA settlements. Plaintiff's counsel's
20 litigation costs are also reasonable, as Plaintiff seeks \$4,336 for reimbursement of out-of-pocket
21 litigation costs. Plaintiff's litigation costs are described more fully in the concurrently filed
22 Declaration of John A. Van Hook.

23 **V. CONCLUSION**

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

1 Dated: August 29, 2023

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

3 

4 John A. Van Hook

Adrian C. Byrne

Attorneys for Plaintiff Maria Elena Villalobos
and all other Aggrieved Employees