

JOSE GARAY, APLC

Jose Garay (SBN 200484)
jose@garaylaw.com
249 E. Ocean Boulevard, Suite 814
Long Beach, California 90802
Tel: (949) 208-3400

Attorneys for Plaintiffs FABRICIO
MARTINEZ
and PABLO GOMEZ

HILL, FARRER & BURRILL LLP

James A. Bowles (SBN 089383)
jbowles@hillfarrer.com
Richard S. Zuniga (SBN 102952)
rzuniga@hillfarrer.com
Elissa L. Gysi (SBN 281338)
egysi@hillfarrer.com
One California Plaza, 37th Floor
300 South Grand Avenue
Los Angeles, CA 90071-3147
Telephone: (213) 620-0460
Fax: (213) 624-4840

Attorneys for Defendant L.A. SPECIALTY
PRODUCE CO. DBA VESTA FOOD
SERVICES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FABRICIO MARTINEZ, PABLO
GOMEZ, as individuals, and on
behalf of all aggrieved employees,

Plaintiffs,

v.

L.A. SPECIALTY PRODUCE CO.,
a California corporation, dba
VESTA FOOD SERVICES, and
DOES 1 through 50, inclusive,

Defendant.

CASE NO. 23STCV03777

[Hon. Timothy Patrick Dillon, Dept. 73]

**JOINT STIPULATION REQUESTING
APPROVAL OF SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF
2004 ("PAGA"); [PROPOSED] ORDER
AND JUDGMENT**

**[Filed concurrently with Declaration of
Jose Garay]**

Action Filed: February 21, 2023
Trial Date: None set

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JOINT STIPULATION REQUESTING APPROVAL OF PAGA
SETTLEMENT

Plaintiffs FABRICIO MARTINEZ and PABLO GOMEZ (“Plaintiffs”) and Defendant L.A. SPECIALTY PRODUCE CO. DBA VESTA FOOD SERVICES (“Defendant”) (collectively “the Parties”), by and through their respective counsel of record, hereby stipulate and agree as follows:

WHEREAS, on February 21, 2023, Plaintiffs filed a Complaint asserting claims for civil penalties under the PAGA against Defendant for: (1) unpaid wages; (2) unpaid overtime wages; (3) failure to provide meal and rest periods and pay penalties; (4) failure to provide accurate wage statements; (5) failure to pay wages upon termination; (6) failure to maintain accurate payroll records; (7) failure to comply with California Labor Code Sections 2100 – 2112, including any purported imposition of quotas that prohibited employees from taking legally compliant meal and rest periods and bathroom breaks; and (8) failure to reimburse expenses.;

WHEREAS, pursuant to California Labor Code § 2699.3(a), Plaintiffs provided the requisite notice by online submission to the LWDA and by certified mail to Defendant on December 30, 2022 ([LWDA-CM-926797-22](#)). Garay Decl., Exhibit C;

WHEREAS, the Parties agreed to attend a private mediation session with mediator Tagore Subramaniam, Esq., who is experienced in wage and hour class and PAGA representative actions;

WHEREAS, in advance of the mediation, the Parties agreed to engage in informal discovery; the Parties subsequently exchanged informal discovery which included: time and payroll records for Plaintiffs, time and payroll records for Aggrieved Employees, sample arbitration agreements, employee handbook and

1 other policy documents, and a sampling of over 3000 pages of PDF payroll
2 records for the aggrieved employees from December 30, 2021 to February 21,
3 2024, over 23,000 pages of time records for 25% of the Aggrieved employees, the
4 total number of Aggrieved Employees, a list of Aggrieved Employees terminated
5 during the PAGA Period, and an anonymized list of the pay periods worked by
6 each Aggrieved Employee during the PAGA Period;

7 **WHEREAS**, on January 21, 2024, the Parties attended an all-day
8 mediation; the parties reached resolution as the result of a mediator's proposal; the
9 parties began negotiating a long-form settlement agreement, which was fully
10 executed on March 20, 2024;

11 **WHEREAS**, the Parties concluded that there were benefits associated with
12 settling the matters, and concluded - after taking into account the sharply disputed
13 factual and legal issues involved in this litigation, the risks associated with further
14 prosecution, the substantial benefits to be received pursuant to the compromise
15 and settlement of the PAGA representative penalty claims as set forth in the
16 Settlement Agreement - that the settlement on the terms set forth therein is in the
17 best interest of Plaintiffs, the LWDA, the Aggrieved Employees, and is fair,
18 reasonable, and adequate, as set forth in the concurrently-filed Declaration of Jose
19 Garay ("Garay Decl.") ¶ 5, 12-15, 29;

20 **WHEREAS**, Defendant denies the allegations in the Complaint, denies any
21 failure to comply with the laws identified in in the Complaint and denies any and
22 all liability for the causes of action alleged;

23 **WHEREAS**, the Parties negotiated and finalized the terms of a settlement
24 memorialized in a long-form PAGA Settlement Agreement; a true and correct
25 copy of the fully executed PAGA Settlement Agreement is attached to the
26 concurrently filed Declaration of Jose Garay ("Garay Decl.") as **Exhibit A**.

27 **WHEREAS**, the Parties negotiated and finalized the terms of the Notice of
28 the PAGA Settlement to Aggrieved Employees; a true and correct copy of the

1 fully executed PAGA Settlement Agreement is attached to the concurrently filed
2 Declaration of Jose Garay (“Garay Decl.”) as **Exhibit B**;

3 **WHEREAS**, Plaintiff submitted on April 2, 2024 to the LWDA the Joint
4 Stipulation Requesting Approval Of Settlement Pursuant To The Private
5 Attorneys General Act Of 2004 (“Paga”); a true and correct copy of the e-mail
6 confirmation is attached to the concurrently filed Declaration of Jose Garay
7 (“Garay Decl.”) as **Exhibit E**;

8 **WHEREAS**, the Parties in their long-form PAGA Settlement Agreement
9 have reached a settlement of the claims of the Aggrieved Employees who are
10 defined as follows: All current and former non-exempt employees who worked at
11 least one pay period for Defendant in California at any time during the PAGA
12 Period; the PAGA Period is from December 30, 2021 through February 21, 2024
13 unless shortened by Defendant in accordance with Section III.2 of **Exhibit A** (the
14 long-form PAGA Settlement Agreement);

15 **WHEREAS**, any settlement of a PAGA action brought by an aggrieved
16 employee must be approved by the court (Lab. Code § 2699(1)(2)); in 2009, the
17 California Supreme Court held that an aggrieved employee's representative action
18 brought on behalf of the state and other aggrieved employees against an employer
19 for PAGA violations does not need to meet the requirements for class certification
20 nor does there need to be notice to the other employees (*Arias v. Superior Court*,
21 46 Cal.4th 969, 975); thus, the Court reviews the settlement and approves it if it is
22 deemed by the Court to be fair, reasonable, and adequate (*see Moniz v. Adecco*
23 *USA, Inc.*, 72 Cal.App.5th 56, 77 (holding that “a trial court should evaluate a
24 PAGA settlement to determine whether it is fair, reasonable, and adequate in view
25 of PAGA’s purposes to remediate present labor law violations, deter future ones,
26 and to maximize enforcement of state labor laws”); *see also Gutilla v. Aerotek,*
27 *Inc.*, 2017 WL 2729864, at *3 (E.D. Cal. Mar. 2017) (holding that “the court will
28 approve a settlement of PAGA claims upon a showing that the settlement terms

1 (1) meet the statutory requirements set forth by PAGA, and (2) are fundamentally
2 fair, reasonable, and adequate in view of PAGA’s public policy goals”);

3 **WHEREAS**, the Parties seek to obtain the Court’s approval of the
4 settlement terms and resolve this matter in the most efficient manner possible; and

5 **WHEREAS**, for the reasons set forth in the supporting Declaration of Jose
6 Garay, the PAGA settlement of \$460,000 is fair, reasonable, and adequate. *Id.*

7 **THEREFORE, IT IS HEREBY STIPULATED AND PROPOSED BY**
8 **THE PARTIES HERETO AS FOLLOWS:**

9 The Parties stipulate and jointly request that the Court approve the following
10 terms of the fully executed PAGA Settlement Agreement (“Sett. Agmt.”) which
11 includes the following key terms (Garay Decl. ¶ 11):

- 12 1. “Aggrieved Employees” means all current and former non-exempt
13 employees who worked at least one pay period for Defendant in
14 California at any time during the PAGA Period. (Garay Decl., Exhibit
15 A, Sett. Agmt. ¶ I.2);
- 16 2. “PAGA Period” means the time period from December 30, 2021 to
17 February 21, 2024 unless shortened by Defendant in accordance with
18 Section III.2 of PAGA Settlement Agreement (Garay Decl., Exhibit
19 A, Sett. Agmt. ¶ I.15);
- 20 3. “Effective Date” means the latter of: (a) the Court’s approval of the
21 Settlement; or (b) the final resolution of any appeal that has been
22 filed. (Garay Decl., Exhibit A Sett. Agmt. ¶ I.7);
- 23 4. “Settlement Administrator” means Phoenix Settlement
24 Administrators, the neutral entity the Parties have agreed to appoint
25 to administer the Settlement. (Garay Decl. Exhibit D, Phoenix
26 Declaration & Bid) (Sett. Agmt. ¶ I.21);
- 27 5. “Gross Settlement Amount” means the non-reversionary sum of
28 \$460,000 which represents the total amount payable under this

Agreement by Defendant, including Individual PAGA Payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs' attorneys' fees and costs, and payment to the Settlement Administrator for administration costs. (Garay Decl. ¶ 11 Exhibit A, Sett. Agmt. ¶ I.8);

6. "Net Settlement Amount" of \$274,666.67 is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following requested amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) settlement administration costs of \$16,000.00; (b) Plaintiffs' attorneys' fees of 33.33% of the Gross Settlement Amount (\$153,333.33)¹; and (b) Plaintiffs' costs of \$16,000.00. (Garay Decl. ¶ 11, Exhibit A, Sett. Agmt. ¶ I.12, Exhibit D);

7. Based on the requested amounts which are to be paid from the Gross Settlement Amount, the Net Settlement Amount (which shall be characterized as 100% PAGA Penalties) is \$274,666.672, of which 75% (i.e., \$206,000.00) will be distributed to the LWDA and the remaining 25% (i.e., \$68,666.67) will be distributed to Aggrieved Employees. The average payment to Aggrieved Employees is approximately \$55.02, based on approximately 1,248 Aggrieved Employees sharing an estimated \$68,666.67. (Garay Decl. ¶ 11.);

8. PAGA Notice and Payment Procedure

a. Within 14 calendar days of the Effective Date, Defendant will provide to the Settlement Administrator with information regarding Aggrieved Employees which shall include each Aggrieved Employee's full name, last known mailing address,

¹ See Declaration of Jose Garay in Support of Joint Stipulation Requesting Approval of Settlement Pursuant to The Private Attorneys General Act of 2004, ¶¶ 17 – 28, for arguments in support of Plaintiff's counsel's request for attorneys' fees.

1 total Affected Pay Periods worked during the PAGA Period,
2 and Social Security numbers to the extent available from
3 Defendant's records. (Garay Decl., Exhibit A, Sett. Agmt.
4 ¶ IV.2);

5 b. Upon receipt of the Aggrieved Employee Information, the
6 Settlement Administrator will perform a search on the National
7 Change of Address database to update the Aggrieved
8 Employees' addresses. (Garay Decl., Exhibit A, Sett. Agmt. ¶
9 IV.3.);

10 b. The Administrator will calculate the amount to be received by
11 each Aggrieved Employee (Garay Decl., Exhibit A, Sett. Agmt.
12 ¶ IV.3).

13 c. Defendant shall fully fund the Gross Settlement Amount by
14 transmitting the funds to the Administrator no later than 30
15 days of the Effective Date. (Garay Decl., Exhibit A, Sett.
16 Agmt. ¶ III.1);

17 e. Within 21 calendar days after Defendant funds the Gross
18 Settlement Amount, the Settlement Administrator will issue
19 payments to: (1) Aggrieved Employees; (2) the LWDA; (3) the
20 Settlement Administrator for Court-approved administration
21 costs incurred in connection with the Settlement; and (4)
22 Plaintiffs' Counsel for Plaintiff's Counsel's Court-approved
23 attorneys' fees and costs. (Garay Decl., Exhibit A, Sett. Agmt.
24 ¶ IV.5);

25 f. The Settlement Administrator will issue the checks for the
26 Individual PAGA Payments and send them to the Aggrieved
27 Employees with an Explanatory Letter in English and Spanish
28 via First Class U.S. Mail. Checks will remain negotiable for

180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken. Garay Decl., Exhibit A, (Sett. Agmt. ¶ IV.3);

- g. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee. It will be conclusively presumed that, if an envelope so mailed has not been returned within 30 days of the mailing, the Aggrieved Employee received the explanatory letter and Individual PAGA Payment. Garay Decl., Exhibit A, (Sett. Agmt. ¶ IV.4);
- h. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform up to a single re-mailing if a new address is located. Garay Decl., Exhibit A, (Sett. Agmt. ¶ IV.4);
- i. Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed for more than 180 days after issuance (collectively, “Uncashed

Checks”), will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund, in the name of the Aggrieved Employee. Garay Decl., Exhibit A, (Sett. Agmt. ¶ IV.4).

IT IS SO STIPULATED.

[Signatures on following page]

1 **IT IS SO STIPULATED.**

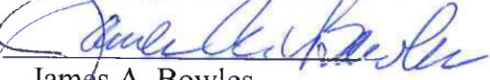
2
3 Dated: March 30, 2024

JOSE GARAY, ALPC

4
5 By: 
6 Jose Garay
Attorneys for Plaintiffs FABRICIO
MARTINEZ and PABLO GOMEZ

7 Dated: March 30, 2024

HILL, FARRER & BURRILL LLP

8 By: 
9 James A. Bowles
10 Richard S. Zuniga
11 Elissa L. Gysi
Attorneys for Defendant L.A. SPECIALTY
PRODUCE CO. DBA VESTA FOOD
SERVICES

JOSE GARAY, APLC

Jose Garay (SBN 200484)
jose@garaylaw.com
249 E. Ocean Boulevard, Suite 814
Long Beach, California 90802
Tel: (949) 208-3400

Attorneys for Plaintiffs FABRICIO MARTINEZ
and PABLO GOMEZ

HILL, FARRER & BURRILL LLP

James A. Bowles (SBN 089383)
jbowles@hillfarrer.com
Richard S. Zuniga (SBN 102952)
rzuniga@hillfarrer.com
Elissa L. Gysi (SBN 281338)
egysi@hillfarrer.com
One California Plaza, 37th Floor
300 South Grand Avenue
Los Angeles, CA 90071-3147
Telephone: (213) 620-0460
Fax: (213) 624-4840

Attorneys for Defendant L.A. SPECIALTY
PRODUCE CO. DBA VESTA FOOD SERVICES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FABRICIO MARTINEZ, PABLO
GOMEZ, as individuals, and on behalf of
all aggrieved employees,
Plaintiffs,

v.
L.A. SPECIALTY PRODUCE CO., a
California corporation, dba VESTA
FOOD SERVICES, and DOES 1 through
50, inclusive,

Defendant.

CASE NO. 23STCV03777

[Hon. Timothy Patrick Dillon, Dept. 73]

**[PROPOSED] ORDER APPROVING JOINT
STIPULATION REQUESTING APPROVAL
OF SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004 ("PAGA") AND JUDGMENT**

**[Filed concurrently with Declaration of Jose
Garay]**

Action Filed: February 21, 2023
Trial Date: None set

Having considered the stipulation of the Parties as set forth above and good cause

appearing, IT IS ORDERED as follows:

1. All terms used herein shall have the same meaning as defined in the Settlement Agreement attached to the Declaration of Jose Garay as Exhibit 1.

2. The Court hereby approves the terms set forth in the Settlement Agreement and finds that the Settlement Agreement is, in all respects, fair, reasonable, and adequate, and directs the Parties to effectuate the Settlement Agreement according to its terms. The Court finds that the Settlement Agreement has been reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds that the Parties were able to reasonably evaluate their respective positions. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the monetary recovery being provided as part of the Settlement and recognizes the significant value accorded to the LWDA and PAGA Aggrieved Employees.

3. The Net Settlement Amount (\$274,666.67) (i.e., the remainder of the Gross Settlement Amount after deducting the settlement administration costs (\$16,000), PAGA Counsel Fees Payment of 33.33% of the Gross Settlement Amount (\$153,333.33); and (b) Plaintiffs' costs of \$16,000.00, shall be allocated for payment of civil penalties and shall be distributed 75% (\$206,000.00) to the LWDA and 25% (\$68,666.67) to the Aggrieved Employees.

4. The 25% to the Aggrieved Employees shall be distributed pro rata based on the number of PAGA Pay Periods worked during the PAGA Period. "Aggrieved Employees" means all current and former non-exempt employees who worked at least one pay period for Defendant in California at any time during the PAGA Period. The "PAGA Period" means the time period from December 30, 2021 to February 21, 2024 unless shortened by Defendant in accordance with Section III.2 of the Settlement Agreement.

5. The Administrator shall pay the Aggrieved Employees pursuant to the procedure described in the Settlement Agreement.

6. The Court hereby confirms Jose Garay, APLC, as PAGA Counsel.

7. The Court hereby awards attorneys' fees in the amount of \$(153,333.33 and costs

1 in the amount of \$16,000.00. The payment of fees to PAGA Counsel shall be made in
2 accordance with the terms of the Settlement Agreement.

3 8. The Court approves Phoenix Settlement Administrators as the Administrator and
4 awards up to \$16,000 in Settlement Administration Expenses Payment to the Administrator.

5 9. All settlement checks will remain valid for 180 days after which the checks shall
6 become null and void, and any monies remaining in the distribution account shall be transmitted
7 to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employees
8 who failed to cash their check.

9 10. All Aggrieved Employees, including Plaintiffs, and the State of California are
10 deemed to release, on behalf of themselves and their respective heirs, trustees, executors,
11 administrators and successors, the Released Parties from all claims for PAGA penalties that were
12 alleged or reasonably could have been assessed upon and collected from the Defendant and the
13 Released Parties under PAGA, based on the factual allegations in the Action and the PAGA
14 Notice, including but not limited to purported violations of California Labor Code sections 201,
15 202, 203, 204, 226(a), 226.3, 248.1, 248.2, 226/7. 248.6, 226.7, 510, 512, 558, 1174, 1194, 1197,
16 1197.1, 1198, 2100-2112, 2800, and 2802 and Industrial Welfare Commission Wage Orders,
17 including *inter alia*, Wage Orders 4-2001 and 5-200, arising under the PAGA Period from the
18 alleged claims against Defendant for: (1) unpaid wages; (2) unpaid overtime wages; (3) failure to
19 provide meal and rest periods and pay penalties; (4) failure to provide accurate wage statements;
20 (5) failure to pay wages upon termination; (6) failure to maintain accurate payroll records; (7)
21 failure to comply with California Labor Code Sections 2100 – 2112, including any purported
22 imposition of quotas that prohibited employees from taking legally compliant meal and rest
23 periods and bathroom breaks; and (8) failure to reimburse expenses.

24 11. This Court shall retain jurisdiction with respect to all matters related to the
25 administration and consummation of the settlement, and any and all claims, asserted in, arising
26 out of, or related to the subject matter of the lawsuit, including but not limited to all matters
27 related to the settlement and the determination of all controversies relating thereto.

28 **IT IS SO ORDERED.**

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Dated: _____, 2024

Hon. Timothy Patrick Dillon
JUDGE OF THE SUPERIOR COURT

1 Jose R. Garay (SBN: 200494)
2 jose@garaylaw.com
3 **JOSE GARAY, APLC**
4 249 E. Ocean Blvd. #814
5 Long Beach, CA 90802
6 Telephone: (949) 208-3400
7 Facsimile: (562) 590-8400

8 Attorneys for Plaintiffs Fabricio Martinez
9 and Pablo Gomez

10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 FABRICIO MARTINEZ, PABLO
13 GOMEZ, as individuals, and on behalf of
14 all aggrieved employees,

15 Plaintiff

16 v.

17 L.A. SPECIALTY PRODUCE CO., a
18 California corporation, dba VESTA
19 FOOD SERVICES, and DOES 1 through
20 50, inclusive,

21 Defendants.

Case No. 23STCV03777

Assigned for All Purposes to:
Hon. Timothy Patrick Dillon, Dept. 73

PROOF OF SERVICE

Action Filed: February 21, 2023
Trial Date: None set

PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **April 1, 2024**, I served true and correct copies of the following document(s):

- **[PROPOSED] ORDER APPROVING JOINT STIPULATION REQUESTING APPROVAL OF SETTLEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA") AND JUDGMENT**
- **JOINT STIPULATION REQUESTING APPROVAL OF SETTLEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA"); [PROPOSED] ORDER AND JUDGMENT**

I served the document(s) on the person(s) below as follows:

HILL, FARRER & BURRILL LLP

James A. Bowles (SBN 089383)

jbowles@hillfarrer.com

Richard S. Zuniga (SBN 102952)

rzuniga@hillfarrer.com

Elissa L. Gysi (SBN 281338)

egysi@hillfarrer.com

One California Plaza, 37th Floor 300 South Grand Avenue Los Angeles, CA 90071-3147

Telephone: (213) 620-0460

Fax: (213) 624-4840

Attorneys for Defendant L.A. SPECIALTY PRODUCE CO. DBA VESTA FOOD SERVICES

The document(s) were served by the following means:

☒ **By electronic service:** Based upon the Case Anywhere Order issued by the Court, I caused the document(s) to be sent to the persons at the electronic service addresses listed above. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **April 1, 2024**, at Long Beach, California.



Jose R. Garay