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Attorneys for Plaintiff
ROBERT IRWIN,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ROBERT IRWIN, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

DURABAG COMPANY INC., a Hawaii
Corporation; TRINET HR II, INC., a
Delaware Corporation; TRINET USA, INC.,
a Delaware Corporation; and DOES 1
through 50, inclusive

Defendants.

Case No. 30-2020-01145526-CU-OE-CXC

Hon. Peter Wilson

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION TO APPROVE
THE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AND RELEASE
UNDER CALIFORNIA LABOR CODE §§
2698 et. seq.**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Memorandum of Points and
Authorities; and [Proposed] Order]*

Date: September 9, 2021
Time: 2:30 p.m.
Dept.: CX102

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals.

3. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I have represented Plaintiff and the aggrieved employees since the inception of this matter. I submit this Declaration in support of Plaintiff's Motion to Approve Settlement Agreement and Release of Private Attorneys General Act of 2004 ("PAGA") Claims under California Labor Code 2698 et seq.

4. On February 24, 2020, Plaintiff Robert Irwin filed a claim notice online with the California Labor & Workforce Development Agency (the “LWDA”) pursuant to Labor Code § 2699.3(a)(1) and gave notice to Defendant and Trinet Hr II, Inc., and Trinet USA, Inc. *See Exhibit 1*. The LWDA Letter alleged that Defendant and Trinet Hr II, Inc., and Trinet USA, Inc. failed to pay minimum wages, wages and overtime, failed to provide accurate, itemized wage statements failed to pay all wages due upon termination, and failed to reimburse necessary business expenses. The LWDA did not respond to the LWDA letter and did not notify Plaintiff or Defendant that it intended to investigate Plaintiff’s allegations.

5. On June 29, 2020, after 65 days from the mailing of the first notice to the LWDA, Plaintiff filed a putative PAGA Complaint against Defendant and Trinet Hr II, Inc., Trinet USA, Inc. in the Superior Court for the State of California, in Orange County, Case Number 30-2020-

1 01151374-CU-OE-CJC, alleging claims for (1) failure to pay minimum wages; (2) failure to pay
2 wages and overtime; (3) failure to furnish accurate itemized wage statements; (4) failure to timely
3 pay final wages upon termination or separation.

4 6. Before filing the lawsuit, my firm investigated and researched the facts and
5 circumstances underlying the pertinent issues and the law applicable thereto. This required
6 thorough discussions and interviews between our firm and Plaintiff, as well as preliminary
7 research into the various legal issues involved in the case. After conducting our initial
8 investigation, we determined that Plaintiff's claims were well-suited for representative action
9 adjudication owing to what appeared to be a common course of conduct affecting a similarly
10 situated group of employees.

11 7. After filing the lawsuit, my firm conducted a thorough investigation of the facts and
12 claims giving rise to the action, including: (1) conducting both formal and informal discovery,
13 and meeting and conferring with defense counsel about same (Defendant informally produced a
14 sampling of time and payroll records for twenty employees from February 25, 2019 through May
15 15, 2020, Plaintiff's personnel file and time and payroll records, policies and procedures
16 regarding wages, and overtime); (2) reviewing and analyzing time and pay records as well as
17 employment handbooks, Plaintiff's personnel files, relevant policies and other documentation; (3)
18 researching the applicable law and potential defenses; (4) constructing damage models based on
19 interpretations of California law; and (5) reviewing information provided by Defendant at the
20 mediation.

21 8. Defendant, for its part, vigorously contested liability, the amount of claimed damages.
22 In addition, informal discovery revealed that Plaintiff, as well as many other Aggrieved
23 Employees, signed an arbitration agreement during their employment with Defendant. The
24 arbitration agreement precludes Plaintiff, or any employee who signed the arbitration agreement,
25 from bringing class claims against Defendant.

26 9. Given the arbitration agreement signed by the Aggrieved Employees, Plaintiff
27 continued proceeding with the claims under Labor Code § 2699. After Plaintiff's Counsel
28 analyzed the relevant documents and other gathered data, Counsel believed that this case was

1 appropriate for resolution via mediation. With the discovery in hand, the parties were able to
2 engage in meaningful settlement discussions, in an attempt to resolve the claims remaining in the
3 Action.

4 **SETTLEMENT NEGOTIATIONS AND TERMS**

5 10. On January 11, 2021, the parties mediated this case with Marc J. Feder, a respected and
6 highly experienced mediator in wage and hour class and PAGA actions. During mediation, the
7 parties discussed all aspects of the case, including the risks of litigation and exchanged further
8 information. The parties recognized that the issues presented in the Action are likely only to be
9 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
10 lead to inconvenience, distraction, disruption, delay and expense disproportionate to the potential
11 benefits of litigation. The parties took into account the risk and uncertainty of the outcome
12 inherent in any litigation.

13 11. As a result of the mediation, the parties agreed to settle the lawsuit according to the
14 terms set forth in the Private Attorney General Act Settlement Agreement (“Settlement
15 Agreement” or “Settlement”), attached hereto as **Exhibit 2**.

16 12. For purposes of the Settlement, Aggrieved Employees are defined as: “all individuals
17 who are or previously were employed by Defendant in California who were classified as non-
18 exempt during the time period February 24, 2019 through January 25, 2021.” In this case, there
19 are 111 Aggrieved Employees.

20 13. The Settlement Agreement requires Defendant to pay a total sum of Ninety-Five
21 Thousand Dollars and Zero Cents (\$95,000.00) (the “Gross Fund Value”) in exchange for a
22 release of Plaintiff’s Representative PAGA claims asserted in the PAGA Complaint. The Gross
23 Fund Value will be allocated as follows, pending Court approval:

- 24 a) Attorneys’ fees of up to one-third of the Gross Fund Value which is Thirty-One
25 Thousand Six Hundred Sixty Six Dollars and Sixty Five Cents (\$31,666.65)
26 (“PAGA Counsel’s Fees”) (see Exhibit 2, at § III, 3(b)) and PAGA Counsel’s
27 litigation costs incurred in this matter which is Eight Thousand Six Hundred
28 Twenty Two Dollars and Fifty Two Cents (\$8,622.50) (“PAGA Counsel’s

Costs) (*see* Exhibit 2, at § III, 3(b)).

- b) Administration costs of no more than Eight Thousand Dollars and Zero Cents (\$8,000.00) to be paid to the Settlement Administrator (“Administration Costs”) for sending notices and for calculating settlement shares and preparing all checks and mailings (*see* Exhibit 2, ¶ at § III, 3(c)); and
- c) The remainder of the Gross Fund Value (the “PAGA Fund”) after deducting the above costs is approximately Forty Six Thousand Seven Hundred Ten Dollars and Eighty Five Cents (\$46,710.85) and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% of the PAGA Fund or the gross amount of Thirty Five Thousand Thirty Three Dollars and Fourteen Cents (\$35,033.14) paid to the LWDA (the “LWDA PAGA Portion) and 25% of the PAGA Fund or the gross amount of Eleven Thousand Six Hundred Seventy Seven Dollars and Seventy One Cents (\$11,677.71) paid to the Aggrieved Employees (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis (*See* Exhibit 2 at § III, 3(a)).

14. From PAGA Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and PAGA Counsel’s own prior litigation experience, PAGA Counsel believes that the recovery for each Aggrieved Employee is fair and reasonable taking into consideration the amounts received in other PAGA actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Aggrieved Employee’s claim to the settlement award he or she will receive. Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm’s length between attorneys with substantial experience litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement process in which the parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

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THE STRENGTH OF PLAINTIFF’S CASE
IN LIGHT OF THE SETTLEMENT AMOUNT

15. Plaintiff alleges that Defendant violated various provisions of California law and seeks civil penalties for the foregoing violations pursuant to Labor Code § 2699 *et seq.*

16. Under Labor Code § 2699, specifically, Plaintiff alleged that the Aggrieved Employees were not paid all wages they were owed, including for all work performed and for all overtime hours worked. Specifically, Defendant’s unlawfully rounded down the hours for Aggrieved Employees.

17. Plaintiff also contend that Defendant failed to provide their employees with accurate, itemized wage statements, in writing, as required by California Labor Code § 226(a). Section 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate. Labor Code § 226(a). These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages, or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages. *Id.* In either case the employer must give the employee these statements twice a month or each time wages are paid. *Id.* As a direct and proximate cause of Defendant’s alleged violation of Labor Code § 226(a), employees allegedly suffered injuries, including not being paid their wages and overtime, confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked. Specifically, the wage statements allegedly failed to accurately account for unpaid wages and overtime due to the off the clock work. As a result, Defendant allegedly failed to provide employees with accurate, itemized wage statements in writing, as required by the Labor Code.

18. By allegedly failing to pay the Plaintiff and Aggrieved Employees their minimum wages, overtime wages, all discussed above, Plaintiff and formerly employed Aggrieved Employees would be due all wages at the time of termination or within seventy-two (72) hours of

1 resignation, as required under Labor Code § 203.

2 19. Regarding the alleged improper rounding and time shaving, Defendant contends that
3 Aggrieved Employees were instructed to clock in before attending to any duties and to stop all
4 work after clocking out. Defendant's further argued that any rounding policy they implemented
5 was neutral on its face and in its effect such that it would not disfavor employees over time.
6 Defendant further argued that since Plaintiff was not disadvantaged by any rounding, they lacked
7 standing to pursue such a claim. *See, e.g., Corbin v. Time Warner Entertainment-*
8 *Advance/Newhouse* (9th Cir. 2016) 821 F.3d 1069 (finding rounding policy that evened out over
9 time lawful, and denying request for certification where plaintiff had no rounding claim).
10 Defendant also argued that to the extent there was any detriment to employees, it was *de minimis*,
11 and therefore not compensable as a matter of law. *Id.* Accordingly, Defendant contends that they
12 paid for all reported hours worked, that Aggrieved Employees were trained to record all hours
13 worked, and that it paid proper overtime and minimum wages to Employees. As a result of
14 Defendant's arguments Plaintiff's Counsel had to apply appropriate discounts in light of the facts
15 and law as discussed above.

16 **PAGA Penalties**

17 20. The Private Attorneys General Act, Labor Code § 2699 et seq., allows Plaintiff to
18 obtain civil penalties on behalf of themselves and other aggrieved employees for Defendant's
19 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
20 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
21 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
22 for each aggrieved employee per pay period for the initial violation and two hundred dollars
23 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
24 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
25 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
26 percent allocated to the affected employees. The limitations period as for all penalties is one year
27 prior to the filing of the complaint. However, under *Amaral v. Cintas*, 163 Cal. App. 4th 1157,
28 1207-09 (2008) the Court held that a lower penalty amount of \$100 per violation applies in the

1 absence of a determination that a violation actually occurred.

2 21. Based on the foregoing facts and law, PAGA Counsel estimated Defendant's maximum
3 total exposure on the PAGA claim at approximately \$223,400. The provisions of the Labor Code
4 potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§
5 201, 202, 203, 204, 210, 226, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2,
6 1197, 1198, 1199, 2698, and 2699, *et seq.* Specifically, the total exposure on the PAGA claim
7 was calculated by multiplying the total number of pay periods (2,234) by \$100.00 per violation.
8 Plaintiff's calculation of the total exposure on the PAGA claim is for one PAGA penalty per pay
9 period (*i.e.*, Plaintiff did not stack the penalties in their calculation). Plaintiff's claims giving rise
10 to the penalties include the following: (1) Defendant's alleged failure to pay minimum wages and
11 overtime due to off the clock work; (2) Defendant's alleged failure to provide accurate wage
12 statements; and (3) Defendant's alleged failure to timely pay formerly employed Aggrieved
13 Employees all wages due and certain at the time of termination or within seventy-two hours of
14 resignation as required by Labor Code §§ 201-203.

15 22. Case law supports the notion that it is inappropriate to "stack" penalties for multiple
16 violations, particularly when those violations all stem from the same alleged "injury" *Aguirre v.*
17 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189
18 Cal.App.4th 562, 577 (2010)). ("One injury gives rise to only one claim for relief...The violation
19 of one primary right constitutes a single cause of action."; *Crowley v. Kattleman*, 8 Cal. 4th 666,
20 681-82) (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012)
21 ("There is no authority that "would permit double recovery of essentially the same penalties.")

22 23. Defendant asserted that if PAGA penalties were mandatory, an employer's PAGA
23 liability would be huge because of the possibility of collecting multiple civil penalties for a single
24 violation, and thus such penalties would almost always dwarf the damages available under the
25 causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor
26 Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty
27 amount specified by this part if, based on the facts and circumstances of the particular case, to do
28 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (See

1 *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (*substantially* reducing PAGA penalties by
2 30% under this provision) (emphasis added); *see also Carrington v. Starbucks Corp.*, 30 Cal.
3 App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal
4 periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.*
5 (2017), LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000);
6 *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million
7 to \$325,000); *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx)
8 (87% reduction from \$2.8 million to \$375,000).). Defendant maintains that it would be unjust to
9 award maximum PAGA penalties.

10 **REQUEST FOR ATTORNEYS' FEES AND COSTS**

11 24. Under the Settlement, the PAGA Counsel requests, without opposition from
12 Defendant, an award of (1) attorney's fees of up to Thirty One Thousand Six Hundred Sixty Six
13 Dollars and Thirty-Five Cents (\$31,666.65) ("PAGA Counsel's Fees) and (2) reimbursement of
14 reasonable costs ("PAGA Counsel's Costs) of Eight Thousand Six Hundred Twenty Two Dollars
15 and Fifty Two Cents (\$8,622.50) (See Exhibit 2, at ¶ § III, 3(c)). Attached hereto and
16 incorporated herein as **Exhibit 3** is my firm's cost log, showing total costs of Eight Thousand Six
17 Hundred Twenty-Two Dollars and Fifty Two Cents (\$8,622.50).

18 25. PAGA Counsel respectfully requests an order approving its attorneys' fees and costs
19 pursuant to the Settlement Agreement.

20 26. This request is fair, reasonable, and adequate to compensate PAGA Counsel for the
21 substantial work they have put into this case and, moreover, the risk they assumed by taking it in
22 the first place. The attorneys' fees award is intended to reimburse Counsel for all uncompensated
23 work that they have already done and for all the work they will continue to do in carrying out and
24 overseeing the notification to the Aggrieved Employees, communicating with Aggrieved
25 Employees regarding their claims, and assisting in the administration of the settlement if it is
26 approved.

27 27. My firm took this case on a contingent-fee basis against a business represented by a
28 reputable defense firm. When we take contingent cases, we must pay careful attention to the

1 economics involved or one bad case can destroy years of work. Accordingly, when we take
2 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
3 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
4 number of hours in a day is limited. Because of this, when we take on one particular matter, we
5 are unable to take on other matters. When my firm became involved in this case, we realized the
6 time commitment that it would entail, and we were forced to turn down matters that we otherwise
7 should have been able to handle.

8 28. Contingent-fee cases present the very real risk of working hundreds if not thousands of
9 hours that may never be entirely compensated. Moreover, while the case is being litigated,
10 counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases
11 pay the out-of-pocket expenses incurred on the plaintiff's behalf. And the prospect of a court-
12 awarded fee does not greatly reduce the risk posed by these cases. In many cases, the prospect is
13 nothing more than a potential that never materializes. First, you must win the case to get a court-
14 awarded fee; even those cases that seem strongest at the onset can be lost and sometimes are lost.
15 Second, there are always the pitfalls and unforeseen obstacles that arise along the way, such as
16 settlement offers that the client may accept without ensuring that we receive a reasonable fee or
17 changes in the law that substantially affect the merits of the case, or other uncertainties involving
18 the client. Finally, there is the great risk inherent in advancing tens if not hundreds of thousands
19 of dollars in out-of-pocket expenses. If that money were to be invested in some sort of financial
20 investment, one would expect a reasonable rate of return on that investment. Here, however, the
21 best we can hope to recover is our money, and then only if we are substantially successful; if we
22 are not, all or part of this "investment" can be lost.

23 29. PAGA Counsel is well acquainted with the contingent-fee market throughout
24 California, particularly as it pertains to PAGA and class-action litigation. PAGA Counsel has
25 negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as
26 representatives in class-action and PAGA suits. Many of those agreements required that counsel
27 receive a fee under certain scenarios that exceeds one-third of the recovery. PAGA Counsel's
28 recent attorneys' fees awards in similar wage-and-hour class and PAGA actions have been one-

1 third of the recovery.

2 30. Attorney's fees payable from this settlement amount to our office in no way
3 undermined our fiduciary duties to the state of California and the Aggrieved Employees.

4 31. PAGA counsel in contingency-fee cases typically receive attorneys' fees equal to or
5 greater than forty percent of the gross settlement amount. *See Crandall v. U-Haul* (Los Angeles
6 County Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney
7 fee request in an overtime-exemption class action; in *Bushnell v. Cremar, Inc.* (Orange County
8 Super. Ct., Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys' fees in
9 the amount of 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Super. Ct.,
10 November 1990), the Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et*
11 *al.*, Alameda County Super. Court, 8-20-1990 No. 572968-3, the court awarded a 40% fee; in
12 *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-CC00333) the Honorable Jonathan
13 Cannon awarded a 40% fee in a wage-and-hour class action which had not yet proceeded to the
14 class certification stage; in both *Rippee v. Boston Market Corporation*, Case No.: 05 CV 1359
15 BTM (JMA) and *Barile v. Boston Market Corporation*, Case No.: 05 CV 1360 BTM (JMA), the
16 Honorable Judge Barry T. Moskowitz awarded a 40% fee to plaintiffs' counsel in wage-and-hour
17 class actions that had not proceeded to the class-certification stage.

18 32. Moreover, PAGA Counsel spent substantial time on this matter. Aside from drafting
19 the initial complaint, PAGA Counsel conducted informal discovery, formal discovery, reviewed
20 and analyzed time and pay records, employment handbooks, Plaintiff's personnel file, relevant
21 policies and other documentation, researched the applicable law and potential defenses,
22 constructed damage models based on interpretations of California law, reviewed information
23 provided by Defendant at the mediation, engaged in meet and confer efforts with Defendant, and
24 ultimately drafted and revised the settlement agreement. PAGA Counsel conservatively estimates
25 that it invested over 123 hours of attorney time in this matter. David Yeremian's billing rate is
26 \$750.00 per hour (18 years out of law school and is less than the Laffey Matrix rate of \$759.00),
27 and he spent approximately 43 hours on this matter. Roman Shkodnik's billing rate is \$575.00 (9
28 years out of law school, Laffey Matrix rate of \$672.00) , and he spent 80 hours on this matter. *See*

1 **Exhibit 4** (David Yeremian Time and Task Summary), Exhibit 5 (Roman Shkodnik Time and
2 Task Summary), and Exhibit 6 (Laffey Matrix). The lodestar for Plaintiff's counsel is \$78,250
3 (\$32,250 for David Yeremian's time on the case and \$46,000 for Roman Shkodnik's time on the
4 case). The fee request of \$31,666.65 is less than the lodestar value of PAGA Counsel's time
5 further evidencing the reasonableness of the request.

6 33. In light of the foregoing, the fee request in an amount equal to one-third of the
7 settlement in this case is well within the bounds that have been established by the above-cited
8 authority. Defendant has no objection to an award of fees in the amount requested.

9 **EXPERIENCE AND VIEWS OF COUNSEL**

10 34. I have been practicing law since 2003. During my career I have represented employees
11 in over 150 wage-and-hour class and/or representative actions as lead or co-lead counsel
12 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
13 obtained six and seven figure settlements against a range of defendants, including Fortune 500
14 companies.

15 35. My firm is well qualified because of our experience, knowledge, and resources to act as
16 counsel and represent Plaintiff and the Aggrieved Employees in this action. A substantial
17 percentage of our practice is devoted to litigating wage, hour, and working-conditions violations,
18 and the bulk of these cases are class and PAGA actions.

19 36. I am experienced in prosecuting employment matters, particularly class and
20 representative PAGA actions. In addition to the present case, I am also class or PAGA counsel for
21 other wage-and-hour class-action lawsuits pending in various counties throughout California
22 (including in federal courts). There follows a list of some of our recent class-action settlements
23 that have received preliminary or final approval: *Galavis v. Patina Restaurant Group, LLC*
24 (LASC BC375225; class size approx. 10,000; co-counsel); *Milford v. ADT Security Services, Inc.*
25 (CACD CV08-2236; class size approx. 2,000; lead counsel); *Carreon v. Wolfgang Puck Catering*
26 *and Events, LLC* (LASC BC398569; class size approx. 1,400; lead counsel); *Fluke v. RFG Oil,*
27 *Inc.* (LASC BC403354; class size approx. 1,400; lead counsel); *Urena v. Camachos Restaurant*
28 (LASC BC365913; class size approx. 887; lead counsel); *Smith v. Rio Rancho Pontiac GMC*

1 *Buick Inc.* (LASC BC391187; class size approx. 860; lead counsel); *Callela v. Dolce Group*
2 (LASC BC364711; class size approx. 600; lead counsel); *Vasquez v. The Hollywood Pig n*
3 *Whistle LP* (LASC BC335075; class size approx. 600; lead counsel); *Goldman v. Aorta*
4 *Restaurant Operating LP* (LASC BC379688; class size approx. 300; lead counsel); *Sink-Crilly v.*
5 *Centex Homes* (CACD CV09-2476; class size approx. 250; lead counsel); *Utley v. Cranbrook*
6 *Partners Inc.* (LASC BC392813; class size approx. 200; lead counsel); *Garcia v. California*
7 *Credits Group* (LASC BC353213; class size approx. 160; lead counsel); *Afanasyev v. Miller*
8 *Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead counsel); *Morris v. Gymboree, Inc.*
9 (LASC BC393270; class size approx. 150; lead counsel); *Ortega v. AJC Sandblasting, Inc.*
10 (LASC BC378806; class size approx. 140; lead counsel); *Lulejyan v. Jim Falk Motors of Beverly*
11 *Hills, Inc.* (LASC BC398459; class size approx. 72; lead counsel); *Rylko v. The Griddle Café,*
12 *Inc.* (LASC BC386126; class size approx. 70; lead counsel); *Healy v. Siemens IT Solutions and*
13 *Services, Inc.* (Santa Clara Superior Court 108CV113479; class size approx. 60; lead counsel).

14 37. This experience is helpful in assessing the reasonableness of settlements such as the
15 one at issue here, and from this experience Plaintiff's Counsel concluded that this lawsuit could
16 not have been settled on better terms than provided under the present settlement agreement given
17 the financial limitations of Defendant.

18 38. In sum, Plaintiff's Counsel is experienced in employment class and PAGA action
19 litigation and is adequate to represent the Aggrieved Employees in the instant action.

20 **SUMMARY**

21 39. If the Court approves each of the foregoing payments, approximately (\$46,710.85)
22 remains in the net settlement fund. Of that 75% (approximately \$35,033.14) must be paid to the
23 Labor and Workforce Development Agency per Labor Code § 2699 et seq. and 25%
24 (approximately \$11,677.71) shall be shared by the Aggrieved Employees.

25 40. Concurrently with the filing of the Settlement Agreement with this Court, Plaintiff's
26 counsel will submit the Stipulation to the LWDA.

27 41. Plaintiff has not served notice on the unnamed Aggrieved Employees and Plaintiff's
28 counsel is unaware of anyone who has relied upon the existence of this action in lieu of pursuit of

1 her individual or PAGA claims against Defendant.

2 42. On August 12, 2021, my office submitted the proposed PAGA Settlement to the
3 LWDA in connection with the PAGA case opened by Plaintiff. Attached hereto as **Exhibit 7** is a
4 true and correct copy of the confirmatory email my office received from the LWDA after
5 submission of the PAGA Settlement.

6 43. I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed this 12th day of August 2021, at Glendale, California.

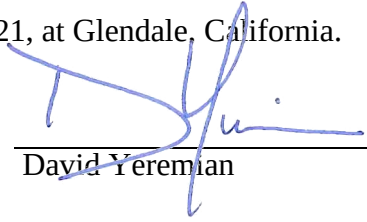
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EXHIBIT 1

THE LAW OFFICES OF

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM

February 24, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Durabag Company Inc.
Frank Huang, Agent for Service
1432 Santa Fe Dr.
Tustin, CA 92780
Certified Mail Tracking Number: 7019 2970 0001 5087 7577

TriNet HR II, Inc.
Corporate Creations Network Inc, Agent for Service
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Certified Mail Tracking Number: 7019 2970 0001 5087 7584

TriNet HR II, Inc.
One Park Pl. Ste. 600
Dublin, CA 94568
Certified Mail Tracking Number: 7019 2970 0001 5087 7591

TriNet USA, Inc.
Corporate Creations Network Inc, Agent for Service
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Certified Mail Tracking Number: 7019 2970 0001 5087 7607

TriNet USA, Inc.
One Park Pl. Ste. 600
Dublin, CA 94568
Certified Mail Tracking Number: 7019 2970 0001 5087 7614

Re: Labor Code § 2699 Penalties
Irwin v. Durabag Company Inc. et al.

Gentlepersons:

This office represents Plaintiff Robert Irwin ("Plaintiff") and other aggrieved employees (collectively "Aggrieved Employees") for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

Plaintiff wishes to bring a representative action on behalf of himself and the State of California against Defendant, Durabag Company Inc., TriNet HR II, Inc., TriNet USA, Inc. and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we Defendants engaged in with respect to our client and all of their California employees.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Defendants’ timekeeping system for the beginning and ending times of their work shifts including requiring Aggrieved Employees to write down when they were starting and ending work for the day. The timekeeping system thus permitted Defendants to record clock in and clock out times to the real-time minute. However, rather than paying Plaintiff and the Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the quarter hour (*i.e.*, to the nearest 15 minute time increment), and generally did so to the detriment of the Employees, and these unlawfully rounded time entries were inputted into Defendants’ payroll system from which wage statements and payroll checks were created. In fact Aggrieved Employees’ timesheets reveal little variance between the hours worked by employees on a daily basis.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a), and Defendants failed to pay Plaintiff and Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Plaintiff and Aggrieved Employees complain of the following violations:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Defendant also had a common policy and/or practice of understating the hours worked by Aggrieved Employees because Defendant would round down Aggrieved Employees time to the nearest 15 minute time increment order to avoid paying them for all the hours worked. Thus, Aggrieved Employees were required to work hours without wages. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for

Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, Aggrieved Employees seek to recover penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions.

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week including "pre-shift" and "post-shift" hours. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. As discussed above Defendants improperly rounded down to the nearest quarter hour, changed, adjusted and/or modified Aggrieved Employees hours in order to avoid paying them for all hours worked as Aggrieved Employees' timesheets reveal little variance between the hours worked by employees on a daily basis.

In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for all hours worked as described above, unpaid wages, overtime, discussed above. In addition the wage statements reflected the incorrect hours worked due to the rounding and understating noted above. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred

dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees' wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Aggrieved Employees seek to recover penalties, interest, fees and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194.

Failure to Keep Records In Accordance With Labor Code § 1174

Section 1174 requires employers to keep records showing payroll records and the hours worked daily by and the wages paid to employees. Failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages fur and owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Unfair Competition Under Business and Professions Code § 17200, et seq.

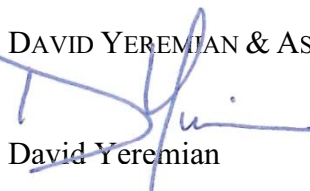
Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

We are constrained to move forward with the filing of this complaint, alleging the causes of action discussed herein, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Wherefore we request that you advise us, by certified mail within sixty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a § 2699 claim in an amended complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Above listed Defendants by Certified Mail

EXHIBIT 2

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiff Robert Irwin (“Plaintiff”) acting in their private attorney general capacity, and Defendant Durabag Company, Inc. (“Defendant”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Actions” means the actions entitled *Robert Irwin v. Durabag Company, Inc.*, Superior Court of California, County of Orange, Case No. 30-2020-01145526-CU-OE-CXC;

2. “Aggrieved Employees” means all individuals who are or previously were employed by Defendant in California who were classified as non-exempt during the time period February 24, 2019 through January 25, 2021. The Aggrieved Employees are estimated to consist of 103 individuals.

3. “Aggrieved Employee List” means the spreadsheet containing the list of Aggrieved Employees with their social security numbers, last known addresses, and their dates of employment and/or pay periods worked as an Aggrieved Employee during the PAGA period.

4. “Court” means the Superior Court of California, County of Orange.

5. “Incentive Payment” means the amount to be paid to Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of Aggrieved Employees. Subject to the Court granting approval of this settlement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of an Incentive Payment of \$2,500, as approved by the Court, which Defendant agrees not to oppose.

6. “Individual PAGA Payment” means the amount to be paid to each of the Aggrieved Employees out of 25% of the PAGA Payment under Labor Code section 2699 with such individual shares to be based on the number of pay periods during which an individual worked as an Aggrieved Employee during the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period.

7. “LWDA” means the California Labor Workforce Development Agency.

8. “Gross Fund Value” means the total sum of \$95,000 for payment of the Administration Costs, Attorneys’ Fees, Attorneys’ Expenses, and the PAGA Payment. The Gross Fund Value shall be all-in with no reversion to Defendant. If the total number of Representative Group Members or pay periods increases by more than 15%, then there shall be a corresponding pro-rata increase in the GFV.

9. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698 *et seq.*

10. “PAGA Action” means the PAGA causes of action included in action entitled *Robert Irwin v. Durabag Company, Inc.*, Superior Court of California, County of Orange, Case No. 30-2020-01145526-CU-OE-CXC.

11. “PAGA Approval Date” means the date that the Court signs the Judgment approving the settlement of the PAGA Action.

12. “PAGA Payment” means the total amount remaining in the Gross Fund Value after payment of the Attorneys’ Fees, Attorneys’ Expenses, and the Administration Costs. The PAGA Payment shall be allocated under Labor Code section 2699 with 75% of the Section 2699 payment going to the LWDA and 25% to the Aggrieved Employees. The Aggrieved Employees will be issued a form 1099 for their Individual PAGA Payments.

13. “PAGA Period” means the time period from February 24, 2019 through January 25, 2021.

14. “Parties” means Plaintiff Robert Irwin and Defendant *Durabag Company, Inc.*

15. “Plaintiff Counsel” means the law firms of David Yeremian & Associates, Inc.

16. “Released Parties” means Durabag Company, Inc. TriNet HR II, Inc., TriNet USA, Inc. and TriNet and any of their agents, officers, directors, employees, stockholders, members, parent corporations, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers, and assigns of the foregoing.

17. “Settlement Administrator” means CPT Group, Inc..

II. RECITALS

1. On February 24, 2020, Plaintiff filed a Representative Action Complaint in Orange County Superior Court (*Robert Irwin v. Durabag Company, Inc. et al.* Case No. 30-2020-01145526-CU-OE-CXC) alleging a sole cause of action for Defendant’s and Defendant Trinet HR II, Inc., and Defendant Trinet USA Inc. alleged violation of the PAGA. (“PAGA Action”).

2. On July 14, 2020, Plaintiff filed an individual Action Complaint in Orange County Superior Court (*Robert Irwin v. Durabag Company, Inc. et al.* Case No. 30-2020-01151374-CU-OE-CJC) against Defendant and Defendant Trinet HR II, Inc., and Defendant Trinet USA Inc.: alleging seven causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code § 510; (3) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (4) Violation of Labor Code § 226(a); (5) Violation of Labor Code § 221; (6) Violation of Labor Code § 203 and (7) Violation of Business & Professions Code § 17200 *et seq.* (“Individual Action”).

3. On January 11, 2021, the Parties engaged in a mediation session before mediator Marc J. Feder. Through arms-length negotiations with the assistance of the mediator, the Parties reached an agreement to settle the Actions which led to the signing of a Memorandum of Understanding.

4. As a result of the settlement, the Parties have agreed to fully and finally resolve the PAGA Released Claims alleged in the pending coordinated actions pursuant to this Settlement Agreement. Plaintiff shall separately dismiss the Individual Action claims in the Individual Action with prejudice.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. Non-Admission. Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees, or any other person, and Defendant specifically disclaim any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Settlement Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, by Defendant or any other Released Party. The Parties themselves agree not to introduce, use, or admit this Settlement Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding before any court that has as its purpose the interpretation, implementation, or enforcement of this Settlement Agreement or any orders or judgments of the Court entered in connection with the Settlement Agreement.

None of the documents produced or created by Defendant or any other Released Party, Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant or any other Released Party of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Actions or in any other action or proceeding; provided, however, this shall not prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Settlement Agreement.

2. **Timing.** Within thirty (30) days after the Effective Date of this settlement, Defendant shall pay to the Settlement Administrator \$95,000 as the Gross Fund Value and provide the Aggrieved Employee List to the Settlement Administrator. The “Effective Date” of this settlement is the date on which the Court’s order approving the settlement of the PAGA Action and judgment thereon (“Judgment”) becomes final. For purposes of this Settlement Agreement, the Court’s Judgment “becomes final” upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (this time period shall not be less than 60 calendar days after the Court’s Judgment is entered); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.

3. **Payments From the Gross Fund Value.** The Parties agree to the following allocations to be paid from the Gross Fund Value:

a. **PAGA Payment:** The PAGA Payment is the total of the Gross Fund Value, less the payments for the Attorneys’ Fees, Attorneys’ Expenses and the Administration Costs, which shall be paid in full settlement of the PAGA Released Claims. Should the amount of the PAGA Payment increase or decrease, the amount to be distributed shall be adjusted according to the changes made by the Court. The PAGA Payment will be subject to Court approval consistent with Labor Code § 2699. Upon approval, the PAGA Payment shall be distributed as follows:

- (1) One Hundred Percent (100%) of the PAGA Payment shall be paid as a Labor Code section 2699 payment with 75% of this amount being paid to the LWDA and 25% being paid to the Aggrieved Employees as their Individual PAGA Payments. Each Individual PAGA Payment shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period. This amount shall constitute resolution of all remedies available under Labor Code section 2699, and preclude pursuit by Aggrieved Employees of any PAGA Released Claims.
- (2) The penalty settlement payments set forth in section 4(a)(1) will be reported on IRS Form 1099s. The Parties acknowledge and agree that all payments under this Settlement Agreement as PAGA

Payments are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA Payments under this Settlement Agreement.

b. Attorneys' Fees and Attorneys' Expenses: One-Third of the Gross Fund Value, which is presently \$31,666.35, shall be paid to Plaintiff's Counsel for payment of Attorney's Fees, and up to \$15,000 shall be paid to Plaintiff's Counsel for Attorneys' Expenses as set forth in the clients' billing statement (pursuant to Declarations by Plaintiff's Counsel) in prosecuting the PAGA claims. Defendant shall not oppose Plaintiff's request for Attorneys' Fees and Attorneys' Expenses in these amounts. In the event that Court approval is required and a payment of less than One-Third of the Gross Fund Value in Attorneys' Fees or \$31,666.35 in Attorneys' Expenses to Plaintiff's Counsel is approved, the unawarded difference will be added to the PAGA Payment and not to Plaintiff's Counsel or the Defendant. This payment will be reported on IRS Form 1099 issued to Plaintiff's Counsel. Except as set forth herein, each party shall bear their own costs and fees of the Actions. The payment of Attorneys' Fees shall be made to David Yeremian & Associates, Inc. The Attorneys' Expenses shall be allocated based upon the costs incurred by each Plaintiff's Counsel as set forth in their declarations for the approval of costs.

c. Administration Costs: A Settlement Administrator shall be selected after receipt of bids and shall be mutually agreed to by the Parties. Administration costs shall not exceed the estimate of the Settlement Administrator to administrate the settlement. Administration Costs shall include the cost of the Settlement Administrator selected by the Parties to administer the settlement in the amount of up to \$8,000. In the event that Court approval of these payments is required and a payment of less than \$8,000 is approved, or if the actual cost to administer the settlement is less than \$8,000, the difference will be added to the PAGA Payment.

d. Representative PAGA Release. In their capacity as private attorney generals "aggrieved employees" acting on behalf of themselves, the State of California and the Aggrieved Employees, and in consideration of the PAGA Payment and the payment to Plaintiff's Counsel for Attorney's Fees and Attorney's Expenses, upon entry of the Judgment, Plaintiff will release Defendant from any and all PAGA Released Claims.

4. PAGA Released Claims.

a. Upon the Effective Date, the Released Parties shall be entitled to a release from the State of California and the Aggrieved Employees only as to all PAGA claims based on the alleged facts and legal claims in the operative complaints of *Robert Irwin v. Durabag Company, Inc. et al.* Case No. 30-2020-01145526-CU-OE-CXC and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, class claims, and PAGA claims outside of the PAGA Period ("PAGA Released Claims"). The PAGA Released Claims expressly exclude all PAGA claims outside the PAGA Period, all PAGA claims not alleged in the operative complaints in the Actions, all claims

under Cal. Labor Code § 558(a)(3), and all non-PAGA claims. **In no event shall the release of the PAGA Released Claims in this Settlement Agreement release any individual claims of any individuals other than Plaintiff.**

b. As part of this Settlement, in addition to the Gross Fund Value Defendant has agreed to pay Plaintiff an agreed to sum certain of \$5,000 pursuant to a separate agreement in exchange for a general release of all individual claims arising out of employment with Defendant, including a waiver of any unknown claims pursuant to California Civil Code section 1542. Plaintiff represent that he does have individual claims other than his PAGA claims which Plaintiff is separately settling. Pursuant to California Rules of Court, Rule 3.770, PAGA Counsel will be filing a declaration with the court disclosing the consideration given for settling these individual claims and confirming that the consideration is unrelated to and separate from the settlement of their PAGA claims. Plaintiff represents and agrees that he will separately dismiss the Individual Action with prejudice.

5. Covenants and Representations by Plaintiff and Plaintiff's Counsel.

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that he has read this Settlement Agreement, that he fully understand his rights, privileges and duties under the Settlement Agreement, and enter into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

c. Plaintiff further agrees to seek a Judgment in the PAGA Action on the PAGA Released Claims.

6. No Publicity. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, or otherwise publicize the settlement other than in documents submitted to the Court.

7. Court Approval of the PAGA Payment. Subject to Defendant's review and approval prior to filing, Plaintiff's Counsel shall be responsible for preparing and filing a Motion for Approval of the PAGA Payment with the proposed Judgment ("Motion"). Plaintiff's Counsel will provide Defendant's counsel with an opportunity to propose revisions to that Motion before it is filed. This Motion shall also be served on the LWDA when filed with the Court.

8. Court Approval of the PAGA Settlement. The Settlement Agreement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement Agreement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns. If after the Parties make at least three (3) good faith efforts, the Court does not approve this Settlement Agreement, or if appellate review is sought and on

such review the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement are not approved or is materially modified or reversed or found to be invalid and the Parties in good faith do not believe that it would be possible to make non-material modifications that would address any concerns raised by the Court, then each of the Parties by and through Counsel shall have the right within fifteen (15) business days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

IV. ADMINISTRATION OF SETTLEMENT

1. After the execution of this Settlement Agreement, Plaintiff shall file the Motion and will submit the Motion and this Settlement Agreement on the LWDA consistent with Labor Code § 2699(1)(2).

2. Settlement Administrator will administer the settlement and shall be paid for Administration Costs, which are estimated to be up to \$8,000 . Defendant will provide the necessary information about the Aggrieved Employees and payment of the Gross Fund Value to the Settlement Administrator within 30 days of the approval of the PAGA settlement by the Court.

3. Within fifteen (15) days after receipt of the Gross Fund Value from Defendant, the Settlement Administrator will issue to each Aggrieved Employee a check for their Individual PAGA Payment at their last known home address along with an explanatory letter which will be mutually approved by the parties. Checks will remain negotiable for one hundred eighty (180) days. 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, Social Security number, phone number, credit reporting and social media of the Aggrieved Employee involved and will then perform a re-mailing. The amount of any individual settlement payments that remain undeliverable or uncashed 180 calendar days after the postmarked date of the initial mailing of the individual settlement payments will be sent to the California State Controller's office to be held as "unclaimed property" in the name of the Aggrieved Employee. The settlement administrator shall notify Plaintiff's Counsel and Defendant's counsel of any undeliverable checks. The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099.

4. Within fifteen (15) days after receipt of the Gross Fund Value from Defendant, the Settlement Administrator will pay the Attorneys' Fees, the Attorneys' Expenses, the Administration Costs, and the portion of the PAGA Payment allocated to the LWDA from the Gross Fund Value.

5. The Settlement Administrator will provide an accounting under oath to the parties of the amounts paid out.

6. Defendant makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement and expressly disclaims any and all liabilities, assessments, fines, attorney fees, and any other costs or fees arising from, related to, or in connection with any and all assessments made by any governmental agency arising out of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. Drafting. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. No Impact on Benefit Plans. Neither the Settlement Agreement nor any amounts paid to Plaintiff or any Aggrieved Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plans, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of their benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

3. Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

4. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

5. Authority. Defendant represents and warrant that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrant that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Settlement Agreement.

6. Governing Law. This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Orange, California and all questions of validity, interpretation or

performance of any of its terms or of any rights or obligations of the parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Orange.

7. Complete Agreement. The Parties acknowledge and represent that this Settlement Agreement contains the entire understanding between them with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between them, written and oral, with respect to the subject matter hereof. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

8. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the settlement of the PAGA Action as provided herein; or (ii) the settlement of the PAGA Action does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

9. Judgment and Continued Jurisdiction. After approval of this settlement, the Court will have continuing jurisdiction pursuant to California Code of Civil Procedure section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

10. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their Counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement of the PAGA Action. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement of the PAGA Action, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the mediator to resolve such disagreement.

11. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic, facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they

have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

13. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

15. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Representation By Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement and receive approval from the Court.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

20. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant or an admission or concession regarding the validity of the claims in the Actions. Nothing in this Settlement Agreement, nor any action taken in implementation thereof,

nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the Actions, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation or lack of violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in any court that has as its purpose the interpretation, implementation, or enforcement of the Settlement Agreement or any orders or judgments of the Court entered into in connection therewith.

21. No Admission of Liability or Wrongdoing by Defendant. Defendant contends that all of its employees were compensated in compliance with the law, and that their conduct was not willful with respect to any alleged failure to pay any wages or penalties. Defendant has denied, and continue to deny, each of the claims and contentions alleged in the Actions. Defendant has asserted and continue to assert defenses thereto, and have expressly denied and continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Actions. Neither this Settlement Agreement, nor any action taken to carry out the terms of this Settlement Agreement, shall ever be construed as, offered, admitted, received or deemed to be evidence in any civil, criminal, administrative, or other proceeding against Defendant or any of the Released Parties, or may be used as an admission, concession, or indication by or against Defendant of any fault, wrongdoing, or liability whatsoever.

22. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of the Settlement Agreement, Plaintiff and Defendant, inclusive, hereby waive any and all rights to appeal in connection with any issue in the Judgment, including, but not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment will become final and non-appealable at the time it is entered.

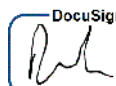
23. Stay of Litigation. The Parties agree that the continuing litigation of the Action shall be stayed and that the time to bring the State Court action to trial shall be extended pending the outcome of the settlement process.

24. Disputes. Any dispute between the Parties as to the remaining terms of the Settlement Agreement shall be presented to the mediator for resolution.

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: 4/21/2021

DocuSigned by:

D8BFA0F41BB54E6...
Robert Irwin

DEFENDANT:

Dated: _____ Durabag Company, Inc.

By: _____

APPROVED AS TO FORM AND CONTENT:

DAVID YEREMIAN & ASSOCIATES, INC.

Dated: 4/21/2021

By: 
DAVID YEREMIAN
ATTORNEYS FOR PLAINTIFF

Goldberg Segalla

Dated: _____

By: _____
KAREN LUH
ATTORNEYS FOR DEFENDANT

Dated: _____

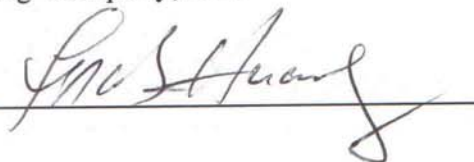
Robert Irwin

DEFENDANT:

Dated: 6/2/2021

Durabag Company, Inc.

By: _____



APPROVED AS TO FORM AND CONTENT:

DAVID YEREMIAN & ASSOCIATES, INC.

Dated: _____

By: _____

DAVID YEREMIAN
ATTORNEYS FOR PLAINTIFF

Goldberg Segalla

Dated: 5/19/2021

By: _____



KAREN LUH
ATTORNEYS FOR DEFENDANT

EXHIBIT 3

Cost report for IRWIN v. DURABAG COMPANY, INC. (PAGA)

<i>Date</i>	<i>TaskCode</i>	<i>Payee</i>	<i>Description</i>	<i>Cost</i>	<i>Acct/Check No</i>
2/24/2020		LWDA	PAGA LETTER	\$75.00	PAGA LETTER 3848
6/29/2020		Rapid Legal	((2)REJECTED BY COURT) SUMMONS & COMPLAINT	\$12.65	Filing
6/30/2020		Rapid Legal	SUMMONS & COMPLAINT - filing fee and complex fee advanced	\$1,494.29	Filing
7/2/2020		Rapid Legal	(REJECTED BY COURT) SUMMONS & COMPLAINT	\$12.65	Filing
7/16/2020		Rapid Legal	PROCESS OF SERVICE - DURABAG COMPANY, INC.	\$113.58	SERVICE
8/4/2020		Rapid Legal	NAR - 3 ENTITIES	\$12.65	Filing
8/12/2020		Rapid Legal	POS OF SUMMONS - DURABAG COMPANY, INC.	\$12.65	Filing
8/28/2020		Rapid Legal	STATUS CONFERENCE STATEMENT	\$10.33	Filing
1/6/2021		MARC J. FEDER	MEDIATION (1.11.21)	\$3,667.00	MEDIATION 4295
2/10/2021		Rapid Legal	MINUTE ORDER CONT STATUS CONFERENCE (4.23.21)	\$12.65	Filing
4/14/2021		Rapid Legal	JOINT STATUS CONFERENCE STATEMENT (4.23.21)	\$12.65	Filing
7/2/2021		Rapid Legal	JOINT STATUS CONFERENCE STATEMENT (7.9.21)	\$14.71	Filing
7/7/2021		Courtcall	STATUS CONFERENCE (9.10.21)	\$94.00	COURTCALL
7/9/2021		Courtcall	HRNG ON MTN FOR PAGA APPROVAL	\$94.00	COURTCALL
7/9/2021		Courtcall	COMPLIANCE HRNG RE DISBURSEMENT OF FUNDS - future hrng	\$94.00	COURTCALL
7/9/2021		Rapid Legal	MTN FOR PAGA APPROVAL - mtn fee advanced	\$95.00	Filing
7/9/2021		Rapid Legal	DEC RE FINAL DISBURSEMENT OF FUNDS - future filing	\$12.65	Filing

TOTAL COST **\$5,840.46**

Total Cost By Account

COURTCALL	\$282.00
Filing	\$1,702.88
MEDIATION	\$3,667.00
PAGA LETTER	\$75.00
SERVICE	\$113.58

Cost report for IRWIN v. DURABAG COMPANY, INC. (INDIVIDUAL)

<i>Date</i>	<i>TaskCode</i>	<i>Payee</i>	<i>Description</i>	<i>Cost</i>	<i>Acct/Check No</i>
7/27/2020		Rapid Legal	SUMMONS & COMPLAINT - filing fee advanced	\$461.79	Filing
8/10/2020		Rapid Legal	SUMMONS (REJECTED BY COURT)	\$12.65	Filing
8/13/2020		Rapid Legal	SUMMONS	\$12.65	Filing
8/25/2020		Rapid Legal	PROCESS OF SERVICE - TRINET USA, INC.	\$77.44	SERVICE
8/25/2020		Rapid Legal	PROCESS OF SERVICE -TRINET HR, INC.	\$77.44	Filing
8/28/2020		Rapid Legal	PROCESS OF SERVICE - DURABAG COMPANY, INC.	\$77.44	SERVICE
9/3/2020		Rapid Legal	POS OF SUMMONS - 3 ENTITIES	\$12.65	Filing
2/22/2021		BERGER CONSULTIN	EXPERT ANALYSIS	\$2,050.00	EXPERT ANALYSIS

TOTAL COST **\$2,782.06**

Total Cost By Account

EXPERT ANALYSIS	\$2,050.00
Filing	\$577.18
SERVICE	\$154.88

EXHIBIT 4

Tasks Performed	Atty Hours Est.	Date range
<u>1. Pre-Filing and Investigation Tasks</u> • Conference with client; review client docs; interview re: facts of case • Research case law and other cases, and research Defendant and their operations and prior litigation • Draft retainer and opening file documents • Reviewed associate's factual and legal research into the merits of Plaintiff's claims	2	Dec 2019 – Jan 2020
<u>2. Filing the Complaint and Drafting and Sending the LWDA Letter Notice</u> • Review and revise complaint • Review and revise LWDA exhaustion letter re: PAGA Notice and claims and facts and theories and grounds for recovering civil penalties	2	Feb 2020 -Mar 2020
<u>3. Initial conferences and correspondence with Defendant's counsel and Initial scheduling conference</u> • Review case initiation documents, conformed copies, and review initial Case Management Conference order and notice of CMC • Confer with defense counsel regarding notice and acknowledgement	1	April 2020 – Jun 2020
<u>4. Potential ADR Discussions and initial formal and informal discovery requests</u> • Confer with defense counsel and exchange e-mails regarding decision to proceed with mediation and status of discovery and how to approach in light of agreement • Confer and correspond with Defendant and mediators regarding mediator selection and availability and scheduling • Agree upon mediator and draft multiple e-mails and respond regarding scheduling • Confer with Plaintiff regarding mediation and availability, and review multiple correspondences from Plaintiff regarding ongoing claims and issues to address with Defendant • Confer with statistical analysis expert regarding production and review and information and items needed to provide conclusions and recommendations and provide documents to him; discuss case claims and approach to damages	3	Jun 2020 – July 2020
<u>5. Complete Initial Informal Discovery, Mediation Preparation, and Conduct Mediation and further discovery meet and confer –</u> • Review formal discovery requests • Complete informal discovery and production of documents and Aggrieved Employees' data • Review all production and file documents and policy documents and compile key exhibits and documents for mediation • Confer and correspond with Defendant's counsel regarding Aggrieved Employees' data and numbers agreed upon and extrapolated for mediation • Complete and draft calculations of Defendant's potential liability	32	Aug 2020 – Jan 2021

Detailed Time and Task Summary – David Yeremian

exposure and summarize defenses to each and alleged bases for reduction in calculated numbers • Provide Aggrieved Employees data and documents as necessary to expert and confer with expert regarding conclusions and numbers for Aggrieved Employees based on the provided information • Review and revise mediation brief, address background and procedure and discovery completed, address relevant policies of Defendant and each of Plaintiff's claims, and the facts and law supporting them, and research and calculate potential estimated damages and penalties exposure • Attend mediation • Conferences with defense counsel regarding Settlement and general terms • Review correspondence following mediation with mediator and confer regarding continued efforts to finalize settlement terms		
<u>6. Finalizing Settlement Agreement and Terms –</u> • Review and revise Memorandum of Agreement; conferences with counsel re same • Review stipulation to continue case management conference to complete Settlement Agreement and attend to filing • Review and revise long form Settlement Agreement and conduct multiple conferences and correspondence with defense counsel regarding detailed terms and revisions • Multiple correspondence and conferences with defense counsel regarding settlement terms and revisions and additions • Review Aggrieved Employees Notice and e-mails regarding same and finalizations after editing • Review administrator quotations and discuss with associate • Conduct multiple conferences with Plaintiff regarding Settlement and terms and responding to his questions and concerns. Address in detail with Plaintiff his ongoing employment and the implications of the Settlement and ensuring it does not impact his current employment status with Defendant	2	October 2020 – July 2021
<u>7. Motion for PAGA Settlement Approval:</u> • Review and revise motion for PAGA approval of the Settlement and supporting documents and declarations and attend to filing • Review entire file, emails, and compile time summary	1	August 2021
TOTAL:	43 Hrs.	

EXHIBIT 5

Tasks Performed	Atty Hours Est.	Date range
<u>1. Pre-Filing and Investigation Tasks –</u> • Complaint research and research case law and other cases, and research Defendant Durabag Company Inc, Defendant Trinet HR II, Inc., and Defendant Trinet USA, Inc. (collectively “Defendants”) and their operations and prior litigations. • Confer with client and review documents with client, including personnel file request and production – send records request and confer with Client and Defendants regarding personnel file; • set up file and documents, including atty-client agreement, responsibilities of a class rep. and wage statements and personnel file documents. • Research California Secretary of State filings for Defendants. • Conduct factual and legal research into the merits of Plaintiff’s claims; • Researching similar wage class actions; • Conduct multiple conferences discussing the facts and allegations with Plaintiff, addressing conduct of litigation, time frame for events and initial actions to commence litigation.	20	Dec 2019 – Jan 2020
<u>2. Filing the Complaint and Drafting and Sending the LWDA Letter Notice</u> • Conduct further research regarding Defendants and policies and practices and confer with client and draft detailed file notes; • Draft Class Action Complaint and allegations. • Draft LWDA Letter and correspondence to LWDA and Defendants re: PAGA Notice and claims and facts and theories and grounds for recovering civil penalties. • Confer and correspond with client regarding Complaint and review and approval of factual allegations and attend to filing.	10	Feb 2020 -Mar 2020

<u>3. Initial conferences and correspondence with Defendants' counsel and Initial scheduling conference and case initiation requirements.</u> • Review case initiation documents and conformed copies, and review initial Case Management Conference order and draft notice of CMC. • Confer and correspond with process server regarding service on Defendants and status and documents to provide. • Conduct multiple conferences with Client and exchange e-mails regarding ongoing experiences as a current employee of Defendants and evidencing claims. • Continue compiling case documents from Plaintiff and case research regarding the applicable authorities and claims and Defendants' policies and operations. • Conduct teleconferences and exchange correspondence regarding claims and Defendants and its operations and the case and claims. • Confer with defense counsel regarding notice and acknowledgement • Draft multiple correspondences to Defense counsel regarding case and conference and appearance and discovery. • Conduct further investigation into the claims, and conferences with client regarding same and documents supporting allegations.	10	April 2020 – Jun 2020
<u>4. Potential ADR Discussions and initial formal and informal discovery requests</u> • Confer with defense counsel and exchange e-mails regarding decision to proceed with mediation and status of discovery and how to approach in light of agreement. • Draft and serve initial informal and formal discovery requests and confer and correspond with Defendants' counsel regarding them and responsive information and documents. • Confer and correspond with Defendants and mediators regarding mediator selection and availability and scheduling. • Agree upon Marc Feder for mediation in January and draft multiple e-mails and respond regarding scheduling. • Book mediation and begin preparation after finalizing scheduling based on parties and counsel schedules and availability and that of the mediator. • Confer with Plaintiff regarding mediation and availability, and review multiple correspondences from Plaintiff regarding ongoing claims and issues to address with Defendants. • Draft stipulations and file all documents regarding conferences and case management dates and continuances for mediation. • Confer with statistical analysis expert regarding production and review and information and items needed to provide conclusions and recommendations and provide documents to him; discuss case claims and approach to damages.	7	Jun 2020 – July 2020

<u>5. Complete Initial Informal Discovery, Mediation Preparation, and Conduct Mediation and further discovery meet and confer –</u> • Draft correspondence with Defendants’ counsel and mediator regarding mediation and scheduling. • Complete informal discovery and production of documents and Aggrieved Employees’ data. • Review all production and file documents and policy documents and compile key exhibits and documents for mediation. • Confer and correspond with Defendants’ counsel regarding Aggrieved Employees’ data and numbers agreed upon and extrapolated for mediation. • Complete and draft calculations of Defendants’ potential liability exposure and summarize defenses to each and alleged bases for reduction in calculated numbers. • Provide Aggrieved Employees data and documents as necessary to expert and confer with expert regarding conclusions and numbers for Aggrieved Employees based on the provided information. • Conduct case law review and research regarding accurate wage statements. • Draft mediation brief, address background and procedure and discovery completed, address relevant policies of Defendants and each of Plaintiff’s claims, and the facts and law supporting them, and research and calculate potential estimated damages and penalties exposure. • Complete conferences with defense counsel regarding Settlement and general terms. • Draft correspondence following mediation with mediator and confer regarding continued efforts to finalize settlement terms. Agree to and address general terms for settlement and begin drafting agreement and Aggrieved Employees notice.	15	Aug 2020 – Jan 2021
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6. Finalizing Settlement Agreement and Terms – • Draft and correspond with Defense counsel regarding Memorandum of Agreement and attend to finalizing and executing. • Draft stipulation to continue case management conference to complete Settlement Agreement and attend to filing. • Draft long form Settlement Agreement and conduct multiple conferences and correspondence with defense counsel regarding detailed terms and revisions. • Multiple correspondence and conferences with defense counsel regarding settlement terms and revisions and additions. • Draft Aggrieved Employees Notice and e-mails regarding same and finalizations after editing. • Confer with administrators and receive quotations and agree on estimate and administrator. • Conduct multiple conferences with Plaintiff regarding Settlement and terms and responding to his questions and concerns. Address in detail with Plaintiff his ongoing employment and the implications of the Settlement and ensuring it does not impact his current employment status with Defendants. • Finalize Settlement Agreement and attend to execution and confer and correspond with Plaintiff regarding same.	10	October 2020 – July 2021
7. Motion for PAGA Settlement Approval: • Draft motion for PAGA approval of the Settlement and supporting documents and declarations and attend to filing. • Conduct multiple conferences and exchange correspondence with defense counsel regarding MPA documents and revisions as required.	8	August 2021
TOTAL:	80 Hrs.	

EXHIBIT 6

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 7