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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

GUADALUPE HERNANDEZ, on behalf of
himself, and all others similarly situated,

Plaintiff,

v.

AUTOMATED HARVESTING, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No: 22CV002717

REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF PAGA ACTION AND
DISMISSING ACTION WITH
PREJUDICE**

[Assigned for all purposes to The Honorable
Thomas A. Wills, Dept. 15]

Date: November 17, 2023

Time: 10:00 a.m. (matter will trail to end of
8:30 a.m. calendar)

Dept. 15

Complaint filed: September 13, 2022

FAC Filed: November 15, 2022

SAC Filed: December 20, 2022

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Guadalupe Hernandez (“Plaintiff”), an alleged “aggrieved employee” under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, (“PAGA”), moves this Court for an order granting approval of the proposed settlement of this representative PAGA action against Automated Harvesting, LLC (“Defendant”).¹ Plaintiff’s PAGA action alleges that Defendant violated certain California Labor Code provisions resulting from its overtime, wage statement, termination pay and timely pay practices.² The proposed settlement will dispose of the PAGA claims asserted on behalf of Plaintiff and all individuals within State of California who are or were employed by Defendant in the State of California as an hourly, non-exempt employee for at any time from September 8, 2021 through August 12, 2023, inclusive (the “PAGA Release Period”), (referred to as the “PAGA Group”).³

The proposed settlement embodies all of the features of a settlement that is fair, reasonable, and adequate. It is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage-and-hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claims, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

The settlement achieves a fair and reasonable benefit for the State of California’s Labor and Workforce Development Agency (“LWDA”) and the 600 members of the PAGA Group. The Settlement Agreement allocates approximately \$239,583.19 to the settlement of the PAGA claims (referred to as the “Net Settlement Amount”).⁴ According to statute, from the \$239,583.19, 75%

¹ See Declaration of Robert Spencer submitted in support of Plaintiff’s Motion for Approval of PAGA Settlement (“Spencer Decl.”), Ex. 1 (the Parties’ Labor Code Private Attorneys General Act Settlement Agreement (the “Settlement Agreement”). All “Ex.” references are to Spencer Declaration exhibits unless stated otherwise. Also, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement unless noted otherwise.

² Ex. 3 (the operative Second Amended Complaint (“SAC”)).

³ Ex. 1 at § I.J.

⁴ Ex. 1 at § I.I. The remaining \$160,416.81 of the \$400,000 Settlement Amount is allocated to attorneys’ fees (\$133,333.33) and litigations costs (\$15,583.48), an enhancement award to

1 (\$179,687.39) will be distributed to the LWDA and 25% (\$59,895.80) will be paid to the
2 Aggrieved Employees.⁵ The \$59,895.80 to be paid the Aggrieved Employees, who are the PAGA
3 Group members, will be distributed according to the formula set forth in the Settlement
4 Agreement.⁶

5 This is a reasonable recovery in light of the fact that Defendant has raised what it
6 considers to be substantial defenses to Plaintiff's claims on the merits, including that it properly
7 paid overtime to Plaintiff and the aggrieved employees, as well as that its wage statements are
8 proper under *General Atomics v. Superior Court* (2021) 64 Cal. App. 5th 987. Plaintiff's Counsel
9 found the risk to recovery to be significant and negotiated a settlement that they view as fair,
10 reasonable and adequate for the LWDA, PAGA Group and Plaintiff under the circumstances.⁷

11 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
12 Court enter an order approving the PAGA settlement. In a separate motion being filed today,
13 Plaintiff seeks an order awarding attorneys' fees and costs, an enhancement award for Plaintiff,
14 and the approval of Simpluris, Inc. as the Settlement Administrator and awarding payment of the
15 settlement administration fees.

16 **II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

17 **A. The Parties**

18 Defendant is a California limited liability company providing harvesting services at
19 locations throughout California.⁸ Plaintiff worked as a non-exempt, hourly lettuce cutter in
20 Salinas, California from approximately April 2021 through November 2021.⁹ The PAGA Group
21 is defined as: All persons within the State of California who are or were employed by Defendant
22 in the State of California as an hourly, non-exempt employee at any time within the PAGA
23

24 _____
25 Plaintiff (\$5,000), and administration costs (estimated to be \$6,500). Spencer Decl. at ¶ 21; Ex. 1
26 at §§ I.O, VI, X and XI.

27 ⁵ Ex. 1 at § I.I. See Lab. Code § 2699(i).

28 ⁶ Ex. 1 at § III.A.

⁷ Spencer Decl. at ¶¶ 18-28.

⁸ Spencer Decl., Ex. 3 (SAC at ¶¶ 5, 8).

⁹ Ex. 3 (SAC at ¶¶ 4, 9).

1 Release Period.¹⁰ The “PAGA Release Period” is defined as the time period from and including
2 September 8, 2021 through August 12, 2023.¹¹

3 **B. Plaintiff’s exhaustion of administrative remedies and filing of the Complaint.**

4 On September 8, 2022, pursuant to Labor Code § 2699.3’s exhaustion requirements,
5 Plaintiff gave written notice of his PAGA claims to the LWDA and Defendant.¹² Plaintiff filed
6 the initial Complaint on September 13, 2022 in Monterey County Superior Court alleging
7 putative class action claims. After satisfying the administrative requirements of Labor Code §
8 2699.3(a), Plaintiff filed the First Amended Complaint on November 15, 2022 adding the PAGA
9 claims and filed the operative Second Amended Complaint (“SAC”) on December 20, 2022,
10 which alleges only PAGA representative claims. The SAC alleges that Defendant violated
11 PAGA when it violated Labor Code provisions related to its overtime, wage statement issuance,
12 termination pay and timely pay practices. Specifically, the PAGA claims in the SAC are based
13 on alleged violations of Labor Code §§ 201-203, 204b, 226(a), 510, 1194, 1197, 1198, and 1199.
14 The SAC seeks Labor Code § 2699(f) penalties.¹³

15 Defendant has denied all of the allegations in their entirety. To date, no court has made a
16 finding of any wrongdoing on the part of Defendant or that Defendant otherwise acted improperly
17 or in violation of any state law, rule or regulation, with respect to the issues presented in the
18 litigation.¹⁴

19 After the filing of the SAC, the Parties met and conferred regarding the potential for
20 settlement. The Parties agreed to exchange informal discovery and participate in private
21 mediation. The Parties subsequently exchanged informal discovery, including documents and
22 information relevant to the claims alleged in the SAC, such as timekeeping and payroll records
23 and the number of total pay periods at issue.¹⁵ Defendant also provided information from its
24

25 ¹⁰ Ex. 1 at § I.J.

26 ¹¹ Ex. 1 at § I.K.

27 ¹² Spencer Decl. at ¶ 7, Ex. 2 (PAGA exhaustion letter).

28 ¹³ Spencer Decl. at ¶ 8, Ex. 3 (SAC).

¹⁴ Ex. 1 at § IV.

¹⁵ Spencer Decl. at ¶ 10.

1 records supporting there are no more than 600 individuals who meet the Settlement Agreement’s
2 definition of the PAGA Group.¹⁶

3 Armed with the information obtained from informal discovery, the Parties participated in
4 a formal mediation session with Mark S. Rudy, Esq. on July 13, 2023. Even though the Parties
5 did not reach an agreement at the mediation, the Parties were able to reach a tentative settlement
6 shortly afterwards with the assistance of the mediator.¹⁷ The Parties agreed to settle the entire
7 action, subject to approval by the Court. The settlement is the result of arm’s-length negotiations
8 between the Parties’ counsel.¹⁸ The detailed, formalized Settlement Agreement sets forth all
9 terms of the Parties’ settlement.¹⁹

10 **C. The Proposed Settlement**

11 **1) The benefits to the LWDA and the PAGA Group.**

12 The Settlement Agreement defines the PAGA Group as “All persons within the State of
13 California who are or were employed by Defendant in the State of California as an hourly, non-
14 exempt employee at any time within the PAGA Release Period.”²⁰ The “PAGA Release Period”
15 is from September 8, 2021 through August 12, 2023, inclusive.²¹ Defendant has identified
16 approximately 600 PAGA Group members.²²

17 The Settlement Agreement provides that, to settle this matter, Defendant will pay
18 \$400,000 (the “Settlement Amount”).²³ The Settlement Amount shall be all inclusive,
19 encompassing (i) all payments to the LWDA and the PAGA Group, (ii) any and all costs of third-
20 party administration of the settlement, (iii) Plaintiff’s Counsel’s attorneys’ fees and costs of suit,
21 and (iv) an enhancement payment to the named Plaintiff.²⁴

22
23 ¹⁶ *Id.*

24 ¹⁷ Spencer Decl. at ¶ 11; Ex. 1 at §§ II.A, II.B.

25 ¹⁸ Spencer Decl. at ¶ 11.

26 ¹⁹ *Id.*

27 ²⁰ Ex. 1 at § I.J.

28 ²¹ Ex. 1 at § I.K.

²² Spencer Decl. at ¶ 10.

²³ Ex. 1 at §§ I.O, VIII.B.

²⁴ Ex. 1 at § I.O.

The total sum available for payment of PAGA penalties is calculated by deducting up to \$133,333.33 for the payment of Plaintiff's Counsel's fees and \$15,583.48 for litigation costs, a \$5,000 enhancement payment to Plaintiff, and estimated administration costs of \$6,500 from the \$400,000 Settlement Amount, leaving \$239,583.19 (the "Net Settlement Amount") to be distributed to the LWDA and the PAGA Group members.²⁵

As required by Labor Code § 2699(i), the Net Settlement Amount will be paid 75% (approximately \$179,687.39) to the LWDA and 25% (approximately \$59,895.80) to the PAGA Group members, who are the aggrieved employees.²⁶ The \$179,687.39 that the LWDA will receive is substantial amount to be used for labor law enforcement and education.²⁷

The PAGA Group members will divide their portion based on the formula set forth in the Settlement Agreement, which, in summary, provides that the portion of the Net Settlement Amount to be distributed to the PAGA Group shall be divided by the total number of full pay periods, with partial pay periods rounded up to the next whole number, as determined by Defendant's records, for all times during the PAGA Release Period which the PAGA Group worked for Defendant. This amount shall be known as the "Pay Period Value." Each member of the PAGA Group shall be paid an amount equal to the number of individual pay periods he or she worked for Defendant during the PAGA Release Period multiplied by the Pay Period Value.²⁸ On average, each PAGA Group member will receive approximately \$99.83.²⁹ PAGA Group members do not need to submit a claim to receive a settlement payment.³⁰

Simpluris will mail an Individual Settlement Payment check to each PAGA Group member no later than 60 calendar days of the Court's approval of the settlement.³¹

²⁵ Ex. 1 at §§ I.H, I.I, I.O, VIII.A; Spencer Decl. at ¶ 21.

²⁶ Ex. 1 at §§ I.I, I.O, VI, X, XI; Spencer Decl. at ¶¶ 21-22; *see also*, Lab. Code § 2699(c) (PAGA defines "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.").

²⁷ Lab. Code § 2699(i).

²⁸ Ex. 1 at §§ I.F, I.J, VIII.A.

²⁹ Spencer Decl. at ¶ 23 (\$59,895.80/600 = \$99.83); *see also*, Ex. 1 at §§ I.F, I.J, VIII.A.

³⁰ Ex. 1 at § VIII.A; Spencer Decl. at ¶ 23.

³¹ Ex. 1 at § VII, *see also*, §§ I.F, I.J, VIII.A.

2) The PAGA Release.

All PAGA claims alleged in the Complaint are released as part of the settlement.³² In exchange for the above-described settlement consideration, Defendant shall be entitled to the following release from Plaintiff on behalf of the LWDA.³³

Upon approval of this Settlement Agreement by the Court, Plaintiff, individually and as a representative acting as a proxy or agent of the LWDA in this Litigation, agrees to release Defendant and its parent, subsidiary, affiliated, predecessor and successor companies and entities, and its and their past and present shareholders, investors, officers, directors, employees, attorneys, agents, benefit plans, trustees, fiduciaries and administrators (collectively, the “Released Parties”), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, et seq., that were or could have been alleged based on the factual allegations and identified Labor Code sections in the Litigation and the LWDA Letter, including, but not limited to, California Labor Code sections §§ 201, 202, 203, 204b, 226, 226.3, 510, 511, 1194, 1198, and 1199, during the time period from and including September 8, 2021 through August 12, 2023 (the “Released Claims”). The Parties further agree to release any and all claims for costs, fees, and interest related to the Released Claims. The Parties further agree that this Agreement and judgment to be entered by the Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.³⁴

3) PAGA Notice.

Under the settlement, the Parties have agreed to provide a Notice of Settlement

³² Ex. 1 at § V, *see also*, § I.K.

³³ This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 987 (“[W]ith respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....”). The PAGA Group members do not individually release any claims as part of the settlement.

³⁴ *See* Ex. 1 at § V.A. *See Arias, supra*, 46 Cal.4th at 987 (“[T]he nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.”) This stands in contrast to the scope of release permitted in the class action context, where class members have a right to notice and the right to exclude themselves from the action. *See Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 586 (“[A] court may release not only those claims alleged in the complaint and before the court, but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the complaint.”).

1 (“Notice”) notifying the PAGA Group members about the settlement terms.³⁵ The settlement
2 requires Defendant to provide the Settlement Administrator with the following information for
3 each PAGA Group member: name, last known home address, number of pay periods that the
4 PAGA Group member worked, and social security number (collectively referred to as the
5 “PAGA List”) no later than 30 calendar days after the Court approves the settlement.³⁶ After
6 updating the PAGA List, the Settlement Administrator will mail the Notice and the Individual
7 Settlement Payment check to each member of the PAGA Group no later than 60 calendar days
8 after the Court approves the settlement.³⁷

9 Under the settlement terms, for any Individual Settlement Payment check that is
10 returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the
11 PAGA Group member by performing an additional skip-trace and shall remail the Individual
12 Settlement Payment check no later than 10 calendar days following the receipt of the
13 undelivered Notice and check.³⁸

14 **4) Residual from uncashed checks.**

15 The Settlement Administrator shall void any settlement checks that remain uncashed
16 more than 180 days after issuance and will remit the entire amount of each PAGA Group
17 member’s uncashed Individual Settlement Payment to the California State Controller for
18 deposit in the Unclaimed Property Fund in the name of the PAGA Group member to whom the
19 uncashed Individual Settlement Payment was drafted.³⁹

20 **5) The Settlement Agreement selects Simpluris, Inc. as the settlement
21 administrator.**

22 The Settlement Agreement provides that Simpluris, Inc. will administer the settlement.⁴⁰

23 **6) Settlement administration, attorneys’ fees and costs, and the Plaintiff’s
24 enhancement payment.**

25 The Settlement Agreement also provides for the payment of settlement administration

26 ³⁵ Ex. 1 at § VII, Exhibit A (the Notice).

27 ³⁶ Ex. 1 at § VII.

28 ³⁷ Ex. 1 at § VII.

³⁸ Ex. 1 at § VII.

³⁹ Ex. 1 at § VIII.B.

⁴⁰ Ex. 1 at § VI.

1 fees, award of attorneys' fees and costs, and an enhancement payment for the Plaintiff.⁴¹ Those
2 terms are discussed in the memorandum accompanying the Motion for Award of Attorneys' Fees
3 and Costs, Plaintiff's Enhancement Award and Settlement Administration Fees that is being filed
4 concurrently with this motion.

5 **7) Notification to the LWDA of the Settlement.**

6 As detailed in the Spencer Declaration, filed concurrently with the submission of the
7 Settlement Agreement to the Court, Plaintiff is submitting the settlement to the LWDA as
8 required by Labor Code § 2699(1)(2).⁴²

9 **III. LEGAL ARGUMENT**

10 **A. Standards for approval of a PAGA settlement.**

11 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
12 statute. Section 2699(1)(2) provides that the court must "review and approve any settlement of
13 any civil action filed pursuant to [PAGA]." The California Supreme Court has noted that the trial
14 court's review and approval of PAGA settlements ensures "that any negotiated resolution is fair
15 to those affected."⁴³

16 As with any settlement, the court conducts its inquiry staying mindful that "[s]ettlement is
17 a compromise, which balances the possible recovery against the risks inherent in litigating
18 further."⁴⁴ Indeed, "the very essence of a settlement is ... 'a yielding of absolutes and an
19 abandoning of highest hopes,'"⁴⁵ as "it is the very uncertainty of outcome in litigation and
20 avoidance of wasteful and expensive litigation that induce consensual settlements."⁴⁶ As such,
21 "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
22
23

24 _____
25 ⁴¹ Ex. 1 at §§ VI, X, XI; *see also*, §§ I.I, I.O.

26 ⁴² Spencer Decl. at ¶ 16.

27 ⁴³ *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Lab. Code § 2699 (1)(2).

28 ⁴⁴ *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) No. C 07-2852 SBA
and C 07-4903 SBA, 2011 U.S. Dist. LEXIS 103222, at *24.

⁴⁵ *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624.

⁴⁶ *See id.* at 625.

merits” or “judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.”⁴⁷

Although Section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, controlling California case law has held that “a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.”⁴⁸ PAGA is intended to incentivize private parties to recover civil penalties on behalf of the overburdened state enforcement agencies who otherwise would have assessed and collected the civil penalties themselves.⁴⁹

When assessing a PAGA settlement, courts utilize some of the factors used to evaluate the fairness of a class action settlement, which can include the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, and the experience and views of counsel.⁵⁰ It, however, is important to underscore that the California Supreme Court has found

⁴⁷ See *id.*

⁴⁸ *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (“*Moniz*”), citing *Williams, supra*, 3 Cal.5th at 546 (finding that PAGA seeks “to remediate present violations and deter future ones”) and *Arias, supra*, 46 Cal.4th at 980 (recognizing that PAGA’s declared purpose is to augment state enforcement efforts to achieve maximum compliance with labor laws.); see also, e.g., *Pettitt v. Exigency Healthcare Servs.* (E.D. Cal. Mar. 2, 2023) No. 21-cv-07639-VKD, 2023 U.S. Dist. LEXIS 35869, at *9 (applying that standard when evaluating the PAGA portion of a settlement, citing *Moniz* and other cases); *Chamberlain v. Hughes* (July 29, 2020) No. 1:19-cv-00831-DAD-JLT, 2020 U.S. Dist. LEXIS 134582, at *15 (applying same standard when approving PAGA settlement), cited with approval in *Moniz*. Plaintiff cites federal authorities for guidance. See *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1392 (“California courts may look to federal authority for guidance on matters involving class action procedures.”).

⁴⁹ See e.g., *Kim v. Reins Int’l California, Inc.* (2020) 9 Cal.5th 73, 81; *Arias, supra*, 46 Cal.4th at 986; *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 710-11 (also finding that “[t]he civil penalties recovered in a PAGA action are ‘recovered on the state’s behalf [and] are intended to ‘remediate present violations and deter future ones,’ not to redress employees’ injuries,”) quoting *Kim, supra*, 9 Cal.5th at 86-87.

⁵⁰ *Moniz, supra*, 72 Cal.App.5th at 77; see also, e.g., *Chamberlain, supra*, 2020 U.S. Dist. LEXIS 134582, at *12, n.5 (noting that the assessment of fairness, adequacy and reasonableness of a PAGA settlement may involve balancing some of the factors used to assess class action settlements), citing *Officers for Justice, supra*, 688 F.2d at 625; *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017) No. 16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272, at *8 (same), citing *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026).

1 that, “[a]lthough representative in nature, a PAGA claim is not simply a collection of individual
2 claims for relief, and so is different from a class action.”⁵¹ A PAGA action “is fundamentally a
3 law enforcement action designed to protect the public and not to benefit private parties.”⁵² In a
4 PAGA action, the plaintiff employee serves as a proxy for the LWDA.⁵³ As a result, certain
5 factors relevant to a class action settlement do not apply when assessing the fairness of a PAGA
6 settlement.

7 In addition, other factors that are not relevant in the class action context are relevant in the
8 PAGA settlement context.⁵⁴ First, as noted, a court assesses a PAGA settlement’s adequacy
9 based on whether the total settlement achieves PAGA’s objective,⁵⁵ which is “to protect the
10 public” with “the potential impact on remedies other than civil penalties [being] ancillary to the
11 action’s primary objective.”⁵⁶ That said, a PAGA settlement – like any settlement – involves a
12 compromise that stops short of rendering findings of liability and damages.

13 Second, because they have no property interest in a PAGA claim,⁵⁷ “PAGA has no notice
14 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
15 action.”⁵⁸ The California Supreme Court has explained that “absent employees do not own a
16 personal claim for PAGA civil penalties and whatever personal claims the absent employees
17

18
19 ⁵¹ *Kim, supra*, 9 Cal.5th at 86, citing *Arias, supra*, 46 Cal.4th at 986.

20 ⁵² *Arias, supra*, 46 Cal.4th at 986.

21 ⁵³ *Id.*; see also, e.g., *Kim, supra*, 9 Cal.5th at 86, quoting *Arias, supra*, 46 Cal.4th at 986 (“[a]n
22 employee suing under PAGA ‘does so as the proxy or agent of the state’s labor law enforcement
23 agencies.’”).

24 ⁵⁴ See *Ramirez, supra*, 2017 U.S. Dist. LEXIS 137272, at *8-9.

25 ⁵⁵ See *Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589 (finding that the trial court
26 properly considered the overall circumstances of the settlement when determine whether the
27 PAGA settlement was appropriate).

28 ⁵⁶ *Arias, supra*, 46 Cal.4th at 987.

⁵⁷ See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th
993, 1003 (PAGA “does not create property rights or any other substantive rights” as “[i]t is
simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor
Code violations—that otherwise would be sought by state labor law enforcement agencies.”).

⁵⁸ See e.g., *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 974 (“PAGA has no notice
requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
action.”); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 (same).

might have for relief are not at stake.”⁵⁹ This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the “two-step approval process” required under California Rule of Court 3.769 and FRCP Rule 23(e).⁶⁰

Finally, unlike in a class action settlement, the scope of release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,”⁶¹ “the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.”⁶² Thus, the scope of a release in a PAGA settlement is necessarily limited to PAGA claims.

B. The settlement meets all of the criteria for approval.

The proposed settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

1) The factors giving rise to a presumption of fairness exist.

When reviewing a settlement, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in similar litigation.”⁶³ In this case, the proposed Settlement (1) is the product of arms-length negotiations,⁶⁴ (2) occurred after Plaintiff’s Counsel had conducted sufficient investigation to evaluate the strength

⁵⁹ *Williams, supra*, 3 Cal.5th at 547, fn. 4, citing other California Supreme Court cases; *see also, Turrieta, supra*, 69 Cal.App.5th at 973, quoting same.

⁶⁰ The Rule 23(e) two-step process facilitates “notice” to absent class members by requiring “(1) preliminary approval of the settlement; and (2) final approval of the settlement at a fairness hearing following notice to the class.” *See, e.g., In re TD Ameritrade, supra*, 2011 U.S. Dist. LEXIS103222, at *10; *see F.R.C.P. 23(e)*. Cal. Rule of Court 3.769 contains similar rules for state court class actions.

⁶¹ *Arias, supra*, 46 Cal.4th at 986.

⁶² *See id.* at 987.

⁶³ *Nordstrom Com. Cases, supra*, 186 Cal.App.4th at 581 (internal quotations and alterations omitted), citing *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117–1118 (also listing as a factor relevant only to class actions that percentage of objectors is small).

⁶⁴ Spencer Decl. at ¶¶ 10-14.

1 and potential value of the PAGA claims, as well as evaluating the risks of litigating these claims
2 through trial,⁶⁵ and (3) was negotiated by Plaintiff's Counsel with significant experience in
3 similar wage and hour litigation.⁶⁶ As a result, the proposed PAGA settlement warrants a
4 presumption of fairness.

5 **2) The risk, expense, and complexity of further litigation balances strongly in**
6 **favor of approval of the Settlement.**

7 The proposed settlement takes into consideration the risks that this action faces in
8 establishing Defendant's liability. Defendant has raised what it considers to be substantial
9 defenses to Plaintiff's claims, including that it properly paid overtime to Plaintiff and the
10 aggrieved employees, as well as that its wage statements are proper under *General Atomics v.*
11 *Superior Court* (2021) 64 Cal. App. 5th 987. Also, continued litigation posed the risk of
12 diminishing any possible recovery by increasing litigation expenses. Those combined risks,
13 balanced with the fact that the settlement achieved a significant recovery, as demonstrated below,
14 weigh strongly in favor of settlement approval.

15 **3) The benefits conferred by the settlement balance in favor of approval.**

16 The proposed settlement provides a significant monetary benefit for the LWDA and a
17 reasonable monetary benefit for the PAGA Group. As the Ninth Circuit has held, a settlement
18 may be fair and reasonable even where it only provides a fraction of what could have been
19 obtained at trial:

20 The proposed settlement is not to be judged against a hypothetical or
21 speculative measure of what might have been achieved by the negotiators.
22 Thus, the very essence of a settlement is compromise, a yielding of absolutes
23 and an abandoning of highest hopes. ... The fact that a proposed settlement
24 may only amount to a fraction of the potential recovery does not, in and of
25 itself, mean that the proposed settlement is grossly inadequate and should be
26 disapproved.⁶⁷

27 There are 600 PAGA Group members who worked approximately 14,000 pay periods
28

26 ⁶⁵ *Id.* at ¶¶ 10-14, 18-28.

27 ⁶⁶ *Id.* at ¶¶ 2-5.

28 ⁶⁷ See *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242 (internal quotations and citations omitted), citing *Officers for Justice, supra*, 688 F.2d at 625, among other cases).

during the PAGA Release Period.⁶⁸ At \$100 per pay period, a PAGA award would amount to \$1,400,000.⁶⁹ Labor Code § 2699(e)(2) however allows a court to reduce the amount of a PAGA penalty at the court's discretion. And, as a number of reported cases demonstrate, many courts end up awarding less than the full amount in PAGA penalties.⁷⁰

Under the Settlement Agreement, after all deductions are made for settlement administration, a service payment to the Plaintiff, and attorneys' fees and costs, approximately \$179,687.39 of the settlement funds will be paid out to the LWDA.⁷¹ PAGA requires that the LWDA use the funds for education and enforcement purposes.⁷² That is a substantial benefit to the State.

The remaining \$59,895.80 will be distributed to the PAGA Group based on the formula set forth in the Settlement Agreement.⁷³ The amount is reasonable and fair in light of the PAGA claims here and Defendant's asserted defenses.

4) The scope of the release is narrowly tailored.

The release bars Plaintiff and the LWDA from prosecuting any claims covered by the Settlement Agreement through the PAGA Release Period.⁷⁴ Under *Arias*, that precludes any other member of the PAGA Group from asserting such claims on behalf of the LWDA in a future action but does not impact any other claims that any member of the PAGA Group may have.⁷⁵ The California Supreme Court has concluded that, in the context of PAGA, "the nonparty

⁶⁸ Spencer Decl. at ¶ 10, Ex. 1 at § I(F).

⁶⁹ See Lab. Code § 2699(f)(2).

⁷⁰ See e.g., *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (affirming the trial court's \$150,000 PAGA penalty award out of \$75 million in penalties sought, based on 30,000 violations, which reduced the penalty rate to \$5 per violation); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1125, 1135-36 (affirming the trial court's award of \$358,588, a 30% reduction of the \$512,000 PAGA penalties requested), *disapproved on another ground* at *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196; *Magadia v Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, 1073, 1080, 1101, 1103-04, 1111 (awarding \$70,000 of requested \$821,400 PAGA penalties for Labor Code § 226.7 meal period violations, among other PAGA penalty reductions); see Spencer Decl. at ¶ 28 (listing additional examples).

⁷¹ Ex. 1 at §§ I.H., I.I, I.O, VIII; Spencer Decl. at ¶¶ 21-22.

⁷² Lab. Code § 2699(i).

⁷³ Ex. 1 at § VIII.A; see Spencer Decl. at ¶¶ 21, 23.

⁷⁴ Ex. 1 at §§ I.K, V.A.

⁷⁵ *Arias, supra*, 46 Cal.4th at 986.

employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.”⁷⁶ Thus, the scope of the release provided in exchange for the foregoing consideration is limited to the civil penalties asserted in this action under Labor Code §§ 2698 *et seq.*⁷⁷ As such, this factor balances strongly in favor of approval of the proposed settlement.

5) The experience and views of Plaintiff’s Counsel favor approval of the settlement.

Plaintiff’s Counsel has significant experience in complex wage and hour litigation.⁷⁸ In the view of Plaintiff’s Counsel, the benefit conferred by the proposed settlement is fair, reasonable, and adequate under the circumstances, as it reflects a reasoned compromise which takes into consideration the risks inherent in this case which have the potential to completely eliminate recovery.⁷⁹ As such, this factor weighs in favor of approval of the proposed settlement.

6) The extent of discovery completed and the stage of the proceedings favor approval of the proposed settlement.

In evaluating this element, the relevant consideration is whether “the parties have sufficient information to make an informed decision about settlement.”⁸⁰ And as the Ninth Circuit has noted, “‘formal discovery is not a necessary ticket to the bargaining table.’”⁸¹

Here, the extent of informal discovery conducted was sufficient to enable Plaintiff’s Counsel to evaluate the strength and value of the claims for purposes of settlement.⁸² Plaintiff’s Counsel’s investigation and the discovery obtained from Defendant were sufficient to assess Defendant’s overtime, other pay and wage statement practices and to tabulate the total number of workweeks and pay periods at issue and identify the approximate total number of individuals falling within the definition of the PAGA Group during the PAGA Release Period.⁸³ The

⁷⁶ *See id.* at 987.

⁷⁷ Ex. 1 at § V.A.

⁷⁸ *See* Spencer Decl. at ¶¶ 2-5.

⁷⁹ *Id.* at ¶¶ 18-28.

⁸⁰ *Linney, supra*, 151 F.3d at 1239.

⁸¹ *Id.*

⁸² Spencer Decl. at ¶¶ 10-14.

⁸³ Spencer Decl. at ¶¶ 10-11, Ex. 1 at § I(F).

1 information obtained in this case in preparation for mediation enabled Plaintiff's Counsel to make
2 a realistic assessment of the strength of the PAGA claims.⁸⁴

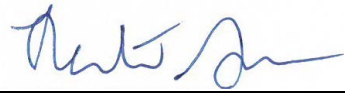
3 Based on Plaintiff's Counsel's experience litigating wage and hour claims, such
4 investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate
5 the strength of these claims for purposes of settlement.⁸⁵

6 **IV. CONCLUSION**

7 As shown herein, the Settlement Agreement is fair, adequate and reasonable, as it
8 represents a reasoned compromise obtained through arm's-length negotiations. For all the reasons
9 set forth above, Plaintiff respectfully requests that this Court approve the settlement.

10
11 Dated: October 10, 2023

KELLER GROVER LLP

12
13 By: 

14 ERIC A. GROVER
15 ROBERT SPENCER
16 *Counsel for Plaintiff*
17 GUADALUPE HERNANDEZ
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27 ⁸⁴ Spencer Decl. at ¶¶ 10-14, 18-28.

28 ⁸⁵ *Id.* at ¶¶ 18-28.

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On October 10, 2023, in the case of *Hernandez v. Automated Harvesting, LLC, et al.*, Monterey Superior Court Case Number 22CV002717, I served the foregoing document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION AND DISMISSING ACTION WITH PREJUDICE

on the interested party(ies) below, using the following means:

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AUTOMATED HARVESTING, LLC

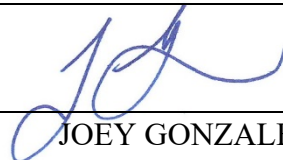
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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


JOEY GONZALEZ