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

JOANNE SOWLE, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

SHERPAUL CORPORATION, a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: RIC2002410

*[Assigned to Hon. Judge Craig Riemer, Dept 1, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION TO
APPROVE SETTLEMENT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

Hearing

Date: September 26, 2022

Time: 8:30 a.m.

Dept.: 1

Reservation #: 890960827233

Complaint filed: June 1, 2020

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law department. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion to Approve Settlement Pursuant to the Private Attorney General Act of 2004 (the "PAGA"). If called as a witness, I could and would competently testify thereto.

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1 **I. COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001. I am
3 admitted to practice in the United States District Courts for the Central and Southern District of
4 California and the Ninth Circuit Court of Appeal and have tried cases in various courts in California.

5 3. I have handled over 500 employee vs. employer litigation matters during my 21 years
6 in practice. Over the last 15 years, my practice has almost entirely consisted of representing employees,
7 the majority of which has included class action and representative action wage and hour matters. In
8 total, I have handled over 250 class action and representative action wage/hour cases, and have been
9 appointed by the court as class counsel and have received final court approval and judgment over half
10 of those actions to date, and anticipate receiving final approval in many more of those in the future.

11 4. As part of these settlements and judgments, I have recovered in excess of \$250 million
12 in damages for my clients and the class members (who often work as nurses, ambulance drivers,
13 technicians, warehouse workers, truck drivers, sales, professional occupations and countless other
14 trades). My team and I once held the record for the largest known PAGA-only case in California’s
15 history - a \$12.5 million-dollar court approved settlement, which followed extensive litigation,
16 summary adjudication and writs to the CA Supreme Court against a Fortune 50 company (*Garcia v.*
17 *Macy’s*, San Bernardino Superior Court).

18 5. I have tried two major class and PAGA cases against Fortune 100 companies. In 2018,
19 I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court and received
20 a \$425,000 judgment. In 2019, I was co-counsel in a class action case against Walmart in District
21 Court, wherein the jury awarded Plaintiffs and the class over \$6 million. Both cases were appealed.

22 6. Over each of the last four to five consecutive years, I have been consecutively selected
23 by my peers as a “Super Lawyer” in Employment Litigation.

24 **II. PROCEDURAL BACKGROUND**

25 7. My firm began investigating this matter in spring of 2020. After being retained by
26 Plaintiff Sowle, my office submitted a claim on May 1, 2020, to the California Labor Workforce and
27 Development (“LWDA”) for civil penalties under the Labor Code Private Attorneys General Act of
28 2004 (Lab. Code §§ 2698, et seq.), which is attached hereto as **Exhibit A**. At the same time, we sent a

1 letter to Defendant requesting the production of Plaintiff Diaz’s personnel and timekeeping records in
2 order to further evaluate her wage and hour claims while also serving a litigation hold on Defendant to
3 preserve potentially relevant electronically stored information.

4 8. Then, on June 1, 2020, my office filed a putative class action complaint alleging causes
5 of action mirroring those alleged in the LWDA notice. On July 15, 2020, and because the LWDA did
6 not assert jurisdiction over the PAGA claims within the 65-day exhaustion period, we filed a First
7 Amended Complaint adding PAGA causes of action as well. However, during this period, counsel for
8 Defendant sent correspondence and documents to Plaintiff’s counsel, including evidence that Plaintiff
9 allegedly signed a binding arbitration agreement with a class action waiver. For that reason, the Parties
10 stipulated to allow Plaintiff to file a Second Amended Complaint (“SAC”) that dismissed the class and
11 individual claims, without prejudice, and left this as a PAGA-only action.

12 9. On February 17, 2021, Plaintiff filed the operative SAC alleging the following causes
13 of action under PAGA: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3)
14 failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business
15 expenses, (6) unlawful deduction of wages, (7) failure to timely pay each period, (8) failure to timely
16 pay final wages, and (9) failure to provide accurate itemized wage statements.

17 10. **CMO ¶ C(2)(b)**. The Parties agreed that it was in the best interests of all to attempt
18 early resolution, and we attended mediation with the Hon. Keith Davis (Ret.) with JAMS in April
19 2021. However, that mediation was unsuccessful because, among other reasons, Defendant raised new
20 theories of defense, namely that the Aggrieved Employees were exempt from meal period and rest
21 break requirements as “personal attendants” under IWC Wage Order 15.

22 11. After the unsuccessful mediation, the Court lifted the stay on formal discovery, and we
23 propounded a full set of written discovery on Defendant seeking documents and information to
24 investigate and verify the claims. But, despite that Defendant provided substantial information and
25 documents, we believed that certain responses were deficient and a lengthy meet and confer process
26 began. However, despite the disputed nature of the claims and pending discovery disputes, the Parties
27 agreed to table the dispute and attempt mediation for a second time.

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12. **CMO ¶ C(2)(b)**. The second mediation took place on March 17, 2022, with the Hon. Jonathan Cannon, a retired judge who sat in the Orange County Complex Division for many years and ruled upon countless class action wage and hour cases like this one, and now serves as a well-respected class action and PAGA mediator. And, in preparation for mediation, the Parties exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including policies and procedures, timekeeping and payroll records, among other documents. This analysis enabled both parties to take a good look into the claims, in particular allegations relating to the failure to pay proper wages, and failure to provide compliant meal and rest periods, among other things. During this process, we evaluated the documents and determined that there were approximately 6,400 pay periods at issue through mediation. This information enabled my firm to analyze, research, and investigate the potential claims, including matters related to the calculation of PAGA penalties, trial, and appellate issues and risks.

13. **CMO ¶ C(2)(b)**. After a full day of mediation, Judge Cannon issued a mediator's proposal that both Parties accepted, resulting in a settlement of all PAGA claims alleged in the action, as well as Plaintiff's individual claims.

14. **CMO ¶ C(2)(a)**. After settling at mediation, the Parties entered into a Memorandum of Understanding (the "Settlement Agreement" or "S.A."), which contains all necessary and material terms of this settlement. Attached hereto as **Exhibit B** is a true and correct copy of the fully executed Settlement Agreement.

15. The Parties also settled and resolved Plaintiff's individual (non-PAGA) claims at mediation. Pursuant to the CMO, the nature and valuation of Plaintiff's individual claims are discussed below – and the terms of the individual settlement are shown at S.A. ¶¶ 16-21.

III. ANALYSIS OF THE CLAIMS AND VALUATION

CMO ¶ C(3)(a): Nature of the Alleged Violations

16. Plaintiff alleged nine causes of action on behalf of the Aggrieved Employees. However, as discussed herein, some of the claims are overlapping due to the nature of the violation (so, in essence, there are not 9 distinct penalties recoverable).

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1 17. Plaintiff claimed that Defendant failed to provide compliant meal periods and rest
2 breaks to the Aggrieved Employees. However, Defendant vehemently opposed this claim based on the
3 argument that the Aggrieved Employees could not bring such claims since they were not entitled to
4 meal periods and rest breaks under the “personal attendant” exemption at IWC Wage Order 15 § 1(b)
5 (“the provision of this order shall not apply to personal attendants.” In addition to this exemption
6 argument, Defendant argued that it provided and made available meal and rest breaks to all employees,
7 and any employee who did not take a meal or rest break did so entirely of his or her own volition. As
8 such, Defendant argued that these claims were without merit because, for each violation, a fact-finder
9 would have to determine why a break was noncompliant/nonexistent, because if it was by the
10 employee’s choice, no liability attaches to Defendant. And, finally, Defendant also argued that many
11 Aggrieved Employees worked short shifts (4 hours or less) that did not entitle them to meal periods or
12 rest breaks.

13 18. Plaintiff alleged unpaid minimum and overtime wage claims under two separate
14 theories. For example, Plaintiff alleged that Defendant paid Plaintiff and the Aggrieved Employees a
15 base hourly rate with higher hourly rates for items such as weekend work. However, during weeks
16 when an Aggrieved Employee worked at two different rates of pay and worked overtime, Defendant
17 illegally paid overtime at only 1.5 times the base (lower) rate of pay. Plaintiff also alleged that
18 Defendant utilized a rounding policy that resulted in a widespread failure to pay minimum and
19 overtime wages for all hours worked because the policy was not neutral on its face or in its
20 application.

21 19. Plaintiff also alleged that Defendant engaged in the practice of requiring Plaintiff and
22 the Aggrieved Employees to purchase personal protective equipment (“PPE”) directly from the
23 company. And, in so doing, Plaintiff alleged that this constituted both a failure to reimburse business
24 expenses and an unlawful deduction of wages (since these expenses came directly from the
25 paychecks). But Defendant disputed that this ever occurred and, as such, claimed that it would defeat
26 these claims on the merits.

27 20. Plaintiff alleged what are often referred to as “derivative” violations. For instance,
28 Plaintiff argued that, due to the unpaid wages: (1) Defendant is liable to each *former* Aggrieved

Employee for failure to timely pay all wages due and owing upon separation of employment (Labor Code § 203), (2) Defendant is liable to each Aggrieved Employee for failure to timely pay wages *each period* under Labor Code § 204, and (3) Defendant's wage statements failed to comply with Labor Code § 226 since the wage statements did not accurately state total hours worked, gross and net wages earned, all deductions, among other violations. However, as Defendant argued that the overarching claims had no merit, Defendant also argued that these derivative claims would fail as well.

CMO ¶ C(3)(b): Number of Alleged Individual Violations [CMO ¶ C(3)(b)]

21. As previously noted, an analysis of discovery responses and pre-mediation data and information showed that there were approximately 6,400 pay periods through the date of mediation. And this time period covered June 1, 2020, through March 17, 2022 (the release period only runs through the date of mediation). During this period, it is estimated that there are 300 individuals that fall within the defined group of Aggrieved Employees.

22. Thus, based on 6,400 total pay periods at issue, Plaintiff calculated that there was a potential total of 12,165 separate Labor Code violations, broken down as follows:

- a. Minimum wage (25% violation rate) = 1,600
- b. Overtime (10% violation rate) = 640
- c. Meal Period (25% violation since majority of shifts less than 5 hours) = 1,600
- d. Rest Breaks (50% violation rate because many shifts were only 3 hours) = 3,200
- e. Failure to Reimburse (3 alleged violations per employee) = 900
- f. Unlawful Deduction (3 alleged violations per employee) = 900
- g. Failure to timely pay wages each period (25% violation, derivative) = 1,600
- h. Failure to timely pay final wages (125 former employees) = 125
- i. Wage statement violations (25% violation, derivative) = 1,600

CMO ¶ C(3)(c): Total Amount of Penalties for which Defendant is Potentially Liable

23. Plaintiff calculated the total amount of penalties for which Defendant was *potentially* liable if all allegations are proven as \$1,216,500, based on:

- a. Minimum Wage: 1,600 x \$100 = \$160,000
- b. Overtime: 640 x \$100 = \$ 64,000

- c. Meal Period: 1,600 x \$100 = \$160,000
- d. Rest Break: 3,200 x \$100 = \$320,000
- e. Labor Code § 2802: 900 x \$100 = \$ 90,000
- f. Unlawful Deduction: 900 x \$100 = \$ 90,000
- g. Labor Code § 204: 1,600 x \$100 = \$160,000
- h. Final Pay: 125 x \$100 = \$ 12,500
- i. Wage Statements: 1,600 x \$100 = \$160,000

CMO ¶ C(3)(d): Total Amount of Penalties for Which Defendant Would Likely be Liable

24. Based on a detailed analysis of each claim, including the weight of the evidence, clarity of applicable law, and strength of the factual and legal defenses asserted by Defendant, Mr. Carlson and I calculated that the total amount of penalties for which Defendant would likely be found liable at trial is \$1,216,500.

25. This total is based on the analysis contained herein and several factors. However, at the outset, the analysis for each claim (regardless of the underlying merits) also factored in a 60% risk that the PAGA claims could be extinguished altogether. After all, this case went to mediation and settled while the parties were awaiting the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, which was the elephant in the room and could have eliminated Plaintiff's PAGA claims. Now that the *Viking River* decision has come down, the decision to settle seems even more proper.

26. With that said, we placed the following risk-adjusted values on each claim based on the merits, risks and defenses, for each:

a. Minimum Wage: This claim was based on an alleged rounding policy and practice. And, under this theory, there is great clarity regarding what is legal vs. illegal (*i.e.*, the policy has to be neutral as to the policy and as applied). However, Defendant raised a strong argument that the policy was facially neutral. And Defendant contended that the evidence did not show the type of non-neutral application that would subject it to liability. Still, Plaintiff believed there was a 70% chance of success on this claim (30% risk), but that the Court would apply a 25% discretionary reduction due to Defendant's attempt to apply a legal policy. Therefore, the risk-adjusted value of this claim (after considering the 60% risk of *Viking River*) is \$33,600.

1 b. Overtime: Here, Plaintiff alleged two theories of liability for overtime: (1) the
2 rounding policy described above, and (2) a failure to pay all wages due to miscalculation of the
3 “regular rate of pay.” The rounding claim is discussed above, and calls for some discount, but
4 Defendant offered evidence showing that only 1% of the total hours worked consisted of overtime
5 hours, so it was a very rare occurrence. However, the other overtime claim – for miscalculation of the
6 regular rate – is apparent from the face of the paystub and directly violates decades of controlling
7 authority. Thus, while Defendant argues that an Aggrieved Employee working at two or more rates in
8 the same rate was a very rare occurrence, Plaintiff placed a high value on this claim and only assigned
9 a small 20% risk on the merits (other than *Viking River*) and believed that the Court would not apply a
10 discretionary reduction. Thus, the risk-adjusted value of the overtime claim is \$20,480.

11 c. Meal Period: Plaintiff’s meal period claims had a maximum value of \$160,000
12 because the number of pay periods with shifts in excess of 5 hours (triggering mandated meal periods)
13 was low – with Defendant providing evidence that the most common shift was only 3 hours.
14 Additionally, on the merits, Defendant raised a strong defense to meal period claims, namely that the
15 Aggrieved Employees were exempt from meal period requirements as “personal attendants” under
16 IWC Wage Order 15. Defendant also argued that, regardless of the outcome on the “personal
17 attendant” exemption, it had a fully compliant written policy for meal periods and made all required
18 meal periods available to the Aggrieved Employees. Based on these facts, we assigned a 40% risk on
19 the merits for the meal period claim and believed the Court would apply a 25% discretionary
20 reduction. Therefore, when including the *Viking River* risk, we assigned a risk-adjusted value of
21 \$28,800 for the meal period claims.

22 d. Rest Break: Plaintiff’s rest break claims had a maximum value of \$320,000
23 because the most common shift was only 3 hours, which did not trigger the requirement for employees
24 to receive and take rest breaks. And, like the meal period claims, Defendant raised strong arguments
25 that (1) the Aggrieved Employees were exempt from rest break requirements as “personal attendants”
26 under IWC Wage Order 15, and (2) it had a fully compliant written policy for rest breaks and made all
27 required breaks available to the Aggrieved Employees. Additionally, because rest breaks need not be
28 recorded, Defendant argued that Plaintiff faced a manageability and evidentiary issue proving when or

1 if rest break violations occurred since we could not rely on timekeeping records alone. In light of these
2 risks, we assigned a 50% merit-based risk to the rest break claims and believed the Court would apply
3 another 25% discretionary reduction. Thus, the risk-adjusted value of this claim is \$48,000.

4 e. Failure to Reimburse and Unlawful Deduction of Wages: Combined, these
5 claims had a maximum value of \$180,000. However, Defendant vehemently opposed these claims and
6 argued that it did not force or require employees to purchase PPE or supplies. And because these
7 violations arose from the same conduct (requiring employees to purchase PPE from the company),
8 Defendant also argued that it would be impermissible to apply two penalties for the same violation.
9 Thus, Plaintiff assumed that she would only receive one penalty per violation (reducing the maximum
10 to \$90,000) and then would face a 40% risk on the merits but that no discretionary reduction would
11 apply if these violations were proven. Thus, the risk-adjusted value for these claims is \$25,200.

12 f. Failure to Pay Wages Each Period: We placed very little value on the Labor
13 Code § 204 claims because these were simply derivative of the unpaid wage claims (*i.e.*, there was no
14 direct violation of the statute, such as a practice of routinely paying late). Therefore, although we
15 believe there was only minimal risk (20% - aligned with the unpaid wage claims), we believe the
16 Court would apply a heavy discretionary reduction of 90% discount, leading to risk-adjusted value of
17 \$5,120.

18 g. Failure to Timely Pay Wages: The failure to timely pay final wage claim was
19 derivative of the unpaid wage claims, so we applied the same 20% risk on the merits and expected
20 another 25% discretionary reduction, leading to a risk-adjusted value of \$3,000.

21 h. Wage Statements: Plaintiff's wage statement claims were based on the
22 argument that – because of the unpaid wage claims – the paystubs failed to accurately state all required
23 information. This was purely a derivative claim and, although we believed it would succeed (20% risk
24 on the merits), we also believed that the Court would apply a 50% discretionary reduction because
25 Defendant was already penalized for the allegedly illegal conduct with imposition of PAGA penalties
26 for the unpaid wage violations. Thus, the wage statement violations had a risk-adjusted value of
27 \$25,600.

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1 **CMO ¶ C(3)(e): Likelihood of Violations being Proven Knowing and Intentional**

2 27. Due to the disputed facts, the uncertainty regarding applicable law as to certain claims,
3 and the fact that Defendant had compliant written policies, we did not believe there was a high
4 likelihood that most of the violations would be deemed knowing and intentional. However, we did
5 believe that the overtime miscalculations, if proven, would be found knowing and intentional since
6 these practices run afoul of decades of state and federal authority regarding the regular rate of pay.

7 **CMO ¶ C(3)(f): Other Facts to Suggest Imposition of Maximum would be Unjust**

8 28. The PAGA gives the court wide latitude to reduce the amount of civil penalties “based
9 on the facts and circumstances of a particular case” and if “to do otherwise would result in an award
10 that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Some factors courts
11 have considered in reducing the amount of civil penalties include whether (1) the violation arises from
12 an unsettled legal obligation (*Cotter v. Lyft, Inc.*, (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037); and (2)
13 the employer’s willingness to fix the violation. (*Fleming v. Covidien*, (C.D. Cal. 2011) 2011 U.S. Dist.
14 LEXIS 154590, *8-9). For instance, in the *Lyft* case, the Court found that a \$1M PAGA settlement
15 was fair and reasonable in light of the unsettled nature of the law, which awarded \$2.52 per pay period
16 (397,110 pay periods / \$1M PAGA settlement), which was a 97.5% reduction from the maximum
17 penalty. In *Fleming v. Covidien*, the Court reduced the potential penalties by over 82 percent,
18 awarding \$500,000 for 28,742 pay periods at issue. Similarly, in *Sanchez v. McDonald’s Restaurants*
19 *of California*, BC499888, Los Angeles Superior Court entered summary adjudication against
20 McDonald’s for violating the overtime laws, but the Court’s tentative ruling at trial was to award only
21 \$750,000 in PAGA penalties against McDonald’s, despite a substantial number of violations at 119
22 stores at issue.

23 29. Additionally, Plaintiff believes that the amount obtained in settlement, and the
24 reasonable estimates provided above, are justified given that Defendant vehemently argued against any
25 contention that its violations were “knowing and intentional” since it had compliant policies and
26 practices in place at all times.

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1 30. Finally, the parties only reached settlement and the agreed-upon PAGA penalties after
2 an extensive exchange of information and arms-length negotiation between the parties and through an
3 experienced mediator.

4 **CMO ¶ C(3)(g): How the Amount of Penalties was Calculated**

5 31. The total amount of PAGA penalties was not “calculated or otherwise arrived at.”
6 Instead, the PAGA penalties make up the entire settlement amount, and the settlement only occurred
7 through after arms-length with an experienced mediator.

8 **CMO ¶ C(3)(h): Other Factors Material to Determination that Penalties are Fair**

9 32. I believe that this declaration covers all factors material to a determination that the
10 penalties are fair.

11 **IV. THE AGREED UPON PENALTIES ARE FAIR**

12 33. The settlement requires Defendant to pay \$110,000 inclusive of payments to the
13 LWDA and approximately 300 Aggrieved Employees, Plaintiff’s attorneys’ fees (\$36,666.66) and
14 actual litigation costs (\$7,698.16), and third party administrator (“Administrator”) costs (\$3,500).
15 After payment of the attorneys’ fees and costs, and Administrator costs, approximately \$62,135.18
16 will remain as the estimated PAGA Award.

17 34. The PAGA Award will be allocated to the PAGA Penalties and, pursuant to Labor
18 Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in the
19 enforcement of labor laws and education of employers and employees about their rights and
20 responsibilities under the Labor Code), and the remaining 25 percent being paid to the Aggrieved
21 Employees based the number of pay periods each Aggrieved Employee worked during the PAGA
22 Period. A following chart reflects the estimated payments:

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Total Amount(s)	
<i>Settlement Amount</i>	\$110,000.00
Attorneys' Fees (1/3)	\$36,666.66
Actual Litigation Costs	\$7,698.16
Administrator Costs	\$3,500.00
<i>PAGA Award</i>	\$ 62,135.18
75% to the LWDA	\$ 46,604.38
25% to the Aggrieved Employees	\$ 15,533.80
<i>Balance</i>	\$0

35. As such, the LWDA will receive approximately \$46,604.38 (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the Aggrieved Employees will receive \$15,533.80 on a pro rata basis. Each Aggrieved Employee will receive approximately \$51.78 on average, although the actual amount will be based on the number of eligible pay periods each person worked during the Settlement Period. The portion of each Aggrieved Employee's Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities.

36. In exchange for these payments and benefits, and in accordance with the Court's Case Management Order, the release in the Settlement Agreement binds the named Plaintiff only for civil penalties claims she brought under Labor Code § 2699.

V. CMO ¶ C(4): REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

37. In accordance with the Settlement, the Parties agreed that my office would receive one-third of the settlement amount as attorney's fees. It has been my experience that the benchmark for attorney fee awards in California state cases is one-third of a common settlement fund. Here, pursuant to the Settlement Agreement, and in recognition of the work performed by Plaintiff's Counsel, and the results we achieved for the State and Aggrieved Employees, my firm is seeking a one-third fee, which is far less than my firm's lodestar through the conclusion of the matter resulting in a negative multiplier.

38. In my experience, Court's award attorney's fees in the amount of one-third of the common fund settlement amount in a PAGA only case.

39. At my office, this case was primarily handled by Peter Carlson and me. Mr. Carlson works exclusively with me on employment law matters and has been in practice for over 8 years, and has handled over 120 class and representative PAGA actions as the handling attorney, with over \$72 million collected for class members and the State of California. He bills at the hourly rate of \$575/hour. I have been in practice for 21 years, with most of those years handling complex litigation. And, for well over the last ten years, my practice has almost entirely consisted of representing employees with most of that time devoted to handling class action and wage and hour matters. My billing rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who handle complex class action litigation, if not somewhat lower.

40. I have reviewed the work performed on the case and the billing inputted by the timekeepers. The table below includes a summary of the hours worked, plus additional hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the administrator and defense counsel to finalize this matter. My firm's lodestar totals approximately \$104,562.50 through the conclusion of this matter, resulting in a negative multiplier, as follows:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin Partner	Trial Counsel	21	\$775	49.3¹	\$38,207.50
Peter Carlson Senior Associate	Handling Attorney	8	\$575	115.4	\$66,355.00
Grand Total for All Attorneys				164.7	\$104,562.50

41. The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (i.e., the Laffrey Matrix at www.laffreymatrix.com indicates that the

¹ Includes an estimated 20 hours of additional work in preparation for and attending the hearing, as well as work that is anticipated to be performed after the hearing with counsel, administrator, employees, and the court

1 benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year attorney at \$764/hour, and
2 a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer 2017 Real Rate Report (“Real Rate
3 Report”) provides directly applicable information in this regard. The Real Rate Report is based on an
4 enormous and statistically significant compilation of data: 25.8 million billing entries and 23.9 million
5 hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
6 billed. (See Wolters Kluwer’s ELM Solutions, Inc., 2017 Real Rate Report). The Real Rate Report
7 then compiles and analyzes this data to provide the hourly rates for partners and associates in major
8 metropolitan areas. For the southern California area, which is based on billing entries for 1,125 partners
9 and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los Angeles is
10 between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates
11 in Los Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most
12 importantly, the information provided in the Real Rate Report is not based on self-reported numbers,
13 surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the
14 actual hours and fees billed by law firms.

15 42. In the course of prosecuting this action, Plaintiff’s counsel has incurred expenses that
16 were incidental and necessary to the effective representation of the Class. These costs include
17 mediation fees, filing fees, and other costs that include Attorney Service charges, CourtCall charges,
18 and process service fees. My firm’s expenses total \$7,698.16 through the conclusion of this matter,
19 which includes costs of filing, serving and attend the approval hearing (see **Exhibit D** attached hereto).
20 This is less than the \$15,000 permitted under Paragraph 7 of the Settlement Agreement, so the savings
21 will be placed in the PAGA Award and paid to the LWDA and Aggrieved Employees.

22 **VI. CMO ¶ C(5): PLAINTIFF’S INDIVIDUAL SETTLEMENT**

23 **CMO ¶ C(5)(a): Nature of Unpled Individual Claims**

24 43. Plaintiff alleged individual claims for the same underlying facts and violations as raised
25 in the PAGA case. Thus, Plaintiff alleges that he was subjected to the same unpaid wage claims, same
26 meal/rest break issues, and the same wage statement violations, along with the other claims detailed
27 above.

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1 **CMO ¶ C(5)(b)(i): Maximum Value of Plaintiff's Individual Claims**

2 44. Plaintiff alleges that the total amount of damages, lost wages, penalties, attorneys' fees
3 and costs, interest, and other relief that she would be awarded on her individual claims, if they were
4 entirely successful at trial, is at least \$53,175. This is based on the following estimates.

5 45. *First*, Plaintiff alleges that she was subjected to the same unpaid minimum and overtime
6 wage claims above and, since she was employed from approximately April 8, 2017, through May 2,
7 2020, the maximum value of these claims is approximately \$1,600 (\$10 unpaid wages for 160
8 workweeks).

9 46. *Second*, because of the unpaid wages, Plaintiff alleged that she was entitled to waiting
10 time penalties under Labor Code § 203, calculated at \$13 per hour x 30 days x 5.5 hours per day, for a
11 maximum value of \$2,145.

12 47. *Third*, as to meal period and rest break claims Plaintiff estimates that, based on the
13 number of shifts she worked and the number of shifts above 3.5 hours and 5 hours, she was subjected
14 to approximately 110 meal period violations and at least 600 rest break violations. At her hourly rate
15 of \$13, this places the maximum value of the meal and rest break claims at \$9,230.

16 48. Plaintiff also alleged several other claims discussed above, and also believed that she
17 would be entitled to interest accrued on the unpaid wages and unpaid wage premiums in an amount of
18 at least \$2,000.

19 49. Finally, I estimate that my firm would incur at least \$40,000 in recoverable attorneys'
20 fees and costs through trial if we were forced to litigate Plaintiff's individual claims.

21 **CMO ¶ C(5)(b)(ii): Risk-Adjusted Value of Plaintiff's Individual Claims**

22 50. The maximum amounts above do not take into account the necessary risk adjustments
23 and what Plaintiff could reasonably expect if her claims proceeded to trial, taking into account the
24 likelihood of prevailing and other risks. And while Defendant would have many of the same defenses
25 to the individual claims as it has to the PAGA claims, Plaintiff believes that she would likely have a
26 very high chance of recovering the full amount given that many of Defendant's defenses were as to the
27 manageability of a representative PAGA action, whereas proving individual claims for unpaid wages
28 and meal/rest violations is much easier given that Plaintiff's testimony is all that is necessary.

1 Furthermore, Defendant would not be entitled to the discretionary reduction it could seek under
2 PAGA.

3 51. When considering those factors, Plaintiff estimates the risk-adjusted value for damages,
4 lost wages, penalties, attorneys' fees and costs, interest, and other relief that she would be awarded on
5 her individual claims is \$43,345.25 – and the risk assessments track those in the PAGA action,
6 discussed above.

7 52. For example, Plaintiff assigns a 20% risk on the merits for her unpaid wage claim,
8 which mirrors the merits risk on the PAGA claim. Thus, Plaintiff's unpaid wage claim has a risk-
9 adjusted value of \$1,280. And Plaintiff assigned the same risk to the waiting time penalty claim since
10 it was based on the same facts and theories of liability- thus making the risk-adjusted value of that
11 claim \$2,681.25.

12 53. Plaintiff's meal and rest break claims are also based on the same facts as the PAGA
13 case, and subject to the similar risk because Defendant had a compliant written policy. However,
14 much of the risk in the PAGA case related to the evidentiary burden of providing competent and
15 compelling evidence as to violations for all Aggrieved Employees. That does not exist on an
16 individual basis, since Plaintiff only needs to submit evidence and convince a trier of fact that she
17 personally was subjected to violations despite the written policies. For that reason, Plaintiff assigned
18 only a 20% risk to the meal and rest break claims, making the risk adjusted value of the meal period
19 claim \$1,144 [\$1,430 value x 20% risk] and the risk-adjusted value of the rest break claim is \$6,240
20 [\$7,800 value x 50% risk].

21 54. And, finally, Plaintiff's attorneys' fees and their maximum value of \$40,000 must also
22 be reduced by the 20% risk of defeat on all claims, leaving risk-adjusted attorneys' fees of \$32,000.

23 **CMO ¶ C(5)(c) and (d): Consideration Paid to Plaintiff for Individual Claims**

24 55. As set forth in Paragraph 17 of the Settlement Agreement, the Parties settled Plaintiff's
25 separate individual claims for a total of \$10,000. After attorneys' fees, Plaintiff will receive \$7,500 for
26 her individual claims, with \$1,000 paid on an IRS Form W-2 and \$6,500 paid on an IRS Form 1099.

27 56. The facts herein show that Plaintiff received only a fraction of the asserted value of her
28 claims, meaning that she certainly did not receive a windfall as a result of the PAGA settlement and

1 further confirming that Plaintiff and her counsel fairly and properly separated the individual
2 settlements from the PAGA settlement.

3 57. Additionally, Plaintiff's individual settlement amounts are in lieu of a service award,
4 which is commonly provided in PAGA case. Although service awards are discretionary, they are
5 "intended to compensate class representatives for work done on behalf of the class, to make up for
6 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
7 willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563
8 F.3d 948, 958-59.

9 **VII. CMO ¶ C(8): RELEASE OF CLAIMS FOR PAGA PENALTIES**

10 58. The release in this Settlement fully complies and is in strict compliance with the
11 Court's CMO.

12 59. Notably, as required by CMO ¶ C(8)(a), the Settlement Agreement states that "[t]he
13 release of claims for PAGA penalties shall bind only the named plaintiff and the State of California."

14 60. Moreover, the "Released Parties," as defined in Paragraph 9(b) of the Settlement
15 Agreement, are defined in strict compliance with the CMO, namely: "Defendant, together with its
16 officers, directors, employees, and agents."

17 61. Finally, the full definition of Released Claims, at Paragraph 9(c) of the Settlement
18 Agreement, is explicitly limited to "claims described in the LWDA notice sent by Plaintiff on May 1,
19 2021, and only to the extent that those claims are alleged in the operative complaint." The remainder
20 of Paragraph 9(c) merely recites the specific claims and spells that reality out in more detail.

21 **VIII. CMO ¶ C(9): APPOINTMENT OF PHOENIX AS SETTLEMENT ADMINISTRATOR**

22 62. After obtaining bids from multiple settlement administrators, the Parties selected
23 Phoenix Settlement Administrators as the Administrator to perform all duties relating to the issuance
24 of checks, mailing the notices, locating employees, and preparation and submission of tax forms for a
25 fee of \$3,500, which is a capped amount based on hourly rates, anticipated time spent on each task,
26 and per-unit costs for postage and other expenses. Phoenix's proposal is attached as **Exhibit B** to the
27 Declaration of Michael Moore explaining his fee and experience.

28 ///

63. The full bidding returned the following results: Simpluris (\$3,000), Phoenix (\$3,500), ILYM (\$4,500), Rust (\$4,959), CPT (\$6,500), and AB Data (\$6,863). Notably, Phoenix's bid was *not* the lowest bid obtained – it was the second lowest after Simpluris. However, as this Court is aware, there have been several issues lately with Simpluris, so my firm chose to use the next lowest bid instead.

IX. CMO ¶ C(2)(c): SUBMISSION TO THE LWDA

64. The Motion and declarations, including the PAGA Settlement Agreement, have concurrently been submitted to the LWDA through its online portal. (See **Exhibit E**).

X. EXHIBITS AND CONCLUSION

65. A true and correct copy of the LWDA letter is attached hereto as Exhibit A.

66. A true and correct copy of the PAGA Settlement Agreement is attached hereto as Exhibit B.

67. A true and correct copy of my firm's billing records is attached hereto as Exhibit C.

68. An itemized statement of my firm's costs is attached hereto as Exhibit D.

69. The LWDA's confirmation of receipt of this Motion and Declarations is attached hereto as Exhibit E.

70. The Notice Letter to the Aggrieved Employees is attached here as Exhibit F.

71. For the foregoing reasons, it is respectfully requested that the Court approve the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 12, 2022, at Riverside, California.

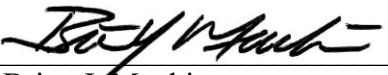
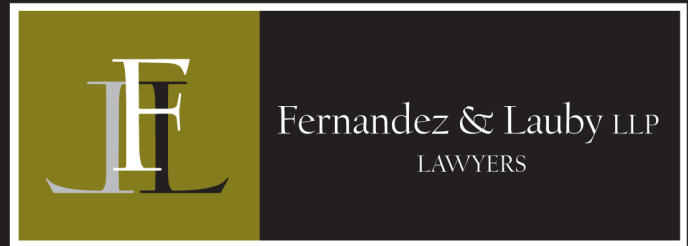
By: 
Brian J. Mankin

EXHIBIT “A”



May 1, 2020

Sent Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Please see attached Service List

Re: PAGA Civil Penalty Claim

Joanne Sowle v. Sherpaul Corporation, Sherry Ann Dziuban, and Paul Dziuban

To the Labor and Workforce Development Agency (“LWDA”), Sherpaul Corporation, Ms. Sherry Ann Dziuban, and Mr. Paul Andrew Dziuban:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Joanne Sowle (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), Sherpaul Corporation and/or any affiliated entities, and/or the respective owner of said companies (Ms. Sherry Ann Dziuban, and Mr. Paul Andrew Dziuban) (collectively the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2007 through April 2020. Claimant alleges that, at all relevant times, she and all other nonexempt employees employed by the Company at each location in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and violations to which Claimant was subjected during her employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages for multiple reasons. Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked, including travel time. Among other violations, at all relevant times, the Company utilized a rounding policy and practice that routinely undercompensated Claimant and resulted in a net benefit to the Company and a net loss for Claimant. In other words, the Company’s rounding policy is not neutral and results in systematic undercompensation. Furthermore, Claimant and the Aggrieved Employees were frequently required to perform routine

and recurring tasks for the Company at the beginning of the shift (before being allowed to clock in) and at the end of the shift (after being allowed to clock out), without compensation. Additionally, the Company paid Claimant and the Aggrieved Employees on an hourly basis but used multiple rates within the same workweek (*e.g.*, the Company paid weekend work at a higher hourly rate of pay). However, during workweeks where the Aggrieved Employees earned more than one rate of pay, the Company failed to pay proper overtime because the overtime was based solely on 1.5 times the base rate of pay – violating the well-established rule that overtime must always be paid at time and one-half the regular rate of pay. As a result of these violations and others, the Company failed to pay proper minimum and overtime wages to Claimant and the Aggrieved Employees.

Claimant and the Aggrieved Employees were also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, Claimant and the Aggrieved Employees were subjected to meal period violations when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company (*e.g.*, forced to take lunch while on the road between clients), (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Also, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, expenses related to purchasing personal protective equipment ("PPE") for use with clients. Notably, the Company often sold PPE to their employees in direct violation of Labor Code § 2802, but also the provisions of Labor Code § 221.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, and meal and rest period premiums. And the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban are an integrated enterprise and should be treated as a single employer because Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban share an interrelation of operations, with common human resources and personnel policies

and shared common offices and facilities. Upon information and belief Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Ms. Sherry Dziuban and Mr. Paul Dziuban are now and at all relevant times were the owners of Sherpaul Corporation, and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Ms. Sherry Dziuban and Mr. Paul Dziuban had the authority, in the interest of Sherpaul Corporation to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Sherpaul Corporation, Ms. Sherry Dziuban, and Mr. Paul Dziuban were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Sherpaul Corporation has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Ms. Sherry Dziuban and Mr. Paul Dziuban have conducted their personal affairs. Adherence to the fiction of the separate existence of Sherpaul Corporation would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Sherpaul Corporation should be imposed jointly and severally against Ms. Sherry Dziuban and Mr. Paul Dziuban.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Ms. Sherry Dziuban and Mr. Paul Dziuban are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

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**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

Claimant and the Aggrieved Employees were not paid all minimum, regular wages, and/or overtime wages for time spent subject to the control of the Company, including instances of underpayment due to the violations discussed above. Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and the Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties, as outlined above. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

PAGA ASSESSMENT FOR UNLAWFUL DEDUCTION OF WAGES
(Labor Code §§ 200, 221, 223)

California Labor Code § 200 defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” California Labor Code § 221 states that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code § 221 reflects “‘California’s strong public policy favoring the protection of employees’ wages.’” *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1166, quoting *Harris v. Investor’s Business Daily, Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code § 219 states that the protections of Labor Code § 221 cannot “be contravened or set aside by a private agreement.” Therefore, the rights under Labor Code § 221 are nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166. Also, under Labor Code §§ 219 and 221, an employer may not “require its employees to consent to unlawful deductions from their wages.” *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

Here, the Company had a policy of unlawfully deducting amounts from the wages of the the Aggrieved Employees, including Claimant, for items such as insurance, vehicle registration, and so forth. Accordingly, Labor Code §§ 210, 225.5, 558, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it engaged in the unlawful deduction of wages. Furthermore, Claimant, on behalf of all Aggrieved Employees, seeks to recover the full amount of the unlawfully deducted wages under Labor Code § 558.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the: failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state total hours worked; failure to accurately state the applicable overtime rate, and; failure to accurately state the corresponding number of hours worked at each hourly rate. As a result of these violations, civil penalties may be assessed under Labor Code §§ 226.3 and/or 2699, and Claimant may recover attorneys’ fees and costs.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 256.) Labor Code § 2699 also imposes a penalty.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

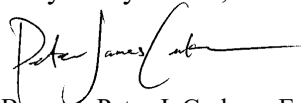
Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 256, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, she reserves the right to add new claims by amending this claim letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: PJC@fernandezlauby.com

www.California-EmploymentLawyers.com

Service List

Sherpaul Corporation
41880 Kalmia Street, Suite 140
Murrieta, CA 92562

Sherpaul Corporation
901 Hacienda Drive #B
Vista, CA 92081

Sherry Ann Dzubian
901 Hacienda Drive #B
Vista, CA 92081

Paul Andrew Dziuban
901 Hacienda Drive #B
Vista, CA 92081

EXHIBIT “B”

Joanne Sowle v. Sherpaul Corporation
Riverside County Superior Court, Case No. RIC2002410
Memorandum of Understanding - Settlement Terms

1. On March 17, 2022, Plaintiff Joanne Sowle (“Plaintiff”) and Defendant Sherpaul Corporation (“Defendant”) (collectively, Plaintiff and Defendant shall be referred to as the “Parties”) mediated the action, *Sowle v. Sherpaul Corporation*, Riverside County Superior Court, Case No. RIC2002410 (the “Action”) with Hon. Jonathan Cannon (Ret.) and reached the following settlement of the representative PAGA claims pled in the Action (the “PAGA Settlement”), which is intended to be a full and final resolution of the Action.

2. Following the Parties’ agreement to settle the Action, the Parties also agreed to settle the separate individual claims for Plaintiff (the “Individual Settlement”).

3. This Memorandum of Understanding (the “Agreement”) contains the material terms of both the PAGA Settlement and the Individual Settlement as follows, and these terms are intended to be in full compliance with the Court’s PAGA Case Management Order #1, filed on December 17, 2020 (the “CMO”).

4. The Parties agree that neither the PAGA Settlement nor the Individual Settlement are an admission of any liability of wrongdoing. Additionally, the Parties agree that the claims made and amount and nature of the remedies requested are contested.

The PAGA Settlement

5. The Parties agree, subject to the Court’s approval, that this Agreement is a good faith, fair, reasonable, and adequate settlement, and the pending litigation and claims in the Action shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendant to pay a maximum of \$110,000 (the “PAGA Settlement Amount”), which is inclusive of PAGA penalties, all attorneys’ fees and costs, and third party administrator (“Settlement Administrator”) costs.

6. The “PAGA Class” or “PAGA Class Members” shall be defined as all current and former non-exempt employees employed by Defendant in California during the “PAGA Period,” defined as June 1, 2020, through March 17, 2022.

7. Defendant agrees not to oppose Plaintiff’s counsel’s motion for attorney’s fees of one-third (1/3) of the Settlement Amount and costs not to exceed \$15,000. Defendant agrees not to oppose any contention by Plaintiff’s counsel that attorneys’ fees should be based on the common fund and/or catalyst theory.

8. After deducting the attorneys’ fees and costs as approved by the court, and the third-party administrator expenses, the balance remaining shall form the Net Settlement Amount, which shall be allocated 75% to the Labor Workforce Development Agency and 25% to the PAGA Class Members, pending approval by the Court. The allocation of the 25% to the PAGA Class Members shall be on a pro rata basis according to the number of pay periods worked by each PAGA Class Member during the PAGA Period.

9. Pursuant to CMO ¶ C(8), the Parties agree to the following terms:

a. The release of claims for PAGA penalties shall bind only the named plaintiff and the State of California. See CMO ¶ C(8)(a). Thus, the Parties agree that the long-form shall note as

Joanne Sowle v. Sherpaul Corporation
Riverside County Superior Court, Case No. RIC2002410
Memorandum of Understanding - Settlement Terms

follows: Upon entry of the PAGA Approval Order and Defendant funding of the Settlement Amount, Plaintiff – in her individual capacity and on behalf of the State of California and LWDA - shall completely release and discharge the Released Parties from the PAGA Released Claims for the PAGA Period. As such, Plaintiff does not release any Aggrieved Employee's claim for wages or damages

b. The release of claims for PAGA penalties shall release only Defendant, together with its officers, directors, employees, and agents. See CMO ¶ C(8)(b). Thus, the "Released Parties" shall be defined in strict compliance with CMO ¶ C(8)(b).

c. The release of claims for PAGA penalties shall release only those claims described in the LWDA notice sent by Plaintiff on May 1, 2021, and only to the extent that those claims are alleged in the operative complaint. See CMO ¶ C(8)(c). Thus, the PAGA Released Claims are defined as follows: any and all PAGA claims that Plaintiff alleged against Defendant, on behalf of Aggrieved Employees and State of California, based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter sent on May 1, 2021, including all PAGA claims seeking civil penalties premised upon (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) unlawful deduction of wages, (7) failure to timely pay wages each period, (8) failure to timely pay final wages, (9) failure to provide accurate itemized wage statements, and (10) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* that were stated in the Complaint and based solely upon the facts alleged in the Complaint and the notice sent by Plaintiff to the LWDA. The time period governing the PAGA Released Claims shall be any time during the PAGA Period.

10. The Parties shall select the Settlement Administrator (i.e., Simpluris, Rust, CPT Group, ILYM, Phoenix, or a similar reputable administrator) based on low bid or by mutual agreement of the Parties.

11. The Parties agree that any funds remaining in the Settlement Administrator's account as a result of a PAGA Class Member failing to timely cash a settlement check shall be deemed void, and the Settlement Administrator shall issue the unclaimed PAGA Class Member's Individual Share(s) to the State Controller's Office for the State of California in the name of the PAGA Class Member, unless the Court directs the Parties to issue the unpaid residue to some other fund.

12. The Parties will not publicize the PAGA Settlement or disclose it to third parties prior to the Court granting approval, except as required or necessary to effectuate its terms and comply with law, including the payment of taxes.

13. These terms are to be included and memorialized in a long-form Settlement Agreement to be prepared by Plaintiff's counsel as soon as practicable. However, in the event that a long form agreement is not finalized or signed within forty-five (45) days, then this Memorandum of Understanding is intended to and shall be fully binding, enforceable and subject to disclosure, including Evidence Code section 1123 and Code of Civil Procedure section 664.6. The Parties waive confidentiality pursuant to Evidence Code section 1119 *et seq.* for the purposes of enforcing this agreement.

Joanne Sowle v. Sherpaul Corporation
Riverside County Superior Court, Case No. RIC2002410
Memorandum of Understanding - Settlement Terms

14. Upon approval of the PAGA Settlement by the Court, Plaintiff agrees to release any and all known claims against Defendant through approval, including a 1542 waiver, except for those claims that cannot lawfully be released by private agreement, including workers' compensation claims or claims for unemployment. Plaintiff's agreement to release all claims is expressly conditioned on the terms in the Individual Settlement discussed below.

15. Funding of the PAGA Settlement Amount. Defendant shall fund the PAGA Settlement Amount by wire payment to the settlement administrator based on the following payment plan:

- a. On or before December 1, 2022, Defendant shall fund \$40,000, which shall be used to pay the amounts approved by the Court for: (1) PAGA Penalties payable to the Aggrieved Employees (*i.e.*, the 25% share of the Net Settlement Amount), and (2) any remaining balance paid towards the Court-approved attorneys' fees.
- b. On or before December 1, 2023, Defendant shall fund \$50,000, which shall be used to pay: (1) the remaining balance of the Court-approved attorneys' fees, (2) the Court-approved costs, (3) the Court-approved third-party administrator expenses, and (4) any remaining balance to the PAGA Penalties payable to the LWDA.
- c. On or before April 1, 2024, Defendant shall fund the remaining \$20,000 (the balance of the PAGA Settlement Amount), which shall be used to pay the remaining balance of the PAGA Penalties payable to the LWDA.

The Individual Settlement

16. Following the agreement to settle the Action via the PAGA Settlement, the Parties also discussed and reached settlement of Plaintiff's separate individual claims.

17. Defendant have agreed to pay Plaintiff Sowle separately, in full and complete resolution of any and all individual claims, the total sum of \$10,000 (the "Individual Settlement"), which shall be allocated as follows:

- a. \$1,000.00, less lawful deductions, shall be paid to Plaintiff as compensation for alleged lost wages, said amount to be reported by Defendant on an IRS Form W-2 as appropriate, and Defendant shall be responsible to separately pay any employer-side taxes on this amount;
- b. \$6,500.00 shall be paid to Plaintiff as compensation for alleged statutory penalties and interest, which will be reported by Defendants on an IRS Form 1099 as appropriate; and
- c. \$2,500.00 to Plaintiff's counsel as attorneys' fees.

18. As consideration for the Individual Settlement, Plaintiff agrees to a complete and general release of all claims, including a waiver of California Civil Code section 1542.

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Memorandum of Understanding - Settlement Terms

19. The Parties agree that the Individual Settlement shall not be confidential in order to comply with the requirements CMO ¶ C(5).

20. **Funding of the Individual Settlement Amounts.** Defendants shall send, via overnight mail, the amounts specified above to Plaintiff's counsel on the later of December 1, 2022, or 30 days after the date on which the Court enters the PAGA Approval Order.

21. Plaintiff and Plaintiff's counsel shall provide Defendant with the necessary IRS Forms (W4 and W9 where appropriate) at least 10 calendar days before the funding deadline discussed above.

Dated: 04/20/2022

Joanne Sowle

Joanne Sowle (Apr 20, 2022 13:56 PDT)

Plaintiff Joanne Sowle

Dated: 4/20/2022

Barry Mankin

Lauby, Mankin & Lauby LLP
Counsel for Plaintiff

Dated: 04/08/22

[Signature]

Defendant Sherpaul Corporation

By: Paul A. Dzianben (name)

CFO. (title)

Dated: _____

Younger & Associates
Counsel for Defendant

Joanne Sowle v. Sherpaul Corporation
Riverside County Superior Court, Case No. RIC2002410
Memorandum of Understanding - Settlement Terms

19. The Parties agree that the Individual Settlement shall not be confidential in order to comply with the requirements CMO ¶ C(5).

20. **Funding of the Individual Settlement Amounts.** Defendants shall send, via overnight mail, the amounts specified above to Plaintiff's counsel on the later of December 1, 2022, or 30 days after the date on which the Court enters the PAGA Approval Order.

21. Plaintiff and Plaintiff's counsel shall provide Defendant with the necessary IRS Forms (W4 and W9 where appropriate) at least 10 calendar days before the funding deadline discussed above.

Dated: _____

Plaintiff Joanne Sowle

Dated: _____

Lauby, Mankin & Lauby LLP
Counsel for Plaintiff

Dated: _____

Defendant Sherpaul Corporation
By: _____ (name)

(title)

Dated: April 11, 2022

Miguel del Rosario

Younger & Associates
Counsel for Defendant

EXHIBIT “C”

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel</i> <i>(21 years)</i>	\$775	49.3	\$38,207.50
Peter J. Carlson <i>Senior Associate</i> <i>(8 years)</i>	\$540	115.4	\$66,355.00
Grand Total for All Attorneys		164.7	\$104,562.50

Sowle v. Sherpaul
Plaintiff's Counsel's Time Records

Date	Attorney	Description	Hours	Rate	Amount
5/18/2020	Brian J. Mankin	Case development analysis of new matter; review LWDA letter and Complaint, meeting with PJC re case and further handling	3.20	\$775	\$ 2,480.00
6/29/2020	Brian J. Mankin	Review letter from OC with arbitration agreement; evaluate same.	1.10	\$775	\$ 852.50
8/18/2020	Brian J. Mankin	Review FAC and multiple correspondence with OC re same	0.70	\$775	\$ 542.50
9/9/2020	Brian J. Mankin	Review Plaintiff's discovery and multiple correspondence related thereto	0.50	\$775	\$ 387.50
9/18/2020	Brian J. Mankin	Receipt and review of multiple correspondence with OC re arbitration agmt and dismissing class claims.	0.40	\$775	\$ 310.00
12/14/2020	Brian J. Mankin	Case status review; evaluate multiple correspondence with OC re potential mediation	0.50	\$775	\$ 387.50
1/22/2021	Brian J. Mankin	Case status review re scheduling mediation	0.20	\$775	\$ 155.00
4/1/2021	Brian J. Mankin	Review mediation brief and damage calculations	1.40	\$775	\$ 1,085.00
4/8/2021	Brian J. Mankin	Attend mediation, followed by multiple correspondence with OC re disputed points of fact and law	3.90	\$775	\$ 3,022.50
9/20/2021	Brian J. Mankin	Case development evaluation including reviewing status of receiving financial records and discovery	0.70	\$775	\$ 542.50
10/15/2021	Brian J. Mankin	Review multiple correspondence with OC re overdue discover and scheduling an IDC	0.30	\$775	\$ 232.50
1/13/2022	Brian J. Mankin	Case status review, including status of scheduling a second mediation and ongoing discovery issues.	0.30	\$775	\$ 232.50
1/28/2022	Brian J. Mankin	Review multiple correspondence with OC re scheduling a mediation with Judge Cannon	0.30	\$775	\$ 232.50
3/7/2022	Brian J. Mankin	Review updated mediation brief and damage model; evaluate the personal attendant exemption	1.70	\$775	\$ 1,317.50
3/17/2022	Brian J. Mankin	Attend second mediation; review MOU and related documents	4.20	\$775	\$ 3,255.00
4/19/2022	Brian J. Mankin	Draft long form settlement agreement	8.20	\$775	\$ 6,355.00
5/5/2022	Brian J. Mankin	Draft correspondence to OC re status of changes to long form	0.20	\$775	\$ 155.00
5/13/2022	Brian J. Mankin	Draft further correspondence to OC re status of changes to long form	0.20	\$775	\$ 155.00
5/23/2022	Brian J. Mankin	Draft another correspondence to OC re status of changes to long form, or we will enforce pursuant to MOU	0.40	\$775	\$ 310.00
6/21/2022	Brian J. Mankin	Draft final correspondence to OC advising that we will enforce pursuant to MOU	0.20	\$775	\$ 155.00
6/27/2022	Brian J. Mankin	Draft correspondence to Phoenix requested a declaration from the administrator; prepare draft	0.70	\$775	\$ 542.50
	Brian J. Mankin	<i>Estimated (through Final Approval) : Finalize Approval Motion and Related Documents; Attend Approval Hearing.</i>	20	\$775	\$ 15,500.00
Subtotals for Brian J. Mankin			49.3		\$ 38,207.50
4/10/2020	Peter J. Carlson	Receipt, review and analysis of documents from client; lengthy Telephone call with client; Further review and analysis of claims, including research on proper corporate entity and any related DBAs	3.40	\$575	\$ 1,955.00
4/29/2020	Peter J. Carlson	Telephone call with client; Legal research regarding potential claims and underlying theories of liability; Draft case initiating docs; Draft LWDA letter	4.40	\$575	\$ 2,530.00
5/6/2020	Peter J. Carlson	Lengthy Telephone call with client regarding status	0.50	\$575	\$ 287.50
5/15/2020	Peter J. Carlson	Draft class action complaint	5.80	\$575	\$ 3,335.00
5/18/2020	Peter J. Carlson	Receive and review documents from client (e-mails and voicemails from owner to client post-representation); Telephone call with client regarding same; Office conference with BJM; Draft Cease and Desist letter to company	1.60	\$575	\$ 920.00
5/19/2020	Peter J. Carlson	Case meeting with BJM re: strategy	0.30	\$575	\$ 172.50

Sowle v. Sherpaul
Plaintiff's Counsel's Time Records

Date	Attorney	Description	Hours	Rate	Amount
6/19/2020	Peter J. Carlson	Exchange emails with client re: status	0.40	\$575	\$ 230.00
6/19/2020	Peter J. Carlson	Further legal research and analysis of claims, including regular rate violation (higher weekend pay) and meal/rest break claims	2.40	\$575	\$ 1,380.00
6/22/2020	Peter J. Carlson	Appear at CMC via courtcall	0.70	\$575	\$ 402.50
7/14/2020	Peter J. Carlson	Draft FAC adding PAGA causes of action	3.80	\$575	\$ 2,185.00
7/28/2020	Peter J. Carlson	Review file, develop case strategy, and identify upcoming tasks	0.30	\$575	\$ 172.50
8/13/2020	Peter J. Carlson	Case review re: filing, service; email OPC re: NAR; exchange emails with client re status	0.90	\$575	\$ 517.50
8/17/2020	Peter J. Carlson	Exchange emails with opc re joint statement and status of service	0.30	\$575	\$ 172.50
8/19/2020	Peter J. Carlson	Draft request to continue CMC	0.60	\$575	\$ 345.00
9/8/2020	Peter J. Carlson	Draft Plaintiff's first set of special interrogatories	0.90	\$575	\$ 517.50
9/9/2020	Peter J. Carlson	Further draft special interrogatories, Belaire notice, and email opc pursuant to CMO E(2)	1.60	\$575	\$ 920.00
9/15/2020	Peter J. Carlson	Review CMO E(3); draft email to opc with list of items needed for meaningful mediation under E(3)(a)	0.60	\$575	\$ 345.00
9/15/2020	Peter J. Carlson	Call with client re status	0.40	\$575	\$ 230.00
9/18/2020	Peter J. Carlson	Receive and review correspondence from opc re motion to compel arbitraiton; legal research re same; email opc with proposal to file SAC on PAGA-only basis	1.60	\$575	\$ 920.00
9/23/2020	Peter J. Carlson	Call with client re status; send confirming email	0.80	\$575	\$ 460.00
9/23/2020	Peter J. Carlson	Draft SAC on PAGA-only basis; Draft stip to file SAC; Draft decl of PJC iso dismissal of class claims; Draft decl of Plaintiff re same	3.10	\$575	\$ 1,782.50
9/28/2020	Peter J. Carlson	Exchange emails with opc re: discovery or mediation; call with opc re: same; Call with client; Further draft declaration of Plaintiff iso dismissal of class claims and email to client	1.60	\$575	\$ 920.00
10/15/2022	Peter J. Carlson	Exchange various meet and confer emails with opc	0.40	\$575	\$ 230.00
10/19/2020	Peter J. Carlson	Call with opc to meet and confer for joint statement; Draft joint statement	2.10	\$575	\$ 1,207.50
10/30/2020	Peter J. Carlson	Call with client re status	0.40	\$575	\$ 230.00
11/3/2020	Peter J. Carlson	Review file; Email opc re: request for class size to determine appropriate mediator	0.40	\$575	\$ 230.00
12/14/2020	Peter J. Carlson	Review file and email opc re: delay setting mediation	0.90	\$575	\$ 517.50
12/23/2020	Peter J. Carlson	Call with client re: status; Draft informal requests for mediation; Draft stipulated protective order for mediation; email opc re same	3.10	\$575	\$ 1,782.50
1/11/2021	Peter J. Carlson	Exchange emails with opc re: mediation	0.40	\$575	\$ 230.00
1/15/2021	Peter J. Carlson	Exchange emails with opc re: mediation	0.40	\$575	\$ 230.00
2/15/2021	Peter J. Carlson	Review file and draft stip to continue CMC; Email opc re: same	0.90	\$575	\$ 517.50
2/24/2021	Peter J. Carlson	Legal research regarding waiting time penalty claims arising from sick time violations under LC 246 for failing to pay sick time at "regular rate"; Review case documents and corresponding facts to determine if cognizable claim	1.40	\$575	\$ 805.00
3/30/2021	Peter J. Carlson	Draft mediation brief	4.20	\$575	\$ 2,415.00
3/31/2021	Peter J. Carlson	Continue drafting mediation brief	8.40	\$575	\$ 4,830.00
4/1/2021	Peter J. Carlson	Finalize mediation brief; Review and extrapolate relevant data points for PAGA claims; Create PAGA damage model; Email brief to mediator and opc	3.40	\$575	\$ 1,955.00

Sowle v. Sherpaul
Plaintiff's Counsel's Time Records

Date	Attorney	Description	Hours	Rate	Amount
4/8/2021	Peter J. Carlson	Attend mediation; Legal Research re: IWC Wage Order 15 and exception for personal attendant; Call with client re status; Office conference with BJM; Email to opc	4.40	\$575	\$ 2,530.00
4/8/2021	Peter J. Carlson	Review Court's CMO re: lifting discovery stay; Draft decl of PJC and proposed order to lift stay	0.70	\$575	\$ 402.50
4/20/2021	Peter J. Carlson	Case analysis re: strategy and determining next steps in case	0.40	\$575	\$ 230.00
5/27/2021	Peter J. Carlson	Review and analyze Court's order denying request to lift stay; exchange emails with OPC re joint statement	0.90	\$575	\$ 517.50
6/1/2021	Peter J. Carlson	Review file re: Defendant's Answer; Call with opc re: upcoming hearing; Draft joint statement and exchange emails with opc re: same	1.80	\$575	\$ 1,035.00
6/3/2021	Peter J. Carlson	Exchange emails with client	0.30	\$575	\$ 172.50
7/6/2021	Peter J. Carlson	Case review with BJM to determine next steps	0.30	\$575	\$ 172.50
8/17/2021	Peter J. Carlson	Draft full set of discovery, including SROG, Belaire, RFP, RFA, and FROGs	3.70	\$575	\$ 2,127.50
8/17/2021	Peter J. Carlson	Email client re: status	0.50	\$575	\$ 287.50
9/9/2021	Peter J. Carlson	Exchange emails with client	0.30	\$575	\$ 172.50
9/20/2021	Peter J. Carlson	Exchange emails with opc re: discovery	0.30	\$575	\$ 172.50
9/21/2021	Peter J. Carlson	Call with opc re: joint statement; Draft joint statement; email client re: status	0.90	\$575	\$ 517.50
10/11/2021	Peter J. Carlson	Review status of discovery; email opc re: overdue discovery responses	0.60	\$575	\$ 345.00
10/28/2021	Peter J. Carlson	Review and analyze Defendant's responses to SROG, RFA, RFP, FROG; draft memo re: results and issues	1.90	\$575	\$ 1,092.50
10/28/2021	Peter J. Carlson	Legal research re disputed topics; Draft 7-page meet and confer	4.90	\$575	\$ 2,817.50
11/8/2021	Peter J. Carlson	Receive email from opc re: discovery; Email Belaire notice again	0.40	\$575	\$ 230.00
11/9/2021	Peter J. Carlson	Draft additional email to opc re discovery dispute	0.40	\$575	\$ 230.00
11/16/2021	Peter J. Carlson	Continued meet and confer re: discovery dispute	0.40	\$575	\$ 230.00
11/23/2021	Peter J. Carlson	Call with opc re: discovery dispute; Draft lengthy confirming email to opc re: agreements reached	0.50	\$575	\$ 287.50
3/7/2022	Peter J. Carlson	Call with client re: status; Review discovery responses and new facts/documents; Draft mediation brief and damage model	4.80	\$575	\$ 2,760.00
3/9/2022	Peter J. Carlson	Continued mediation prep	1.10	\$575	\$ 632.50
3/11/2022	Peter J. Carlson	Further draft and finalize 2nd mediation brief; email to mediator	1.70	\$575	\$ 977.50
3/16/2022	Peter J. Carlson	Call with client; Call with Mediator Judge Cannon; Send mediation brief to defense counsel; review and analyze Defendant's mediation brief	3.90	\$575	\$ 2,242.50
3/17/2022	Peter J. Carlson	Attend mediation and draft MOU	4.90	\$575	\$ 2,817.50
5/31/2022	Peter J. Carlson	Call with opc; Draft joint statement; Exchange emails re same	1.20	\$575	\$ 690.00
6/27/2022	Peter J. Carlson	Review Court's CMO and begin drafting documents in support of Motion for PAGA Approval	1.70	\$575	\$ 977.50
6/28/2022	Peter J. Carlson	Draft Motion for PAGA Approval, [Proposed] Order, Declarations in support of same, and Notice to AEs	8.10	\$575	\$ 4,657.50
6/29/2022	Peter J. Carlson	Further draft Motion for PAGA Approval and supporting docs	1.40	\$575	\$ 805.00
6/29/2022	Peter J. Carlson	Exchange emails with opc re: joint statement; Draft and circulate same	0.60	\$575	\$ 345.00
Subtotals for Peter J. Carlson			115.4		\$ 66,355.00

EXHIBIT “D”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00421 Sowle v Sherpaul Corp (Active Only)

Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Joanne Sowle</u> <u>14000-00421 Sowle v Sherpaul Corp</u>									
05-01-2020	Approved		Non-Billable	E101 Copying	Aguilera, Sophia J.	0.20	0.00	92.00	18.40
92 copies @ \$0.20 for Letters to LWDA and employer									
05-01-2020	Approved		Non-Billable	E108 Postage	Aguilera, Sophia J.	31.40	0.00	1.00	31.40
Postage for the month of May 2020									
05-04-2020	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	75.00	0.00	1.00	75.00
LWDA- Check #0553									
05-18-2020	Approved		Non-Billable	E107 Messengers/ Overnight	Aguilera, Sophia J.	16.42	0.00	1.00	16.42
UPS Next Day Air Saver- Cease & Desist letter to Sherpaul Corporation, Paul Andrew Dziuban									
07-08-2020	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	1,450.00	0.00	1.00	1,450.00
RVSC Submission ID #10318862 to file Complaint									
08-24-2020	Approved		Non-Billable	Attorney Service	Aguilera, Sophia J.	121.95	0.00	1.00	121.95
Bosco Inv 4792335 Serve: SHERPAUL CORPORATION, A CALIFORNIA CORPORATION AMENDED SUMMONS; FIRST AMENDED COMPLAINT; NOTICE OF ASSIGNMENT TO DEPARTMENT AND CASE MANAGEMENT CONFERENCE; ADR Court: Riverside County Superior Court - Central District									
10-09-2020	Approved		Non-Billable	Attorney Service	Aguilera, Sophia J.	20.00	0.00	1.00	20.00
RVSC Submission ID #10439652 to file SAC stip									
02-22-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Sophia J.	20.00	0.00	1.00	20.00
RVSC Submission ID #10611722 to file stip to continue CMC									
03-18-2021	Approved		Non-Billable	E125 Mediation fees	Aguilera, Sophia J.	2,475.00	0.00	1.00	2,475.00
JAMS Inv 5573952 for mediation with Hon. Keith Davis (Ret.)									
09-29-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	2.00	0.00	1.00	2.00
RVSC Submission ID #10937421 to file joint statement									
01-28-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	12.35	0.00	1.00	12.35
One Legal Order #17586918 to submit Stip and Order									

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
 Group By Staff Member Group
 Client - Project = 14000-00421 Sowle v Sherpaul Corp (Active Only)
 Activity Code = All
 Expense Code = All
 View = Original
 Approval Status = All
 Selected Expenses = All
 From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Joanne Sowle</u> <u>14000-00421 Sowle v Sherpaul Corp</u>									
02-03-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	12.35	0.00	1.00	12.35
One Legal Order #17597796 to re-submit Stip and Order									
02-24-2022	Approved		Non-Billable	E125 Mediation fees	Grossi, Tracie L.	3,125.00	0.00	1.00	3,125.00
JAMS Inv 6072916 for mediation with Hon. Jonathan Cannon (Ret.)									
03-31-2022	Approved		Non-Billable	E108 Postage	Grossi, Tracie L.	17.95	0.00	1.00	17.95
Postage for the month of March 2022									
06-30-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	16.78	0.00	1.00	16.78
OneLegal Order #18478923 - File Joint Statement									
07-08-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	16.78	0.00	1.00	16.78
OneLegal Order# 18301554 - File Joint Statement									
08-02-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	16.78	0.00	1.00	16.78
OneLegal Order #18656501 - File Ntc of COA									
08-10-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	250.00	0.00	1.00	250.00
Estimated fees and costs for OneLegal to file Motion for Approval and supporting documents									

Project Total 7,698.16
Client Total 7,698.16
Grand Total 7,698.16

EXHIBIT “E”

EXHIBIT “F”

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment from *Sowle v. Sherpaul Corporation*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the settlement of a lawsuit entitled *Joanne Sowle, on behalf of all aggrieved employees and the State of California v. Sherpaul Corporation., a California Corporation; and DOES 1 through 20, inclusive*, which was pending in the Superior Court of the State of California for the County of Riverside, Case No. RIC2002410 (the “Sowle case” or “Lawsuit”).

The *Sowle* case was initially filed on June 1, 2020, and in its current form the lawsuit brings claims against Sherpaul Corporation (“Sherpaul”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). As such, the Lawsuit was brought on behalf of the State of California and all current and former non-exempt employees employed by Defendant in California any time from June 1, 2020, through March 17, 2022 (the “Aggrieved Employees”).

Specifically, in the Lawsuit, Mr. Diaz alleged that Legacy failed to pay all required minimum and overtime wages, failed to provide meal periods and rest breaks, failed to reimburse business expenses, subjected Aggrieved Employees to the unlawful deduction of wages, failed to timely pay wages owing during employment, including, but not limited to, failed to timely pay wages at termination, and failed to provide accurate itemized wage statements. As such, the lawsuit sought PAGA civil penalties for these violations.

Sherpaul denies the allegations and denies that it owes any penalties. In an effort to avoid the time, expense and uncertainty of litigation, Ms. Sowle and Sherpaul agreed to settle the case. You have been identified as one of the alleged aggrieved employees on whose behalf Ms. Sowle filed her lawsuit, and for purposes of the Lawsuit, the Settlement, and the following paragraph, you are considered an “Aggrieved Employee.”

As such, the parties’ settlement resolves Ms. Sowle’s claims on behalf of all Aggrieved Employees, including any and all PAGA claims that Plaintiff alleged against Defendant, on behalf of Aggrieved Employees and State of California, based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter sent on May 1, 2021, including all PAGA claims seeking civil penalties premised upon (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) unlawful deduction of wages, (7) failure to timely pay wages each period, (8) failure to timely pay final wages, (9) failure to provide accurate itemized wage statements, and (10) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* that were stated in the Complaint and based solely upon the facts alleged in the Complaint and the notice sent by Plaintiff to the LWDA. **Please note: this settlement does not release any Aggrieved Employee’s individual claim for wages or damages.**

The Court approved the Settlement on [REDACTED], 2022. As a result, the enclosed settlement check has been issued and shall remain valid for one hundred eighty (180) days. Checks remaining uncashed for more than 180 days after issuance will be voided and funds represented thereby will be remitted by the State Controller’s Office for the State of California in the name of the each Aggrieved Employee that did not cash their check.

[illegible]

On August 12, 2022, I caused to be served the foregoing document(s) described as follows:

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Jacqui Chuang

Tracie Chiarito, Declarant

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