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10 and all other Aggrieved Employees

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF IMPERIAL – EN CENTRO COURTHOUSE**
13

14 FRANCISCO AMEZQUITA, on behalf of
15 himself and all other aggrieved employees,

16 Plaintiff,

17 vs.

18 KAIZEN RESOURCES, INC., a Delaware
19 corporation; and DOES 1 through 100,
inclusive,

20 Defendants.
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Case No. ECU003568

[Hon. Jeffrey B. Jones, Dept. 5]

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

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

Date: February 20, 2025

Time: 8:30 a.m.

Dept.: 5

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

2 PLEASE TAKE NOTICE THAT on February 20, 2025, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard in Department 5 of the above-entitled Court, located at
4 939 W Main St., El Centro, CA 92243, Plaintiff Francisco Amezcuita, on behalf of himself and
5 all other aggrieved employees and the State of California as a private attorney general, will and
6 hereby does move the Court for an Order approving the Parties' Representative PAGA
7 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); the Declaration of
11 Adrian C. Byrne, and on such further oral and documentary evidence which may be submitted
12 at the time of hearing, and on the complete files and records in this action.

13
14 Dated: January 24, 2025

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

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17 John A. Van Hook
Adrian C. Byrne

18 Attorneys for Plaintiff Francisco Amezcuita
19 and all other Aggrieved Employees
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1 **I. INTRODUCTION**

2 Plaintiff Francisco Amezcuita (“Amezcuita” or “Plaintiff”) and Defendant Kaizen
3 Resources, Inc. (“Kaizen” or “Defendant,” and collectively with Plaintiff, the “Parties”)
4 negotiated a settlement of Seventy-Eight Thousand Nine Hundred Dollars (\$78,900.00) to
5 resolve this matter brought pursuant to the California Labor Code Private Attorneys General
6 Act 2004, Labor Code section 2698, *et seq.* (“PAGA”). Given the relatively modest number of
7 allegedly “aggrieved employees” and pay periods at issue, this is an outstanding resolution for
8 the State of California and for the allegedly aggrieved employees.

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

12 **II. FACTUAL OVERVIEW**

13 Kaizen owns and operates automobile dealerships in El Centro, California. As part of its
14 dealerships, Kaizen operates service centers, which provide repair and maintenance services. See
15 Declaration of John. A Van Hook [“Van Hook Decl.”], ¶ 3.

16 Plaintiff worked for Kaizen as a non-exempt employee. According to Kaizen’s records,
17 he was employed from May 10, 2019, through August 2, 2023. Plaintiff was paid a combination
18 of hourly and incentive pay. See *id.*, ¶ 4.

19 Plaintiff and other non-exempt employees recorded their work hours, including unpaid
20 breaks, through Defendants’ electronic timekeeping system. Plaintiff alleges that he and other
21 non-exempt employees worked off the clock, including work before clocking in, work after
22 clocking out, and work during meal periods. See *id.*, ¶ 5. Plaintiff also alleges that he was denied
23 legally compliant meal periods, including meal periods that were too late, too short, and/or were
24 interrupted by work. Plaintiff alleges similar violations with rest periods. See *id.*, ¶ 6.

25 Plaintiff also alleges that he was required to use his personal cell phone to communicate
26 with his supervisor during the workday, and that these expenses were not reimbursed by Kaizen.

1 In addition to cell phone expenses, Plaintiff alleges that he had to purchase various tools and
2 equipment to perform his job duties, and that these expenses also were not reimbursed. See *id.*

3 Kaizen denies all of these allegations made by Plaintiff, denies that it violated applicable
4 employment laws as to Plaintiff and as to the allegedly aggrieved employees, and denies that it is
5 liable to Plaintiff or the allegedly aggrieved employees in any manner. See *id.*, ¶ 7.

6 Kaizen's records at the time of mediation reflected a total of 82 allegedly aggrieved
7 employees during the PAGA period, working a total of approximately 2,100 pay periods. See *id.*,
8 ¶ 8.

9 **III. PROCEDURAL BACKGROUND**

10 **A. Plaintiff Files His PAGA Notice and Representative PAGA Complaint.**

11 On September 5, 2023, Plaintiff filed a notice with the Labor and Workforce
12 Development Agency ("LWDA"), giving notice of Plaintiff's potential claims under PAGA.
13 Plaintiff defined the "aggrieved employees" as all of Defendant's non-exempt employees
14 (including those working on an hourly basis, piece-rate, and/or other compensation system)
15 beginning September 5, 2022 (one year prior to the LWDA notice). See *id.*, ¶ 9.

16 Plaintiff did not immediately file his PAGA lawsuit because the Parties were exploring
17 informal settlement discussions. These discussions were unsuccessful, and Plaintiff filed this
18 representative PAGA action in Imperial County Superior Court on June 13, 2024, No.
19 ECU003568. See *id.*, ¶ 10; Complaint.

20 Separately, pursuant to an arbitration agreement entered into between the Parties,
21 Plaintiff initiated an arbitration action with ADR Services regarding his individual claims.
22 Plaintiff concurrently initiated his representative PAGA action in Court. See *id.*, ¶ 11.

23 Plaintiff promptly began formal discovery in the representative PAGA action, including
24 service of Requests for Production of Documents and a Notice of Person Most Knowledgeable
25 ("PMK") Deposition on July 1, 2024, and service of Special Interrogatories on July 30, 2024.
26 See *id.*, ¶ 12.

1 **B. The Parties Reach a Settlement Through a Private Mediation.**

2 After Defendant responded to these discovery requests, the Parties again discussed
3 possible settlement. The Parties ultimately scheduled a private mediation with experienced
4 employment law mediator, Steven Kruis, Esq. The Parties agreed to postpone further formal
5 discovery, including the PMK deposition, until after the mediation. To prepare for the mediation,
6 the Parties engaged in substantial informal discovery. Defendant provided Plaintiff with a list of
7 allegedly aggrieved employees, including their positions, dates of employment, and relevant pay
8 periods Defendant also provided 925 pages of sample time and payroll records for the allegedly
9 aggrieved employees, as well as the relevant policies and employee handbook. In addition to this
10 sample of records for the allegedly aggrieved employees, Defendant produced 923 pages of
11 documents specific to Plaintiff, including his schedules, time and payroll records, among other
12 personnel records relevant to these claims. See *id.*, ¶¶ 13-14.

13 In addition to these records from Defendant, Plaintiff and his counsel conducted their
14 own investigation. Plaintiff participated in multiple conferences with counsel to gather and
15 analyze information in preparation for the mediation. See *id.*, ¶ 15.

16 On November 20, 2024, the Parties participated in a full-day private mediation with
17 Steven Kruis, Esq. Although the Parties did not reach a settlement during the mediation, the
18 Parties ultimately accepted a mediator's proposal shortly thereafter. The Parties agreed to settle
19 this representative PAGA action. In addition, the Parties reached a confidential agreement for the
20 resolution of all Plaintiff's individual claims pending in arbitration. See *id.*, ¶¶ 16-17.

21 Although the mediator's proposal outlined the general terms of the settlement, the Parties
22 subsequently negotiated the terms of the Settlement Agreement. The Settlement Agreement was
23 fully executed on January 22, 2025. See *id.*, ¶ 18. Attached as **Exhibit 1** to the Van Hook
24 Declaration is a true and correct copy of the PAGA Settlement Agreement.

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

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The “Aggrieved Employees” for purposes of the PAGA Settlement are all of Kaizen’s non-exempt employees that worked in California at any time during the PAGA Period. The PAGA Period shall run from September 5, 2022, through the earlier of: (1) date of settlement approval by the Court, or (2) the date that the total number of pay periods of the Aggrieved Employees does not exceed 2,205. See Van Hook Decl., ¶ 21.

- Plaintiff's Counsel's attorney's fees of 1/3 of the PAGA Settlement Sum (\$26,300.00) in connection with the PAGA claims;
- Plaintiff's Counsel's out-of-pocket litigation expenses of \$4,800 arising out of the PAGA Claims (including the mediation fee); and
- PAGA Settlement administration expenses of \$2,750.
- This results in an estimated Net PAGA Settlement Sum of \$45,050 (i.e., the PAGA Settlement Sum minus requested fees, costs, and PAGA settlement administration expenses).

On June 27, 2024, the California Legislature passed two bills reforming various provisions of PAGA. However, the amendments were only applicable to civil actions brought on or after June 19, 2024.¹ Thus, the instant matter is subject to the original legal landscape for previously filed PAGA cases and all references to PAGA refer to the prior statutory provisions applicable to this matter.

¹ See Assembly Bill 2288 and Senate Bill 92.

1 Settlement Fund will be paid to the LWDA and the remaining 25% of the Net PAGA Settlement
2 Fund will be distributed among the aggrieved employees on a pro rata basis according to their
3 pay periods during the relevant time period. Data produced in connection with the mediation
4 indicates 82 current and former Aggrieved Employees (including Plaintiff) and a total of
5 approximately 2,100 pay periods. Recognizing that these figures may vary somewhat, the Parties
6 agreed that the 2,100 pay periods shall be subject to a 5% buffer, meaning that the settlement
7 will cover a maximum of 2,205 pay periods. If the total number of pay periods through the date
8 of Settlement approval is greater than 2,205, then the PAGA period shall end on such that date
9 that the number of pay periods does not exceed 2,205. See Van Hook Decl., ¶ 23; Ex. 1, § IV.E.

10 Payments will be made to the Aggrieved Employees by check to their last known home
11 address, and Aggrieved Employees will not be required to submit a claim form or take any other
12 steps to receive their payment. As this is a PAGA-only settlement, non-PAGA individualized
13 claims (such as claims for alleged unpaid wages, or wrongful termination) of other aggrieved
14 employees are not being released by virtue of the PAGA Settlement. See *id.*, ¶ 24.

15 Subject to the Court's approval, the settlement administration, including calculation and
16 issuance of payments, will be performed by Phoenix Settlement Administrators ("Phoenix"), a
17 nationally recognized settlement administrator. Attached as **Exhibit 3** to Van Hook Decl. is a
18 true and correct copy of Phoenix's quote in the amount of \$2,750 for administration of the
19 PAGA Settlement. See *id.*, ¶ 25; Ex. 3.

20 The PAGA Settlement Agreement releases all PAGA Claims "that arose from Plaintiff's
21 PAGA Notice and operative complaint in this Action for the period of September 5, 2022, up to
22 and including the Approval Date." See Ex. 1 to Van Hook Decl., § V.A.

23 Within 10 business days after the Effective Date of the PAGA Settlement, Defendants
24 shall deposit the Gross PAGA Settlement Fund with the Settlement Administrator (the "Funding
25 Date"). Within 10 business days after funding, the Settlement Administrator shall issue all
26 settlement payments, including the payment to the LWDA, the payment to the Aggrieved
27 Employees, and the payments to Plaintiff's Counsel for the approved attorney's fees and costs.

1 See Van Hook Decl., ¶ 27.

2 Accompanying the payments to the Aggrieved Employees the PAGA Settlement
3 Administrator shall mail a letter explaining the reason for the payment. Attached as **Exhibit 2** to
4 Van Hook Decl. is a true and correct copy of the Notice of Settlement of PAGA Action. See *id.*,
5 ¶ 28; Ex. 2.

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

7 **A. Legal Standard**

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

17 Settlement of a PAGA claim requires that the “Court shall review and approve any
18 penalties sought as part of a proposed settlement agreement pursuant to this part.” previously
19 Labor Code § 2699(l)(2). In contrast to class settlements, there is little case law addressing the
20 standard for approving a PAGA settlement. Courts have found that the PAGA settlement must be
21 reasonable in light of the potential verdict value. See *O’Connor v. Uber Technologies, Inc.* (N.D.
22 Cal. 2016) 201 F.Supp.3d 1110, 1135 (rejecting settlement of less than one percent of the
23 potential verdict). However, PAGA settlements may be substantially discounted given the
24 uncertainties that the plaintiff would prevail, and because courts often exercise their discretion to
25 award PAGA penalties below the statutory maximum, even where a claim succeeds at trial. See
26 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
27 5907869 at **8-9. See also *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (affirming

1 a judgment which only provided for a PAGA penalty of \$5 per violation, as opposed to the \$100
2 maximum awardable penalty).

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

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

11 Notwithstanding that PAGA settlements are not treated as class action settlements, the Parties
12 use the class action settlement standard here because of the dearth of guidance for PAGA
13 settlements approval.

14 Here, with the exception of the percentage of objectors (which is not a factor in the
15 PAGA settlement context) all of these factors are present. The PAGA Settlement Agreement
16 here was the result of extensive arm’s-length negotiations between experienced employment law
17 attorneys who are familiar with the substantive legal issues and with complex representative
18 PAGA litigation. The Parties participated in a full-day, private mediation with an experienced
19 mediator. See Van Hook Decl., ¶ 16. Following the general terms of the agreement reached
20 through a mediator’s proposal at the conclusion of the mediation, the Parties engaged in further
21 negotiations regarding the terms of the Settlement Agreement. See *id.*, ¶ 18.

22 In addition, Plaintiff’s Counsel are experienced in the litigation and settlement of
23 complex wage-and-hour cases, including representative PAGA actions. See Van Hook Decl., ¶
24 29-33; Declaration of Adrian C. Byrne [“Byrne Decl.”], ¶¶ 3-5. Based on their experience
25 litigating similar cases, Plaintiff’s Counsel are of the opinion that this PAGA settlement is fair,
26 reasonable, adequate, and in the best interests of all Parties, the LWDA, and the Aggrieved
27 Employees, in light of all known facts and circumstances and the risks inherent in litigation. See

Van Hook Decl., ¶ 35; Byrne Decl., ¶ 8.

C. Calculation of Maximum Potential Civil Penalty Exposure.

Based on the data provided by Defendants, in reaching this settlement, the Parties estimated that there were a total of 82 allegedly aggrieved employees who worked a total of 2,100 pay periods from September 5, 2022 (the beginning of the PAGA Period) through November 20, 2024 (the date of the mediation). See Van Hook Decl., ¶ 8.

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

The following calculations assume a 100% violation rate, no discretionary reduction of penalties by the Court, and "stacking" of penalties of the three primary predicate violations advanced by Plaintiff, for unpaid overtime, meal period violations, and rest period violations.

Using this methodology, the maximum PAGA penalty, assuming three distinct violations, would be: **\$210,100** (2,100 pay periods x \$100 "initial" penalty rate).

Unpaid wages:	\$210,000
Wage statement violations:	\$210,000
<u>Meal and rest period violations:</u>	<u>\$210,000</u>
Total:	<u>\$630,000²</u>

The PAGA settlement here is \$78,900, or 12.5% of this estimated PAGA exposure, assuming three separate penalties are assessed for each pay period.

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

1 However, if one assumes that “stacking” of multiple penalties in a single pay period is
2 not permitted, or the maximum civil penalties would be approximately \$210,000, In this case, the
3 settlement represents 37.5% of the maximum estimated PAGA exposure.

4 The PAGA settlement provides for a gross settlement of **\$37.57 per pay period**.

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

7 Given the risks and challenges that Plaintiff’s claims would face in extended litigation,
8 and the vigorous substantive and procedural defenses that Defendant would present, Plaintiff and
9 his counsel believe that this is a fair and reasonable settlement, and an excellent outcome for the
10 LWDA and for the allegedly aggrieved employees. See Van Hook Decl., ¶¶ 34-35; Byrne Decl.,
11 ¶ 8. Plaintiff applied various risk discounts to account for the perceived strengths and
12 weaknesses of each claim, as well as Defendant’s anticipated defenses, including manageability
13 issues should the Parties continue litigating. See Van Hook Decl., ¶ 34.

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

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

17 **a. The Availability of “Stacked” PAGA Penalties**

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

1 penalties).

2 Defendant, however, contends that only a single penalty may be assessed per pay period,
3 regardless of the number of different Labor Code provisions violated during that pay period.
4 They argue that this reading is supported by, among other things, the language of Section
5 2699(f)(2): “the civil penalty is one hundred dollars (\$100) for each aggrieved employee for pay
6 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
7 pay period for each subsequent violation.” Defendant contends that only a single penalty may be
8 assessed for each employee for each pay period. While Plaintiff certainly disputes this statutory
9 interpretation, Plaintiff recognizes the lack of certainty, including the lack of appellate authority,
10 as to how trial courts would interpret the statute.

11 In Plaintiff’s calculations set forth above, Plaintiff “stacked” three separate penalties
12 representing the primary predicate Labor Code violations advanced by Plaintiff. However, absent
13 the availability of “stacked” penalties, the maximum PAGA penalty that Plaintiff could recover –
14 no matter the number of violations he could prove at trial – would be \$210,000.

15 **b. The Trial Court’s Discretion to Reduce PAGA Penalties**

16 As Defendant has vigorously argued throughout these settlement negotiations, even if
17 Plaintiff were to prevail on some or all of his PAGA claims, the statute gives trial courts the
18 discretion to reduce the penalties actually awarded. *See* Lab. Code § 2699(e)(2) (allowing
19 reductions of penalties where the full amount would be “unjust, arbitrary and oppressive, or
20 confiscatory”). Moreover, as long as the Court awards some penalties, the statute imposes no
21 limit to the reduction that a court can apply in a PAGA award. Defendant has argued that this
22 Court could (and should) greatly reduce any penalty award against them. While Plaintiff disputes
23 that a substantial discount would be appropriate, the Court’s wide discretion to reduce penalties
24 is a substantial uncertainty that Plaintiff and his counsel properly considered in reaching this
25 settlement.

26 In analyzing the likelihood of discounts by the Court, and appropriate discounts for
27 settlement purposes, Plaintiff and his counsel also considered the nature of the violations. For
28 example, the time and payroll records produced by Defendant suggested that many of the

1 apparent violations, including short or later meal periods, involved meal periods that lasted just
2 below the 30-minute threshold, or meal periods that began just past the end of the fifth hour of
3 work. While Plaintiff maintains that these are still Labor Code violations supporting PAGA
4 penalties, Defendant argues that many of these violations are technical or insignificant.

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

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

18 **2. Defendant's Legal Defenses**

19 Throughout this litigation, including in the settlement negotiations and in the settlement
20 agreement, Defendant argued that Plaintiff would lose most if not all of his PAGA claims if they
21 were tried because Defendant complied with their obligations under the Labor Code and Wage
22 Orders. As to Plaintiff's claims for unpaid wages and overtime, Defendant has argued that it had
23 lawful timekeeping and payroll policies, that any unpaid time occurred due to employee error,
24 and that any unpaid wages were *de minimis*. As Plaintiff's claims for unpaid wages and overtime
25 rested largely on off-the-clock work, Plaintiff had a substantial risk that the Court might not
26 credit the testimony of Plaintiff and other allegedly aggrieved employees regarding off-the-clock
27 work, and might instead credit Defendant's testimony and documentary evidence.

1 Defendant also argued that it provided meal periods and authorized and permitted
2 employees to take rest periods, and that any non-compliant meal and rest periods were the result
3 of decisions by the employees themselves, and not the result of Defendant's actions. Further,
4 Defendant also argued that their wage statements are accurate and complete. While Plaintiff
5 rejects these various defenses, they have not been tested in litigation, raising substantial risks and
6 uncertainty that some or all of Plaintiff's PAGA claims might be defeated on the merits if this
7 litigation continued.

8 Further, even if Plaintiff were to prevail on all of his PAGA claims, it is far from certain
9 that Plaintiff could prove that *every aggrieved employee* suffered a violation in *every pay period*,
10 as is assumed by Plaintiff's estimate of potential PAGA penalties.

11 **3. Defendant's Manageability Arguments**

12 Defendant has argued that Plaintiff's PAGA claims suffer from manageability problems,
13 which might cause the Court to narrow the scope of claims and/or the scope of the aggrieved
14 employees. For example, Defendant argues that the off-the-clock and meal and rest period claims
15 are based on individualized, fact-specific circumstances that are not appropriate for
16 representative adjudication. While Plaintiff contends that PAGA actions, unlike class actions, do
17 not have a manageability requirement, Plaintiff recognizes the current uncertainty in the law
18 regarding the application of this defense.

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

20 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Labor Code §
21 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund
22 for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
23 from the fund as a whole." *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478. *Accord*,
24 *Serrano v. Priest* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys'
25 fees and costs when a litigation proceeding in a representative capacity secures a substantial
26 benefit); *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. This guidance
27 should equally apply to representative settlements under PAGA.

1 Plaintiff's counsel requests an award of attorney's fees of \$26,300, or 1/3 of the PAGA
2 Settlement Sum, which is typical in class and PAGA settlements. These fees are substantially
3 lower than Plaintiff's counsel's lodestar, estimated at \$45,200.00, as described in the
4 accompanying declarations of Plaintiff's counsel. See Van Hook Decl., ¶¶ 37-38; Byrne Decl., ¶
5 6. Accordingly, rather than seeking a multiplier (a common practice in contingency fee and
6 class/PAGA actions), Plaintiff seeks attorney's fees lower than the amount they incurred in
7 prosecuting this action.

8 Plaintiff's counsel's litigation costs are also reasonable, as Plaintiff seeks \$4,800 for
9 reimbursement of out-of-pocket litigation costs. These costs, which exceed the amount
10 requested by Plaintiff, are set forth in the Van Hook Declaration. See Van Hook Decl., ¶¶ 41-43.

11 **V. CONCLUSION**

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

15
16 Dated: January 24, 2025

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

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19 John A. Van Hook
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20 Attorneys for Plaintiff Francisco Amezcuita
21 and all other Aggrieved Employees
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