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Attorneys for Plaintiff and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ROBERT RODRIGUEZ, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

CITY NATIONAL BANK, business entity
form unknown; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20STCV29761

[Assigned for all purposes to the Hon.
Malcolm Mackey, Department 55]

**DECLARATION OF KRISTEN M.
AGNEW IN SUPPORT OF PLAINTIFF'S
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT**

Date: November 10, 2022
Time: 8:30 a.m.
Dept.: 55

Reservation No.: 936780749585

Complaint Filed: August 6, 2020
Trial Date: None

1 I, Kristen M. Agnew, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff
4 Robert Rodriguez (“Plaintiff”). I have personal knowledge of the facts set forth below and if
5 called to testify I could and would do so competently.

6 **PROCEDURAL HISTORY**

7 2. From the inception of the case, Plaintiff’s Counsel has zealously represented the
8 interests of the Aggrieved Employees.

9 3. On June 9, 2020, Plaintiff submitted his written notice under Labor Code section
10 2699.3 (the “PAGA Notice”) to the California Labor and Workforce Development Agency
11 (“LWDA”) and Defendant City National Bank (“Defendant”). Plaintiff alleged that Defendant
12 violated Labor Code sections 201-203, 226, 226.7, 246, 510, 512, 558, and 1194.

13 4. As set forth in the PAGA Notice, Plaintiff alleged that he and other Aggrieved
14 Employees earned non-discretionary incentive wages, including shift differentials. Plaintiff
15 further alleged that Defendant failed to incorporate the non-discretionary incentive pay in the
16 regular rate of pay for the purposes of paying overtime, meal period premiums, and sick pay.
17 Rather, Defendant paid such wages at the employee’s base rate of pay, instead of the correct,
18 higher regular rate of pay.

19 5. Plaintiff further alleged that Defendant failed to provide off-duty rest periods to
20 Aggrieved Employees who were required to carry a two-way radio. Plaintiff contends that
21 Defendant required these employees to respond to work-related calls during their breaks. As a
22 result, employees remained subject to Defendant’s control, received interrupted and shortened
23 rest breaks, and were subject to an immediate return to work.

24 6. Additionally, as a result of the regular rate miscalculation and rest period
25 violations, Plaintiff contends that the wage statements issued to Aggrieved Employees
26 identified incorrect wage rates and net and gross wages earned, in violation of Labor Code
27 section 226(a). Plaintiff further alleged that when shift differential wages were paid, the
28 corresponding wage statements issued to Aggrieved Employees did not identify the applicable

1 rate of pay and number of hours worked used to calculate such wages.

2 7. On August 6, 2020, Plaintiff filed a class action complaint against Defendant in
3 the Superior Court of California, County of Los Angeles. The complaint alleged class claims
4 predicated on the Labor Code violations set forth in the PAGA Notice.

5 8. On November 9, 2020, counsel for Defendant provided a copy of a Mutual
6 Agreement for Dispute Resolution, signed by Plaintiff. The agreement contained an arbitration
7 provision and class action waiver. Considering the class action waiver, Plaintiff agreed to
8 dismiss the class allegations and proceed on a PAGA-only basis.

9 9. On November 16, 2020, Plaintiff filed the First Amended Representative Action
10 Complaint (“Complaint”). The Complaint alleged a single cause of action for civil penalties
11 pursuant to Labor Code section 2698, *et seq.*, based on the facts and the alleged Labor Code
12 violations described in Plaintiff’s PAGA Notice. The First Amended Complaint is the
13 operative complaint.

14 10. On December 8, 2020, Defendant filed a Demurrer and Motion to Strike
15 Allegations from Plaintiff’s First Amended Complaint. Defendant argued that Plaintiff cannot
16 recover PAGA penalties based on Defendant’s alleged violation of the Healthy Workplace
17 Healthy Family Act (“HWHFA”), Labor Code section 245 *et seq.* More specifically,
18 Defendant advanced the legal argument that sick pay is not a wage, subject to the requirements
19 of Sections 201 and 202. Defendant further maintained that there is no private right of action
20 to pursue PAGA penalties for alleged violations of the HWHFA. Plaintiff opposed the
21 Demurrer and Motion to Strike. On February 18, 2021, the Court denied the motion.

22 **DISCOVERY AND INVESTIGATION**

23 11. Plaintiff and Defendants (collectively, the “Parties”) engaged in an extensive
24 exchange of documents and information, through both formal and informal discovery.

25 12. On February 26, 2021, Plaintiff served Special Interrogatories (Set One) and
26 Requests for Production of Documents (Set One). The written discovery called for Defendant
27 to state: the number of aggrieved employees; the number of pay periods in which aggrieved
28 employees earned overtime and non-discretionary incentive wages in the same workweek; the

1 number of pay periods in which aggrieved employees earned sick pay and non-discretionary
2 incentive wages in the same workweek; the number of pay periods in which aggrieved
3 employees earned a meal penalty premium and non-discretionary incentive wages in the same
4 workweek; the number of pay periods in which aggrieved employees worked 3.5 hours or
5 more in any shift where he or she was also assigned a radio communication device; and the
6 number of pay periods in which aggrieved employees earned shift differential wages. The
7 discovery also called for Defendant to produce Plaintiff's wage statements and relevant
8 policies, including those pertaining to the calculation of the regular rate of pay for sick pay,
9 meal penalty premium wages and overtime, and meal/rest period procedures. On May 12,
10 2021, Defendant served responses and produced responsive documents.

11 13. On April 8, 2021, Defendant served Requests for Production of Documents (Set
12 One). The requests sought documents relevant to Plaintiff's claims, including communications
13 pertaining to Defendant's meal/rest period policy and communications with employees and
14 management regarding the claims alleged in the Complaint. On May 24, 2021, Plaintiff served
15 responses to Defendant's Requests for Production of Documents.

16 14. In or around November 2021, the Parties agreed to participate in a private
17 mediation with the Honorable Brian C. Walsh (Ret.), a respected and experienced mediator
18 knowledgeable of both the wage and hour laws and representative claims at issue in this
19 action. Prior to the mediation, Defendant produced the payroll records of Aggrieved
20 Employees, data relating to the number of pay periods worked by Aggrieved Employees, the
21 number of pay periods in which Aggrieved Employees were assigned a radio, the number of
22 pay periods in which Aggrieved employees earned a shift differential and meal period
23 premium, the number of pay periods in which Aggrieved employees earned a shift differential
24 and overtime wages, the number of pay periods in which Aggrieved employees earned an
25 incentive and sick pay, and the number of Aggrieved Employees that separated from
26 Defendant's employ during the PAGA Period. Using the data provided by Defendant, I
27 performed a comprehensive damages analysis.

28 15. I also extensively met and conferred with defense counsel regarding the regular

1 rate claims. Defense counsel maintained that shift differential pay is not an hourly rate, but
2 instead a percentage bonus paid on total earnings. In connection with these discussions, I
3 reviewed a copy of the shift differential pay policy that was in effect during the liability
4 period. The policy provides that eligible employees will receive shift differential pay for
5 working a swing shift or graveyard shift. The shift differential is paid as a percentage of the
6 employee's standard hourly rate for all hours worked for that day. I also reviewed Plaintiff's
7 wage statements and confirmed that the shift differential pay he received was a percentage of
8 his total gross wages.

9 **MEDIATION**

10 16. On January 10, 2022, the Parties engaged in an all-day mediation session before
11 Judge Walsh. During the mediation, counsel zealously advocated on behalf of their respective
12 clients. The Parties spoke at length about the strengths and weaknesses of each sides' claims
13 and defenses and the scope of Defendant's liability. The Parties gained valuable insight and
14 exchanged significant information about their respective positions

15 17. After a full day of negotiation, the Parties were able to reach an agreement for
16 settlement and the key terms, which they memorialized in a memorandum of understanding.
17 The Parties thereafter worked to memorialize the terms of the settlement in a long-form
18 settlement agreement.

19 18. On or about May 9, 2022, the Parties executed a Joint Stipulation of Settlement
20 and Release under PAGA ("Agreement" or "Settlement Agreement"). Attached hereto as
21 **Exhibit A** is a true and correct copy of the Settlement Agreement.

22 **SUMMARY OF THE PROPOSED SETTLEMENT**

23 19. The Settlement Agreement covers the following groups of employees: (i)
24 California non-exempt employees who earned both shift pay and overtime in the same
25 workweek during the PAGA Period ("Overtime Aggrieved Employees"); (ii) California non-
26 exempt employees who earned both shift pay and meal period premiums in the same
27 workweek during the PAGA Period ("Meal Period Aggrieved Employees"); (iii) California
28 non-exempt employees who earned both non-discretionary incentive wages and sick pay in the

1 same workweek during the PAGA Period (“Sick Pay Aggrieved Employees”); (iv) California
2 non-exempt employees who received a wage statement reflecting the payment of shift pay
3 wages during the PAGA Period (“Shift Pay Aggrieved Employees”); and (v) California non-
4 exempt employees, who were assigned a company-issued radio, and worked at least one shift
5 lasting 3.5 hours or more during the PAGA Period (“Radio Aggrieved Employees”). *See*
6 Settlement Agreement (“SA”) § B-2. The PAGA Period is defined as April 9, 2019 through
7 the date the approval motion for the instant settlement is filed with the Court. *See* SA § B-11.

8 20. Together, the Overtime Aggrieved Employees, Meal Period Aggrieved
9 Employees, Sick Pay Aggrieved Employees, Shift Pay Aggrieved Employees and Radio
10 Aggrieved Employees constitute the “Aggrieved Employees. *See* SA § B-2. Defendant has
11 determined that there are approximately 1,304 Aggrieved Employees. *See id.* Defendant has
12 further determined that Aggrieved Employees worked approximately 14,957 pay periods from
13 April 9, 2019, through September 1, 2021. *See id.*

14 21. The Settlement Agreement requires Defendant to pay the gross amount of Two
15 Hundred Seventy-Five Thousand Dollars (\$275,000.00) (the “Gross Settlement Amount”). *See*
16 SA §§ B-9, C-1.

17 22. The balance of the Gross Settlement Amount remaining after deduction of
18 approved Enhancement Payment to Plaintiff, Attorneys’ Fees and Costs, and Settlement
19 Administration Costs (the “PAGA Penalties Fund”), will be available for distribution to the
20 LWDA and Aggrieved Employees. *See* SA § B-11, C-3. The Parties estimate that the PAGA
21 Penalties Fund will total at least \$158,385.95. Seventy-five percent (75%) of the PAGA
22 Penalties Fund, or approximately \$118,789.46, will be paid to the LWDA for PAGA penalties.
23 *See* SA § C-3. The remaining twenty-five percent (25%), or approximately \$39,596.49, will be
24 distributed to Aggrieved Employees. *See* SA § C-3.

25 23. As part of the Settlement Agreement, Defendant does not object to Plaintiff’s
26 Counsel’s request for attorneys’ fees of approximately thirty-three and one-third percent
27 (33.33%) of the Gross Settlement Amount, *i.e.*, Ninety-One Thousand Six Hundred Sixty-Six
28 Dollars (\$91,666.00), plus up to Fifteen Thousand Dollars (\$15,000.00) for reimbursement of

1 litigation costs, subject to the Court approving this Settlement. *See* SA § C-7. Plaintiff's
2 Counsel's anticipated actual litigation costs total \$7,198.05. The costs were all directly
3 incurred in the prosecution of this action, including filing fees, mediation fee, postage,
4 copying, and service of process fees. Attached hereto as **Exhibit B** is a true and correct copy
5 of my office's cost bill, which reflects costs incurred in prosecuting this case. Any costs not
6 awarded by the Court will revert to the PAGA Penalties Fund for distribution to the LWDA
7 and the Aggrieved Employees.

8 24. Defendant has also agreed to not object to Plaintiff's request for a Representative
9 Plaintiff's Payment of Ten Thousand Dollars (\$10,000.00). *See* SA § C-6.

10 25. Finally, the Settlement Agreement provides for the payment of the fees and
11 expenses reasonably incurred by the Settlement Administrator. *See* SA §§B-17, B-18, C-8.
12 The Parties have agreed to utilize Phoenix Settlement Administration to administer the
13 settlement, with the administration costs estimated to be Seven Thousand Seven Hundred Fifty
14 Dollars (\$7,750.00). *Id.* at §§ B-18, C-8. The Parties believe that the administration fee is
15 reasonable and should be approved.

16 **VALUE OF SETTLEMENT PER PAY PERIOD**

17 26. Based on the Gross Settlement Amount, Defendant will pay approximately
18 \$18.38 per pay period ($\$275,000 \div 14,957$ pay periods) to resolve the claims in this case.

19 27. The amount any particular Aggrieved Employee will be entitled to recover will
20 depend on the number of pay periods worked by the employee in a non-exempt position in
21 California during the PAGA Period in which they were paid overtime wages and shift pay,
22 and/or meal period premiums and shift pay, and/or were assigned a radio, and/or were paid
23 sick pay and incentive pay. *See* SA § C-4. This is fair, as it directly allocates greater penalties
24 to individuals who have allegedly suffered greater harm.

25 28. Any uncashed checks will escheat to the Unclaimed Property Fund administered
26 by the California State Controller's Office in the name of the Aggrieved Employee, where it
27 will be held in trust. *See* SA § D-6.

POTENTIAL CIVIL PENALTIES

29. Using the data provided by Defendant, I performed a comprehensive damages analysis. Defendant has indicated Aggrieved Employees worked approximately 14,957 pay periods from April 9, 2019, through September 1, 2021. Assuming that the Court were to award a \$100 penalty for each pay period, the maximum PAGA penalties total \$1,495,700.

30. In the alternative, if the Court were to “stack” penalties, (*ie*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA the could total as high as \$1,865,650:

Lab. Code Section	Violation	Pay Periods	PAGA Penalties
Lab. Code §§ 510, 558, and 1194	Failure to pay overtime at the correct regular rate	1,655	\$165,500
Lab. Code §§ 226.7 and 512	Failure to pay meal period premium at the regular rate	95	\$9,500
Lab. Code §§ 201-203 and 246	Failure to pay sick pay at the correct rate	12,751	\$1,275,100
Lab. Code § 226.7	Failure to provide off-duty rest periods	18	\$1,800
Lab. Code § 226	Failure to provide accurate wage statements	1,655	\$413,750
TOTAL			\$1,865,650

31. However, I believe that is unrealistic to assume that the Court would permit the “stacking” of PAGA penalties in this manner. I am not aware of any PAGA award in which the trial court assessed more than one penalty per pay period.

32. The above penalty calculations further assume that Plaintiff will prevail on the merits. However, Plaintiff’s claims are contested.

33. **Unpaid Overtime.** The Parties sharply disagree as to whether the shift differentials wages should be included in the regular rate of pay for purposes of calculating

overtime wages. Defendant contends that it relied on the percentage pay method set forth in the FLSA regulations and paid the incentive as a total percentage of qualifying earnings during the pay period. As argued by Defendant, an employer need not recalculate an employer's regular rate of pay where a bonus is paid as a percentage of earnings, including straight time and overtime. However, Plaintiff contends that California law is far more protective than the FLSA. I am unaware of the existence of any published California Court of Appeal decision that grapples with this precise dispute regarding the calculation of the regular rate. However, at least two federal courts interpreting California law have upheld the use of a percentage payment.

34. **Unpaid Sick Pay Wages.** With respect to the alleged unpaid sick time, Plaintiff alleges that Defendant consistently paid sick pay at an employee's base hourly rate of pay, even in workweeks where the employee earned non-discretionary incentive wages. Defendant maintains that there is no private right of action to bring a paid sick pay claim. This argument presents novel legal issues and there is substantial ground for difference of opinion as to the remedies, if any, available to employees who have experienced a violation of the HWHFA. I am unaware of the existence of any published California Court of Appeal decision that grapples with this issue. There are a handful of unreported district court opinions and state court trial orders, which have held that only the Labor Commissioner may recover penalties for a violation of HWHFA. Furthermore, even if Plaintiff ultimately prevailed on the merits, given the novelty of the legal questions it raised, Defendant may have sought immediate appellate review through a writ or appeal.

35. **Unpaid Meal Period Premium Pay.** Plaintiff alleges that Meal Period Aggrieved Employees' meal period premium payments were not correctly calculated at the regular rate of pay that included all non-discretionary remuneration. Defendant argues that shift differentials—which are paid as a percentage of total earnings—are excluded from the regular rate calculation under *Ferra*. As argued by Defendant, the *Ferra* Court adopted the FLSA's approach to the regular rate of calculation, and under the FLSA payments that are a percentage of total earnings are not included within the regular rate calculations. I am not

1 aware of any court that has applied Labor Code section 226.7's requirements that meal period
2 premiums be paid at the "regular rate of compensation" to bonus payments that are paid on
3 total earnings.

4 36. **Rest Period Violations.** Plaintiff alleges that Defendant required Radio
5 Aggrieved Employees carry a two-way radio and respond to calls whenever they came in. As a
6 result, Radio Aggrieved Employees remained subject to Defendant's control, received
7 interrupted and shortened rest breaks, and were subject to an immediate return to work.
8 However, Defendant has argued that it complied with the law, had legal policies, and provided
9 its employees duty-free rest periods. In support of this argument, Defendant provided evidence
10 that it implemented a facially compliant written rest period policy, which included a channel
11 for reporting any violations. Defendant further argued that, even if Plaintiff were able to
12 establish that he experienced a rest period violation, such a claim would not be manageable.

13 37. **Wage Statement Violations.** Plaintiff alleges that when shift differential wages
14 were paid, the corresponding wage statements issued to Plaintiff and Shift Pay Aggrieved
15 Employees did not identify the applicable rate of pay and number of hours worked used to
16 calculate such wages. The Parties do not dispute that Defendant's wage statements fail to
17 identify the rate or hours used to calculate shift differential wages. Defendant, however, points
18 out that the shift differential plan calls for the incentive to be calculated as a percentage of an
19 employee's earnings. Thus, as framed by Defendant, shift differential wages are not an hourly
20 wage subject to the requirements of Labor Code section 226(a)(9). While Plaintiff believes
21 that Defendant's defense lacks merit, the defense involves a purely legal question that can be
22 easily adjudicated through a motion for summary adjudication. An adverse ruling on this issue
23 would have resulted in the elimination of any potential civil penalties available to Shift Pay
24 Aggrieved Employees.

25 38. In negotiating the amount of the settlement, I also took into account the inherent
26 uncertainty in the potential recovery in a PAGA action. By statute, the Court can decline to
27 award the full amount of PAGA penalties where "...if, based on the facts and circumstances of
28 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and

oppressive, or confiscatory.” See Cal. Labor Code § 2699(e)(2). Assuming that Plaintiff prevailed on liability, under the facts of this case, I appreciate the substantial risk that Defendant could present a persuasive argument to reduce the amount of PAGA penalties at trial. The Court has discretion under PAGA to reduce the maximum allowable PAGA penalties.

39. I am also aware that Courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. As shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; see *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal., 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA penalties of approximately 10% of the total maximum, a more realistic estimate of the maximum PAGA penalties at issue—even with “stacking”—is \$186,565.

THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

40. I believe that Plaintiff could prevail at trial. However, I also believe in the fairness of the settlement, which is based on factoring in the uncertainty and risks attendant to not prevailing on one or more theories of liability, the possibility of losing at trial and potential for appeals. Moreover, as Defendant adamantly denies that it should be liable for the full extent of the alleged penalties, there is a possibility that Plaintiff and the Aggrieved Employees would be awarded less or recover nothing at trial. Thus, after taking into account sharply disputed legal issues involved in this litigation, the risks associated with further prosecution, delays caused by potential appeals, and the substantial benefits to be received pursuant to the Settlement, I believe that the proposed settlement is fair, reasonable, and adequate and is in the best interests of Plaintiff and the Aggrieved Employees.

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1 **NOTICE TO LWDA**

2 41. Concurrent with the filing of the Motion to Approve PAGA Settlement, my
3 office uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's
4 website.

5 **ATTORNEY EXPERIENCE**

6 42. Diversity Law Group has a great deal of experience in wage and hour class
7 action litigation and has been approved as class counsel in a number of class actions.

8 43. My qualifications are as follows: I was the 2003 recipient of the Spelman
9 Presidential Scholarship to Emory University School of Law. During law school, I was a
10 summer associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the
11 Atlanta office of the Equal Employment Opportunity Commission. I received my J.D. from
12 Emory University in 2006 and was admitted to the California Bar in December 2006.
13 Following law school, I was an associate at Sonnenschein from September 2006 to May 2009.

14 44. Since 2009, my primary area of practice has been employment litigation. I have
15 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I
16 was an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate,
17 and then senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP
18 from June 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of
19 fortune 500 companies in employment litigation in both state and federal courts, as well as
20 before government agencies, including the California Department of Labor. My practice
21 included the defense of single plaintiff and multi-plaintiff lawsuits involving claims under the
22 California Fair Employment and Housing Act, the California Labor Code and the Fair Labor
23 Standards Act. I also handled a number of wage and hour class actions.

24 45. While at Ogletree and Seyfarth, I served as the lead associate on a number of
25 wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County
26 Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los
27 Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate*
28 *Insurance Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*,

1 Los Angeles County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware,*
2 *Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta*
3 *Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183;
4 *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court
5 Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia*
6 *v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v.*
7 *Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

8 46. I also second chaired two jury trials where I represented the prevailing
9 defendant. Both cases involved employees who brought claims against their former employers
10 pursuant to the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton*
11 *Aerospace LLC et al*, Los Angeles County Superior Court Case No. BC401543; and *Richard*
12 *Gulden v. Pratt & Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case
13 No. BC468909. More recently, I was lead trial counsel on a PAGA bench trial, in which the
14 plaintiff was the prevailing party.

15 47. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
16 handling employment cases. I primarily represent employees.

17 48. I have been approved as class counsel in numerous wage/hour class actions that
18 have been granted class certification and final approval, including: *Antonio Becerra-Mata v.*
19 *PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030;
20 *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case
21 No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case
22 No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa
23 Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa
24 Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los
25 Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville*
26 *Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v.*
27 *Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139; *Cody*
28 *Wirbick v. Sundt Construction, Inc.*, U.S. District Court for the Eastern District of California

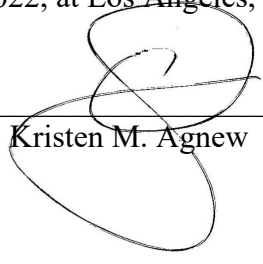
Case No. 2:19-cv-02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S. District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v. Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA; *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582.

49. To date, I have incurred approximately 72.80 hours in connection with the litigation of this lawsuit. Attached hereto as **Exhibit C** is a summary of the hours I have spent on this case to date. This figure does not include the estimated hours for appearing at the fairness hearing, conferring and reviewing e-mails with defense counsel and the Settlement Administrator, and answering questions from Aggrieved Employees regarding payments and related issues. I anticipate I will expend approximately two hours working on this matter, in addition to the hours described in Exhibit C.

50. The total lodestar for my hours will be approximately \$52,360 based on an hourly rate of \$700.00 per hour ($[72.80 \text{ hours} + 2.0 \text{ hours}] \times 700$). I have been approved at an hourly rate of \$700.00 per hour by various Courts, including: *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139; *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211; *Chavez v. Converse, Inc.*, United States District Court, Northern District of California Case No. 15-cv-03746-NC; and *Carrillo v. New Balance Athletics, Inc.*, Santa Clara Superior Court Case No. 19CV352469.

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

Executed on this 2nd day of June 2022, at Los Angeles, California.



Kristen M. Agnew

EXHIBIT A

Larry W. Lee (State Bar No. 228175)
 Kristen M. Agnew (State Bar No. 247656)
 Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

ROBERT RODRIGUEZ, as an individual
 and on behalf of all others similarly situated,

Plaintiffs,

vs.

CITY NATIONAL BANK, business entity
 form unknown; and DOES 1 through 50,
 inclusive,

Defendants.

Case No.: 20STCV29761

[Assigned for all purposes to the Hon. Malcolm Mackey, Department 55]

**JOINT STIPULATION OF SETTLEMENT
 AND RELEASE UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE § 2698, *ET
 SEQ.***

Complaint Filed: August 6, 2020
 FAC Filed: November 16, 2020
 Trial Date: None Set

This Joint Stipulation of Settlement and Release (“Agreement” or “Settlement”) under the Private Attorneys General Act, California Labor Code section 2698 *et seq.* (“PAGA”), is made by and between Robert Rodriguez (“Rodriguez” or “Plaintiff”), as an individual and on behalf of Aggrieved Employees as further defined herein and the State of California, and City National Bank (“CNB” or “Defendant”). Rodriguez and CNB are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.”

A. FACTUAL BACKGROUND

1. This Settlement is subject to the terms and conditions hereof, and to the Court's approval. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. Defendant denies that it is liable to Plaintiff or the Aggrieved Employees and denies that it has violated any law.

2. On June 9, 2020, Plaintiff filed a notice with the California Labor & Workforce Development Agency ("LWDA") alleging that Defendant violated Labor Code sections 201-203, 226, 226.7, 246, 510, 512, 558, and 1194 ("PAGA Notice").

3. On August 6, 2020, Plaintiff filed a class action complaint. As set forth in the class action complaint, Plaintiff alleged the following claims: (1) failure to pay overtime wages at the correct regular rate of pay in violation of Labor Code sections 510, 558, and 1194; (b) failure to pay meal period premiums at the correct regular rate of pay in violation of Labor Code sections 226.7 and 512; (c) failure to pay sick pay at the correct regular rate of pay in violation of Labor Code sections 201-203 and 246; (d) failure to provide proper rest breaks in violation of Labor Code section 226.7; (e) failure to provide accurate wage statements in violation of Labor Code section 226(a); and (f) engaging in unfair business practices in violation of the UCL.

4. On November 16, 2020, Plaintiff filed the First Amended Representative Action Complaint. The First Amended Complaint alleges a single cause of action for violation of violation of Labor Code section 2698, *et seq.* predicated on the Labor Code violations set forth in the PAGA Notice. No class action claims remain. The First Amended Complaint is the operative Complaint ("Complaint").

5. On or about March 10, 2021, Defendant filed an Answer denying all allegations in the Action.

6. In about November 2021, the Parties agreed to participate in private mediation. In connection with the mediation, Defendant produced the payroll records of Aggrieved Employees, data relating to the number of pay periods worked by Aggrieved Employees, and the number of Aggrieved Employees that separated from Defendant's employ during the PAGA

1 Period, which allowed Plaintiff's Counsel to conduct a full damage analysis.

2 7. On January 20, 2022, the Parties participated in private mediation with mediator
3 Hon. Brian C. Walsh (Ret.) After a full day of arm's length negotiations, the Parties reached a
4 settlement in principle, which they memorialized in a memorandum of understanding, and which
5 is superseded by this Agreement.

6 8. The Parties recognize the risk, expense, and delay in continuing the Action, and
7 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
8 desire to settle, compromise, and discharge all disputes and claims arising from or relating to the
9 Action.

10 **B. DEFINITIONS**

11 1. "Action" means *Robert Rodriguez v. City National Bank*, filed on August 6, 2020,
12 in the Superior Court of California, County of Los Angeles, Case No. 20STCV29761, and which
13 includes Plaintiff's First Amended Representative Action Complaint filed on November 16,
14 2020.

15 2. "Aggrieved Employees" means the following groups of employees:

16 2.1. Californai non-exempt employees who earned both shift pay and overtime
17 in the same workweek during the PAGA Period ("Overtime Aggrieved Employees");

18 2.2. California non-exempt employees who earned both shift pay and meal
19 period premiums in the same workweek during the PAGA Period ("Meal Period Aggrieved
20 Employees");

21 2.3. California non-exempt employees who earned both non-discretionary
22 incentive wages and sick pay in the same workweek during the PAGA Period ("Sick Pay
23 Aggrieved Employees");

24 2.4. California non-exempt employees who received a wage statement
25 reflecting the payment of shift pay wages during the PAGA Period ("Shift Pay Aggrieved
26 Employees");

27 2.5. California non-exempt employees, who were assigned a company-issued
28 radio, and worked at least one shift lasting 3.5 hours or more during the PAGA Period ("Radio

1 Aggrieved Employees”).

2 Defendant has determined that there are approximately 1,304 Aggrieved Employees.
3 Defendant has further determined that Aggrieved Employees worked approximately 14,957
4 pay periods from April 9, 2019, through September 1, 2021.

5 3. “Attorneys’ Fees and Costs” means such award of fees and costs and expenses as
6 the Court may authorize to be paid to Plaintiff’s Counsel for the services they have rendered to
7 Plaintiff and the Aggrieved Employees in this Action. Defendant agrees not to oppose Attorneys’
8 Fees of approximately one-third of the Gross Settlement Amount (\$275,000.00), *i.e.*, the sum of
9 Ninety-One Thousand Six Hundred Sixty-Six Dollars (\$91,666.00), and costs in the amount of
10 up to Fifteen Thousand Dollars (\$15,000.00), subject to the Court finally approving this
11 Settlement. Any portion of the Attorneys’ Fees and Costs not awarded to Plaintiff’s Counsel
12 shall be added to the PAGA Penalties Fund.

13 4. “Complaint” means the First Amended Representative Action Complaint filed by
14 Plaintiff in this Action.

15 5. “Defendant” or “CNB” mean City National Bank.

16 6. “Effective Date” is the date on which the settlement is approved and the Court’s
17 order approving the settlement (“Judgment”) becomes final. For purposes of this agreement, the
18 Court’s Judgment “becomes final” upon the latter of: (i) if no appeal is filed, the expiration date
19 of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s
20 Judgment (this time period shall not be less than 60 calendar days after the Court’s Judgment is
21 entered); (ii) the date of affirmance of an appeal of the Judgment becomes final under the Federal
22 Rules; or (iii) the date of final dismissal of any appeal from the Judgment or the final dismissal
23 of any proceeding on review of any court of appeal decision relating to the Judgment.

24 7. “Enhancement Payment” means the amount that the Court authorizes to be paid to
25 Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and risks
26 in assisting with the prosecution of the Action. Subject to the Court granting approval of the
27 Settlement, the Parties agree that Plaintiff shall be paid up to Ten Thousand Dollars (\$10,000.00)
28 from the Gross Settlement Amount. It is understood by Plaintiff that the Court has final

discretion in any Enhancement Payment. Any portion of the Enhancement Payment not used or approved by the Court shall be added to the PAGA Penalties Fund.

8. "Individual Settlement Payment" means the amount payable from the Net PAGA Payment to each Aggrieved Employee.

9. "Gross Settlement Amount" means the total gross settlement amount of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00) to be paid by Defendant as a result of this Agreement. The Gross Settlement Amount includes all Individual Settlement Payments to Aggrieved Employees, payment to the LWDA, the Enhancement Payment to Plaintiff, Settlement Administration Costs, and Attorneys' Fees and Costs.

10. "PAGA Penalties Fund" means the balance of the Gross Settlement Amount remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys' Fees and Costs, and Settlement Administration Costs.

11. "PAGA Period" means the period of April 9, 2019, through the date the approval motion for the instant settlement is filed with the Court.

12. "Parties" means Plaintiff and Defendant, together.

13. "Plaintiff" means Robert Rodriguez.

14. "Plaintiff's Counsel" means Diversity Law Group, P.C.

15. "Released Parties" means Defendant City National Bank, including any of its past present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, insurers, and privies, and any other entity or individual which could be liable for the acts or omissions of Defendant in relation to the Released Claims.

16. "Released Claims" means all claims for penalties under the California Private Attorneys General Act, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 226, 226.7, 246, 510, 512, 558, and 1194, based on claims that are or could have been alleged against the Released Parties in the Complaint and PAGA notice that occurred during the PAGA Period. It is understood and agreed that this

1 Agreement neither releases the Released Parties from liability, if any, to Aggrieved Employees
2 for violations of any predicate statutes other than PAGA, nor effects a waiver of claims by
3 Aggrieved Employees against the Released Parties for any individual wage and hour claims.
4 Specifically, the Released Claims includes:

5 16.1. All PAGA claims for or arising from unpaid overtime, under California
6 Labor Code sections 510, 558, and 1194, and associated penalties under Labor Code sections
7 201, 202, 203 and 226, and any related provisions in the wage orders, limited to Overtime
8 Aggrieved Employees;

9 16.2. All PAGA claims for or arising from unpaid meal period premium pay,
10 under California Labor Code sections 226.7 and 512, and associated penalties under Labor Code
11 sections 201, 202, 203 and 226, and any related provisions in the wage orders, limited to Meal
12 Period Aggrieved Employees;

13 16.3. All PAGA claims for or arising from unpaid sick pay, under California
14 Labor Code section 246, *et seq.* and associated penalties under Labor Code sections 201, 202,
15 203 and 226, and any related provisions in the wage orders, limited to Sick Pay Aggrieved
16 Employees;

17 16.4. All PAGA claims for or arising from wage statement violations, under
18 California Labor Code section 226, and any related provisions in the wage orders, limited to
19 Shift Pay Aggrieved Employees; and

20 16.5. All PAGA claims for or arising from rest period violations, under
21 California Labor Code section 226.7, and associated penalties under Labor Code sections
22 201, 202, 203 and 226, and any related provisions in the wage orders, limited to Radio
23 Aggrieved Employees.

24 17. "Settlement Administration Costs" means the fees and expenses reasonably
25 incurred by the Settlement Administrator as a result of the procedures and processes expressly
26 required by this Agreement, which are estimated at Seven Thousand Seven Hundred Fifty
27 Dollars (\$7,750.00). Expenses shall not exceed the amount estimated by the Settlement
28 Administrator to administrate the settlement funds. Any portion of the Settlement Administration

Costs not used or approved by the Court shall be added to the PAGA Penalties Fund.

18. “Settlement Administrator” means Phoenix Settlement Administration.

C. PAYMENT OF CONSIDERATION

1. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement Payments; (2) Attorneys’ Fees and Costs; (3) Enhancement Payment; (4) Settlement Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendant.

2. Funding of the Gross Settlement Amount. Within thirty (30) days after the Effective Date, Defendant shall deposit the Gross Settlement Amount into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. The QSF shall be a non-interest-bearing distribution account at a federally insured bank that is established by the Settlement Administrator. The QSF shall be a non-interest-bearing, federally insured distribution account at a federally insured bank that is mutually acceptable to the Parties and the Settlement Administrator. The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the Settlement Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open and administer the Settlement Account in such a manner as to qualify and maintain the qualification of the QSF as a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state and local and income and other tax reporting, return, and filing requirements with respect to the QSF and any interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including any estimated taxes, interest, or penalties) with respect to the interest or other interest earned by the QSF, and (ii) fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Agreement. The aforementioned taxes, fees, costs and expenses shall be treated as and included in the costs of administering the QSF and as

1 Settlement Administration Costs. The Parties and the Settlement Administrator shall treat the
2 QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set
3 forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement shall be attached to the
4 appropriate returns as required by 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate
5 with the Settlement Administrator and one another to the extent reasonably necessary to carry
6 out the provisions of this Section.

7 3. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used
8 to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA
9 in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum
10 amount that will be available for distribution to the LWDA and Aggrieved Employees in full
11 satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the PAGA
12 Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%), will be
13 paid to all Aggrieved Employees ("Net Employee Payment").

14 4. Calculation of Individual Settlement Payment. The Settlement Administrator shall
15 calculate the Individual Settlement Payments by dividing the Net Employee Payment by the total
16 number of pay periods worked by Aggrieved Employees in a non-exempt position in California
17 during the PAGA Period in which they were paid overtime wages and shift pay, and/or meal
18 period premiums and shift pay, and/or were assigned a radio, and/or were paid sick pay and
19 incentive pay. That value will then be multiplied by the number of pay periods worked by each
20 respective Aggrieved Employee in a non-exempt position in California during the PAGA Period
21 in which they were paid overtime wages and shift pay, and/or meal period premiums and shift
22 pay, and/or were assigned a radio, and/or were paid sick pay and incentive pay. Aggrieved
23 Employees are entitled to 100% of the Net Employee Payment.

24 5. Tax Treatment of Individual Settlement Payment. All Individual Settlement
25 Payments shall be allocated as 100% as penalties. The amount of payments shall be reported on
26 an IRS Form 1099 by the Settlement Administrator.

27 6. Enhancement Payment. Defendant agrees not to oppose or impede any application
28 or motion by Plaintiff for an Enhancement Payment of up to Ten Thousand Dollars (\$10,000.00)

to Plaintiff. The Enhancement Payment shall be paid from the Gross Settlement Amount and shall be paid in addition to Plaintiff's Individual Settlement Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be distributed to the LWDA and Aggrieved Employees as provided in this Agreement.

7. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees that Plaintiff's Counsel shall be paid the amount of Ninety-One Thousand Six Hundred Sixty-Six Dollars (\$91,666.00) in attorneys' fees and up to Fifteen Thousand Dollars (\$15,000.00) in litigation costs and expenses ("Attorneys' Fees and Costs"), which shall be paid from the Gross Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses.

8. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Gross Settlement Amount, currently estimated at Seven Thousand Seven Hundred Fifty Dollars (\$7,750.00). These costs, which shall be paid from the Gross Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Gross Settlement Amount, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the PAGA Penalties Fund and shall be distributed to LWDA and Aggrieved Employees as provided in this Agreement.

D. ADMINISTRATION OF SETTLEMENT

1. Stipulation for Settlement Approval. Plaintiff's Counsel shall draft and file a stipulation (or motion if required by the Court) for settlement approval. Plaintiff's Counsel shall

1 submit the motion for approval of the PAGA settlement to Defendant's Counsel, who will have
2 at least seven (7) calendar days to review and revise prior to filing by Plaintiff. In the event that
3 Defendant's Counsel does not provide revisions to the draft motion within this time period, then
4 Plaintiff may file the motion as a unilateral motion for approval, in substantially similar form to
5 the draft provided to Defendant.

6 2. Approval of PAGA Settlement. Plaintiff's Counsel shall request the entry of an
7 order granting final approval, which shall include findings and orders: (i) approving the
8 settlement, (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the State
9 of California, (iii) reciting the release terms, (iv) directing that the settlement's terms and
10 provisions be carried out; (v) entering final judgment in accordance with this Agreement and
11 without further fees or costs to any party except as expressly set forth in this Agreement; and (vi)
12 retaining jurisdiction to oversee administration and enforcement of the terms of this Agreement
13 and the Court's orders. Plaintiff's motion shall be unopposed by Defendant unless Plaintiff's
14 approval motion seeks relief inconsistent with or not specified by this Agreement. In such event,
15 Defendant reserves the right to address any assertions that are not contained in this Agreement.

16 3. Settlement Administration. The Parties agree to cooperate in the administration of
17 the Settlement and to make all reasonable efforts to control and minimize the costs and expenses
18 incurred in the administration of the Settlement. The Settlement Administrator shall provide the
19 following services:

- 20 a. Establish and maintain a Qualified Settlement Fund account;
- 21 b. Calculate the Individual Settlement Payments to be paid to Aggrieved
22 Employees in accordance with the terms and provisions of this Agreement;
- 23 c. Print and issue Individual Settlement Payment checks;
- 24 d. Verify the last known address for each Aggrieved Employee through a
25 generally utilized, national address update database prior to mailing the Individual Settlement
26 Payment check;
- 27 e. Disburse any awards of costs and attorneys' fees and the Enhancement
28 Payment;

1 f. Prepare and issue 1099 Forms; and

2 g. Perform such other tasks necessary to effectuate the terms of this

3 Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

4 4. Delivery of the Aggrieved Employee List and Data. Within fifteen (15) calendar
5 days after the Effective Date, Defendant shall provide the Settlement Administrator with a
6 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's full name;
7 employee number; most recent mailing address; Social Security number; and the number of pay
8 periods worked in a non-exempt position in California during the PAGA Period in which they
9 were paid overtime wages and shift pay, and/or meal period premiums and shift pay, and/or were
10 assigned a radio, and/or were paid sick pay and incentive pay.

11 5. Timing of Distribution. Within ten (10) calendar days after the payment of the
12 entire Gross Settlement Amount, the Settlement Administrator will issue payments to: (a)
13 Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and (d)
14 Plaintiff's Counsel. The Settlement Administrator will issue the appropriate tax forms for all
15 payments issued under this Settlement.

16 6. Mailing of Individual Settlement Payments to Aggrieved Employees. The
17 Settlement Administrator will issue each Aggrieved Employee a check for his or her share of the
18 PAGA Penalties Fund along with an explanatory notice as defined in Paragraph 22.. Checks will
19 remain negotiable for 180 days. Any checks returned as non-deliverable on or before the check
20 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
21 address affixed thereto. Funds represented by settlement checks returned as undeliverable and
22 those settlement checks remaining un-cashed for more than 180 days after issuance will be sent
23 to the Unclaimed Property Fund of the California State Controller in the name of the Aggrieved
24 Employee.

25 **E. RELEASE OF CLAIMS**

26 1. Release of Claims by Aggrieved Employees Upon the Effective Date, each of the
27 Aggrieved Employees, including Plaintiff, fully release and forever discharge any and all of the
28 Released Parties of and from any and all Released Claims. This Agreement solely releases

1 PAGA claims predicated on alleged violations of Labor Code sections 201, 202, 203, 226, 226.7,
2 246, 510, 512, 558, and 1194 during the PAGA Period.

3 2. No Right to Opt-Out. The Parties agree there is no statutory right for any
4 Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.

5 3. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining
6 the Enhancement Payment provided for herein, Plaintiff (on behalf of himself and his heirs,
7 executors, administrators, trustees, and/or permitted assigns) also agrees to a general release of
8 any and all claims against the Released Parties—which shall include without limitation any and
9 all claims which in any way relate to his employment with Defendant, under State or Federal
10 law, in tort, common law, statute, contract, or equity, whether pled in the Complaint or not,
11 including but not limited to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA,
12 California Labor Code, or any Industrial Welfare Commission Wage Order—now existing or
13 arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the
14 beginning of time to the date of execution hereof. Plaintiff further expressly waives and
15 relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section
16 1542 of the California Civil Code, which provides: “**A general release does not extend to**
17 **claims that the creditor or releasing party does not know or suspect to exist in his or her**
18 **favor at the time of executing the release and that, if known by him or her, would have**
19 **materially affected his or her settlement with the debtor or released party.”**

20 F. MISCELLANEOUS

21 1. Tax Liability. Defendant, Defendant’s counsel, the Settlement Administrator, and
22 Plaintiff’s Counsel make no representation as to the tax treatment or legal effect of the payments
23 called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement,
24 representation, or calculation by Defendant, Defendant’s counsel, Plaintiff’s Counsel, or by the
25 Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and
26 agree that they will be solely responsible for the payment of any and all taxes and penalties
27 assessed on their respective payments described herein and will defend, indemnify, and hold
28 Defendant, Defendant’s counsel, Plaintiff’s Counsel, and the Settlement Administrator free and

1 harmless from and against any claims resulting from treatment of such payments as non-taxable
2 penalties/damages.

3 2. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
4 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
5 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
6 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
7 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
8 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
9 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
10 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
11 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
12 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
13 RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX
14 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
15 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
16 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
17 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
18 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
19 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
20 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
21 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
22 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
23 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
24 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
25 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
26 AGREEMENT.

27 3. No Prior Assignments. The Parties and their counsel represent, covenant, and
28 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported

1 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
2 demand, action, cause of action or right herein released and discharged.

3 4. Right to Terminate. The Gross Settlement Amount was calculated with, and is
4 premised on, Defendant's representation that there are approximately 14,957 pay periods at
5 issue from April 9, 2019 through September 1, 2021. Should the actual number of pay periods
6 during this period of time increase by 10% or more, Plaintiff may terminate this Agreement and
7 the Parties will revert to their pre-mediation position in the litigation.

8 5. Nullification of Settlement Agreement. This Agreement is conditioned upon the
9 Los Angeles Superior Court's order granting approval of the Settlement and issuing a Judgment
10 on the PAGA claims. In the event that: (i) the Court does not approve the Settlement as provided
11 herein; or (ii) the Settlement does not become final for any other reason, then this Settlement
12 Agreement, and any documents generated to bring it into effect, will be null and void, and the
13 Parties will be returned to their original respective positions. Plaintiff, on behalf of himself, the
14 State of California, and Aggrieved Employees hereby waives any and all rights to appeal in
15 connection with any issue in the Order Approving Settlement, including but not limited to, all
16 rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate
17 or set-aside judgment, and any extraordinary writ, and the Order Approving Settlement will
18 become final and non-appealable at the time it is entered.

19 6. Continued Jurisdiction. After entry of the judgment, the Court will have
20 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
21 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
22 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

23 7. Entire Agreement. This Settlement Agreement constitutes the entirety of the
24 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be
25 deemed binding on the Parties.

26 8. Amendment or Modification. This Settlement Agreement may be amended or
27 modified only by a written instrument, signed by either the Parties or their successors-in-interest
28 or counsel for all Parties.

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

11 10. Binding on Successors and Assigns. This Settlement Agreement will be binding
12 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

13 11. California Law Governs. All terms of this Settlement Agreement and Exhibit A
14 will be governed by and interpreted according to the laws of the State of California.

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

20 13. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
21 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
22 arrived at this Settlement after arm's-length negotiations. The Parties further acknowledge that
23 they are each represented by competent counsel and that they have had an opportunity to consult
24 with their counsel regarding the fairness and reasonableness of this Settlement.

25 14. Invalidity of Any Provision. Before declaring any provision of this Settlement
26 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
27 extent possible consistent with applicable precedents so as to define all provisions of this
28 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement is or

1 becomes invalid or unenforceable in any respect, the validity and enforceability of the remaining
2 provisions contained herein shall not be affected.

3 15. Captions. The captions and section numbers in this Settlement Agreement are
4 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
5 or intent of the provisions of this Settlement Agreement.

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

10 17. Enforcement Action. In the event that one or more of the Parties institutes any
11 legal action or other proceeding against any other Party or Parties to enforce the provisions of
12 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
13 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
14 fees and costs, including expert witness fees incurred in connection with any enforcement
15 actions.

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

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

26 20. Binding Agreement. The Parties warrant that they understand and have full
27 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
28 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to

1 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
2 provisions that otherwise might apply under federal or state law.

3 21. No Publicity Regarding the Settlement. Neither the Plaintiff, Defendant, nor their
4 counsel shall publicize or communicate the fact or terms of the settlement on any social media,
5 any internet site, print media, or marketing/advertising materials. The Court shall have the
6 power to enjoin violations of this provision and the prevailing party shall be entitled to its
7 attorneys' fees and costs.

8 22. Content Of Notice To Be Sent To Aggrieved Employees. With Distribution Of
9 Settlement Funds – The Claims Administrator, when distributing the settlement checks to the
10 Aggrieved Employees, shall include a statement as follows: “City National Bank has entered into
11 a compromise and settlement with the State of California in connection with claims brought
12 under the Private Attorneys General Act. As part of this compromise and settlement, the Court
13 has ordered the enclosed settlement check.”

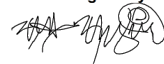
14 23. Denial of Liability. The Parties expressly recognize that the making of this
15 agreement does not in any way constitute an admission or concession of wrongdoing on the part
16 of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor
17 any statements, discussions or communications, nor any materials prepared, exchanged, issued or
18 used during the course of this Action, is intended by the Parties to, nor will any of the foregoing
19 constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral,
20 administrative, investigative or other forum or proceeding, as evidence of any violation of any
21 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
22 obligation or duty at law or in equity. Defendant intends, by this Agreement, merely to avoid the
23 expense, delay, uncertainty, and burden of continued litigation. This Agreement is a settlement
24 document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
25 Evidence 408 and/or any other similar law, be inadmissible in evidence in any proceeding,
26 except in an action or proceeding to approve the Settlement, and/or interpret or enforce this
27 Agreement. Notwithstanding the foregoing, this agreement may be used in any proceeding in the
28 Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement

or any orders or judgments of the Court entered into in connection therewith, including, without limitation, by Defendant should any party seek relief against any of the Released Parties on any Released Claims.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

DATED: 5/9/2022

PLAINTIFF ROBERT RODRIGUEZ

DocuSigned by:

FB2A3849D88E495

Plaintiff Robert Rodriguez

DATED: _____

DEFENDANT CITY NATIONAL BANK

Please Print Name of Authorized Signatory

APPROVED AND ACKNOWLEDGED

DATED: May 10, 2022

DIVERSITY LAW GROUP, P.C.



Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff Robert Rodriguez and the
Aggrieved Employees

1 or any orders or judgments of the Court entered into in connection therewith, including, without
2 limitation, by Defendant should any party seek relief against any of the Released Parties on any
3 Released Claims.

4 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
5 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily
6 and with a full understanding of its consequences.

7
8 DATED: _____

PLAINTIFF ROBERT RODRIGUEZ

9
10 _____
Plaintiff Robert Rodriguez

11
12 DATED: 5/6/22

DEFENDANT CITY NATIONAL BANK

13
14 _____
Stacey R. Turner
Associate General Counsel, SVP

15
16
17 **APPROVED AND ACKNOWLEDGED**

18
19
20 DATED: _____

DIVERSITY LAW GROUP, P.C.

21
22 _____
Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiff Robert Rodriguez and the
24 Aggrieved Employees

25
26 DATED: 5/12/22

SEYFARTH SHAW LLP

27 By Michael W. Kopp
28 Michael W. Kopp
Attorneys for Defendant City National Bank

EXHIBIT B

5/24/2022
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DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Rodriguez, Robert v. City
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
62919	EXP	Olympia	1	75.00	75.00
6/18/2020		Court fees			
WIP		Rodriguez, Robert v. City			
LWDA					
63314	EXP	Olympia	3	0.25	0.75
6/30/2020		Photocopies			
WIP		Rodriguez, Robert v. City			
Photocopies					
63315	EXP	Olympia	1	0.50	0.50
6/30/2020		Postage			
WIP		Rodriguez, Robert v. City			
Postage					
63888	EXP	Olympia	1	1673.84	1673.84
8/5/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - Complaint					
63929	EXP	Olympia	1	90.45	90.45
8/20/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - 170.6					
63939	EXP	Olympia	1	89.25	89.25
8/24/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - Complaint Service					
64072	EXP	Olympia	12	0.25	3.00
8/31/2020		Photocopies			
WIP		Rodriguez, Robert v. City			
Photocopies					
64073	EXP	Olympia	1	0.80	0.80
8/31/2020		Postage			
WIP		Rodriguez, Robert v. City			
Postage					

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Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
64323	EXP	Olympia	1	40.59	40.59
9/3/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - POS of Summons					
64325	EXP	Olympia	1	59.70	59.70
9/4/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - Notice of ISC					
64342	EXP	Olympia	1	55.95	55.95
9/14/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - Notice of ISC					
64559	EXP	Olympia	13	0.25	3.25
9/30/2020		Photocopies			
WIP		Rodriguez, Robert v. City			
Photocopies					
64560	EXP	Olympia	1	0.80	0.80
9/30/2020		Postage			
WIP		Rodriguez, Robert v. City			
Postage					
64793	EXP	Olympia	1	53.00	53.00
10/30/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - Notice of Entry of Order					
65201	EXP	Olympia	1	52.50	52.50
11/5/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - Joint ISC Statement					
64691	EXP	Kristen Agnew	1	15.00	15.00
11/13/2020		Court fees			
WIP		Rodriguez, Robert v. City			
LACourtConnect					
65214	EXP	Olympia	1	53.50	53.50
11/16/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - FAC					
65621	EXP	Olympia	1	53.15	53.15
12/15/2020		Atty Service			
WIP		Rodriguez, Robert v. City			
Attorney Service - Notice of Minute Order					

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DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
65291	EXP	Olympia	1	12.07	12.07
12/21/2020		Court fees			
WIP		Rodriguez, Robert v. City			
ACE E Filing - Notice of Reassignment & Minute Orders					
65675	EXP	Olympia	1	114.00	114.00
1/13/2021		Court fees			
WIP		Rodriguez, Robert v. City			
Case Anywhere					
65938	EXP	Olympia	1	12.07	12.07
2/3/2021		Court fees			
WIP		Rodriguez, Robert v. City			
ACE E Filing - Opposition to MTS					
66230	EXP	Olympia	1	33.55	33.55
2/3/2021		Delivery serv			
WIP		Rodriguez, Robert v. City			
Federal Express					
67933	EXP	Olympia	1	54.30	54.30
2/3/2021		Delivery serv			
WIP		Rodriguez, Robert v. City			
Federal Express					
66064	EXP	Olympia	1	12.07	12.07
2/10/2021		Court fees			
WIP		Rodriguez, Robert v. City			
ACE E Filing - CMS					
66154	EXP	Kristen Agnew	1	15.00	15.00
2/18/2021		Court fees			
WIP		Rodriguez, Robert v. City			
LACourtConnect					
66306	EXP	Olympia	1	12.07	12.07
3/2/2021		Court fees			
WIP		Rodriguez, Robert v. City			
ACE E Filing - Notice of Minute Order					
66845	EXP	Olympia	1	104.40	104.40
4/7/2021		Court fees			
WIP		Rodriguez, Robert v. City			
Case Anywhere					
70266	EXP	Olympia	1	4450.00	4450.00
1/6/2022		Arbitrators			
WIP		Rodriguez, Robert v. City			
JAMS Mediation [5,000-550.00 refund]					

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Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71235	EXP	Kristen Agnew	1	30.42	30.42
1/21/2022		Meals			
WIP		Rodriguez, Robert v. City			
Meal					
71837	EXP	Valeria Tril	1	12.07	12.07
5/24/2022		Court fees			
WIP		Rodriguez, Robert v. City			
Estimated - ACE E Filing - Notice of Motion					
for Preliminary Approval					
71838	EXP	Valeria Tril	1	15.00	15.00
5/24/2022		Court fees			
WIP		Rodriguez, Robert v. City			
Estimated LA CourtConnect Appearance					
Grand Total					
			Billable	0.00	7198.05
			Unbillable	0.00	0.00
			Total	0.00	7198.05

EXHIBIT C

Robert Rodriguez v. City National Bank
Time and Task Chart for Kristen M. Agnew

Hours	Description of Work
3.20	Initial research and review of background facts in preparation for filing of complaint; legal research re private right of action to enforce Labor Code section 245 <i>et seq.</i> ; confer with co-counsel re theories of liability.
2.10	Draft PAGA letter and Complaint.
2.80	Meet and confer with defense counsel re November 13, 2020 initial status conference; draft joint initial status conference report.
1.30	Review and respond to correspondence from defense counsel re arbitration agreement; review Defendant's arbitration agreement and research re same; confer with co-counsel re same.
1.20	Draft First Amended Complaint; review and respond to correspondence from defense counsel re same.
2.60	Review and respond to correspondence from defense counsel re demurrer to sick pay claim; conference calls with defense counsel re same; confer with co-counsel re same.
14.40	Review Defendant's demurrer and research re same; prepare opposition to demurrer; review Defendant's reply in support of demurrer; prepare for and appear at hearing re demurrer.
.90	Meet and confer with defense counsel re February 18, 2021 case management conference; draft Plaintiff's case management conference statement.
2.50	Draft requests for production of documents (set one) and requests for production of documents (set one).
3.30	Review Defendant's responses to production of documents (set one) and requests for production of documents (set one) and document production; meet and confer with defense counsel re Defendant's responses; review and respond to correspondence re same; confer with co-counsel re same.
3.70	Draft responses and objection to Defendant's requests for production of documents; review and respond to correspondence with Plaintiff re same; confer with Plaintiff re same.
1.40	Meet and confer with defense counsel re mediation; analysis and research re information required from Defendant to engage in settlement negotiations; draft and revise data requests for defense counsel.
7.20	Review putative class data produced by Defendant; draft mediation statement; legal research re same.
10.90	Prepare for and attend mediation.

6.40	Draft Joint Stipulation of Settlement and Release under PAGA; conference calls with defense counsel re revisions to settlement agreement; review and respond to correspondence re same.
8.90	Draft Motion for Approval of PAGA Settlement and supporting declarations.
72.80	TOTAL HOURS