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Attorneys for Plaintiff Michael Daw,
On behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MICHAEL DAW, on behalf of himself and
all other aggrieved employees,

Plaintiff,

vs.

RRL CORPORATION and Does 1-10,
Inclusive,

Defendants.

Case No.: 30-2020-01157398-CU-OE-CXC

Hon. Randall J. Sherman - Dept. CX-105

**DECLARATION OF JONATHAN M. LEBE
IN SUPPORT OF PLAINTIFF'S MOTION
TO APPROVE OF PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

[Motion, Plaintiff's Report re: Compliance with
Procedural Guidelines, and [Proposed] Order
Filed Concurrently]

Hearing Information:

Date: December 3, 2021

Time: 10:00 a.m.

Location: Dept. CX-105

Reservation No.: 73631040

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I, Jonathan M. Lebe, declare as follows:

1. I am an attorney duly licensed to practice law before all courts in the State of California. I am the Managing Attorney of Lebe Law, A Professional Law Corporation and I represent Michael Daw (“Plaintiff”) in this action. I have personal knowledge of the facts set forth herein and, if called and sworn in as a witness, could and would testify competently thereto.

2. I submit this declaration in support of Plaintiff's Motion to Approve PAGA Settlement.

Experience of Proposed Class Counsel

3. I received Bachelor of Arts degrees in Political Science and International Studies from Northwestern University in 2008. I received my Juris Doctorate from Santa Clara University School of Law in 2012. During law school, I was a legal extern to the Honorable Nandor J. Vadas of the U.S. District Court, Northern District of California. I also had legal internships during law school with the Civil Division of the U.S. Attorney's Office and the Complex Litigation Division of the San Francisco City Attorney's Office.

4. I was admitted to the California State Bar in the fall of 2012. I am admitted to practice in all state courts in California and in all United States District Courts in California.

5. Upon admission to the bar, I became a Deputy County Counsel in the Litigation Section of the Santa Clara County Counsel's office. The Santa Clara County Counsel's office is one of the largest and most sophisticated offices of government lawyers in the county. The County Counsel's office engages in significant impact litigation and, of course, is responsible for the legal representation of the County. In my capacity as Deputy County Counsel, I litigated cases ranging from employment disputes to constitutional challenges to County jail policies.

6. Before starting my own firm, I also worked as an associate attorney with Lawyers for Justice, P.C., a class action law firm in California. In that capacity, I was responsible for the day-to-day management of numerous wage and hour class actions at a given time. In this position, I engaged in all possible types of motion practice including preparing motions for class certification.

1 7. I started my own law firm in early 2016. In 2018, 2019, 2020 and 2021, I was
2 selected as a Super Lawyer Rising Star based on nominations from my peers, a distinction only
3 received by 2.5% of attorneys. The vast majority of my practice consists of litigating wage and
4 hour class actions filed in California. Some of our firm's representative matters include:

5 a. *Midwest Motor Supply Co. v. Superior Court* (2020) 56 Cal.App.5th 702: In its
6 published opinion, the Court of Appeal affirmed the trial court's denial of
7 Defendant's motion to dismiss or stay action for forum non conveniens because
8 Defendant's purported forum selection clause was unenforceable under Labor Code
9 section 925.

10 b. *Zakaryan v. The Men's Wearhouse, Inc.* (2019) 33 Cal.App.5th 659: In its
11 published opinion, Court of Appeal affirmed a trial court's denial of Defendant's
12 motion to compel arbitration (disapproved on another ground in *ZB, N.A. v.*
13 *Superior Court* (2019) 8 Cal.5th 175).

14 c. *Ortega v. Carson Wild Wings, LLC* (Los Angeles Superior Court, Case No.
15 BC677388): In this matter, our firm obtained a unanimous jury verdict holding our
16 client's former employer responsible for wrongful termination and retaliation. In
17 its verdict, the jury awarded our client \$300,000 in lost earnings, emotional distress
18 damages, punitive damages and penalties. The Court also awarded \$291,948 in
19 attorneys' fees. This matter is currently on appeal.

20 8. I have been appointed certified Class Counsel in the following proceedings in
21 connection with approvals of wage and hour class action and Private Attorney General Act
22 settlements: *Amie Pfiefer v. Zesty Inc.*, San Francisco Superior Court, CGC-19-574570; *Anthony*
23 *Dirico, et al. v. Seek Capital, LLC*, Los Angeles Superior Court Case No. BC698076; *Brandon*
24 *Centino v. Arrowhead Products*, Orange County Superior Court, Case No. 30-2018-00988493;
25 *Donna Burris v. Resort Vacations, Inc.*, Orange County Superior Court, Case No. 2018-00997260;
26 *Elizabeth Merritt v. Houzz Inc.*, Santa Clara Superior Court, Case No. 19CV341181; *Janet*
27 *Manteon v. M.A.C. Cosmetics, Inc.*, Los Angeles County Superior Court, Case No. BC702940;
28 *Jamal Holcomb v. Weiser Security Services, Inc.*, Los Angeles Superior Court, Case No.

1 19STCV03843; *Jerome Hughes, et al. v. Surveillance Security, Inc.*, Judicial Coordination
2 Proceeding Case No. 4969; *Jihwan Kim v. Demandforce, Inc.*, San Francisco Superior Court, Case
3 No. CGC-18-570997; *Jordan Olson v. Medtronic, Inc., et al.*, San Francisco Superior Court, Case
4 No. CGC-19-576875; *Joseph Jun Caballero v. MLTD, Inc.*, Los Angeles Superior Court Case No.
5 BC659936; *Kendall Klette v. Balboa Capital Corporation*, Orange County Superior Court, Case
6 No. 30-2018-00970552; *Kevin Klein v. Loomis Armored, US LLC*, San Bernardino Superior Court
7 Case No. CIVDS1704547; *Leslie Walling v. National Funding Inc.*, San Diego Superior Court,
8 Case No. 201800061889; *Lorena Sanchez v. Valley Presbyterian Hospital*, Los Angeles Superior
9 Court Case No. BC678638; *Lucas Cardena v. Strata Capital Corporation*, Orange County
10 Superior Court, Case No. 30-2018-01041233-CU-OE-CXC; *Michael Schmitz, et al. v. HealthIQ*
11 *Re Inc.*, Santa Clara Superior Court, Case No. 18CV337951; *Patricia Martinez v. Whaler LLC*,
12 Los Angeles Superior Court Case No. BC621047; *Rhett Hubbard v. Caliber Home Loans, Inc.*,
13 Orange County Superior Court, 30-2018-01017838; *Shameka Watson v. Aegis Security &*
14 *Investigations Inc.*, Los Angeles Superior Court Case No. BC695411; *Shayna Amster v. Starbucks*
15 *Corporation*, San Bernardino Superior Court, Case No. CIVDS1922016; *Suzana Mederos v.*
16 *Consolidated Disposal Service, L.L.C.*, Los Angeles Superior Court, Case No. BC677379; and
17 *Tyler Jones, et al. v. Citiguard, Inc.*, Los Angeles County Superior Court Case Number BC664890.

18 9. I consider myself experienced and qualified to evaluate the aggrieved employees
19 claims and viability of the defenses. Based on the history of the above-captioned case, and given
20 my experience, analysis, it is my view that the settlement is fair, reasonable, and adequate, and in
21 the best interest of the class members. Had the litigation not reached the proposed settlement set
22 forth in the Settlement Agreement, I would have continued to prosecute aggrieved employees'
23 claims through trial and beyond.

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Litigation History

10. On June 16, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) of his intent to assert a claim under PAGA and his alleged basis for the claim. Attached as **Exhibit 1** is a true and correct copy of the PAGA notice.

11. On July 29, 2020, Plaintiff gave amended written notice to the LWDA. Attached as **Exhibit 2** is a true and correct copy of the Amended PAGA Notice.

12. The LWDA did not inform Plaintiff that it intended to investigate the alleged violations.

13. On August 27, 2020, Plaintiff filed his representative complaint against Defendant in the Orange County Superior Court, asserting the following causes of action: (1) PAGA Civil Penalties for Violations of Labor Code §§ 1194, 1197.1 and the Applicable Wage Order for Failure to Pay All Minimum Wages; (2) PAGA Civil Penalties for Violations of Labor Code §§ 510, 1194, 1198 and the Applicable Wage Order for Failure to Pay all Overtime Wages; (3) PAGA Civil Penalties for Violations of Labor Code §§ 204, 210 and the Applicable Wage Order for Failure to Pay All Wages; (4) PAGA Civil Penalties for Violations of Labor Code §§ 226.7, 512 and the Applicable Wage Order for Failure to Provide Timely and Compliant Meal Periods; (5) PAGA Civil Penalties for Violations of Labor Code § 226.7 and the Applicable Wage Order for Failure to Provide Timely and Compliant Rest Periods; (6) PAGA Civil Penalties for Violations of Labor Code § 246 for Failure to Provide Sick Pay; (7) PAGA Civil Penalties for Violations of Labor Code § 221 for Unlawful Deduction of Wages; (8) PAGA Civil Penalties for Violations of Labor Code §§ 226, 226.3 and the Applicable Wage Order for Failure to Provide Accurate and Itemized Wage Statements; (9) PAGA Civil Penalties for Violations of Labor Code §§ 201-203 for Failure to Timely Pay All Wages Due to Terminated/Separated Employees; and (10) PAGA Civil Penalties for Violations of Labor Code §2802 and the Applicable Wage Order for Failure to Reimburse All Reasonable and Necessary Business Expenses. On November 5, 2020, Defendant filed an answer, asserting various affirmative defenses. Attached as **Exhibit 3** is a true and correct copy of Plaintiff’s Complaint.

1 14. Shortly thereafter, the Parties agreed to attend mediation with an informal exchange
2 of discovery. In preparation for mediation, Defendant produced a thirty percent sample of the
3 aggrieved employees' time and payroll records, along with the relevant employee handbook and
4 policy documents. Plaintiff's expert formulated a damages analysis based on the records provided
5 by Defendant.

6 15. On March 8, 2021, the Parties engaged in a full-day mediation with mediator Todd
7 Smith, Esq., an experienced wage and hour mediator, but were unable to reach a settlement that
8 day. Following mediation, with Mr. Smith's assistance, the settlement negotiations continued, and
9 a mediator's proposal was accepted by both Parties on May 28, 2021.

10 16. The Parties finalized the terms of the settlement in August 2021, which is now
11 presented to this Court for approval.

12 17. The Parties have agreed that Defendant will pay a total settlement amount of
13 \$325,000, subject to a *pro rata* increase of \$27.74 per additional workweek above 12,889 (which
14 is 10% more than the 11,717 workweeks estimated at mediation) ("Gross Settlement Amount").
15 From this amount, one third of the Gross Settlement Amount, or \$108,333.33, is allocated as
16 attorneys' fees. Additionally, Plaintiff's counsel costs incurred are \$11,281.63, and shall be paid
17 to Plaintiff's counsel from the Gross Settlement Fund. The Settlement Administrator CPT Group,
18 Inc.'s costs associated with administration of the Settlement is \$5,500 and shall be paid from the
19 Gross Settlement Fund. In exchange for a general release of his individual claims, \$10,000 is
20 allocated to Plaintiff. After deducting the attorneys' fees and costs, Settlement Administrator's
21 costs, and Plaintiff's individual enhancement award, the remaining fund, anticipated to be
22 \$189,885.04 ("Net PAGA Payment") will be paid 75 percent (anticipated to be \$142,413.78) to
23 the LWDA and 25 percent (anticipated to be \$47,471.26) to the aggrieved employees. Aggrieved
24 employees are "All current and former non-exempt employees who performed work for Defendant
25 within the State of California at any time during the PAGA Period." Attached as **Exhibit 4** is a
26 true and correct copy of the Settlement.

27 18. The Individual PAGA Payment for each aggrieved employee shall be determined
28 based on the number of workweeks each Aggrieved Employee was employed by Defendant during

1 the PAGA Period, with each Aggrieved Employee being entitled to a share of the Net PAGA
2 Payment allocated to the Aggrieved Employees based upon the Aggrieved Employee's number of
3 workweeks employed with Defendant during the specified period as a numerator and the total
4 number of workweeks all Aggrieved Employees were employed with by Defendant during the
5 PAGA Period as the denominator.

6 19. The Settlement Administrator CPT Group, Inc. will disburse Notice of PAGA
7 Settlement ("Notice") and Individual PAGA Payment to all Aggrieved Employees by first-class
8 United States mail, postage prepaid, to the last known address of each Aggrieved Employee with
9 directions to the Postmaster to forward the Notice and Individual PAGA Payment and return all
10 undeliverable Notices and Individual PAGA Payments to the Settlement Administrator. For each
11 Notice and Individual PAGA Payment that is returned as undeliverable, the Settlement
12 Administrator shall promptly attempt to locate the Aggrieved Employee by using an address
13 refresher database. All funds not claimed within 120 days of mailing of payment shall be paid to
14 the LWDA by the Settlement Administrator. The proposed notice is attached hereto as **Exhibit A**
15 to the proposed settlement agreement attached as **Exhibit 4** to this declaration.

16 20. In exchange for the settlement payment, the State of California and the aggrieved
17 employees will release "PAGA Released Claims" defined as "any action under the California
18 Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*,
19 against, the Released Parties based on or arising out of alleged violations of Labor Code sections
20 alleged in the Action, including unpaid wages, minimum wages, regular wages, overtime and
21 double time, improper calculation of overtime and double time wages, unlawful deduction of
22 wages, failure to provide sick leave, meal and rest breaks, failure to timely pay wages during
23 employment, non-compliant wage statements, failure to pay wages due upon termination, failure
24 to produce employment records, failure to reimburse for business expenses, and any other alleged
25 violation in Plaintiff's LWDA letter." The "Released Parties" are "Defendant, its subsidiaries,
26 affiliates, predecessors or successors in interest, and its respective past or present officers,
27 directors, shareholders, employees, attorneys, agents, assigns, members, investors, principals,
28 heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their

1 respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.”

2 Only Plaintiff agrees to a general release of all known and unknown claims.

3 21. Although the Parties engaged in substantial informal discovery prior to mediation,
4 the Parties agreed to postpone formal written discovery and depositions until after exhausting their
5 settlement efforts at mediation. Therefore, absent settlement, the Parties will be required to expend
6 substantial time and resources conducting formal discovery. Preparation for trial remained, as well
7 as the prospect of appeals in the wake of an adverse summary judgment ruling for either party, as
8 well as appeals after trial.

9 22. For a group of approximately 165 employees, a penalty of \$325,000 is large enough
10 to punish Defendant for alleged violations. The settlement amount is equivalent to a penalty of
11 approximately \$1,969.70 per employee, which is a significant penalty for a wage and hour case.
12 At the same time, the penalty amount is not so large as to be unjust, oppressive or confiscatory,
13 considering the company’s potential exposure explained below. After deductions and payment of
14 75 percent to the LWDA, each aggrieved employee will receive on average \$287.70.

15 The Gross Settlement Fund is also reasonable in light of the facts of the foregoing action,
16 the real risk that no PAGA penalties would be paid, and inherent risks and uncertainties associated
17 with PAGA claims. Plaintiff and his expert analyzed Defendant’s produced data, and forecasted
18 Defendant’s exposure for PAGA civil penalties as follows:

- 19 a. Failure to Provide Accurate and Itemized Wage Statements: Plaintiff’s claim
20 for failure to provide accurate and itemized wage statements is premised on the
21 theory that Defendant failed to include all required information pursuant to
22 Labor Code Section 226, including but not limited to, failing to include the
23 correct number of hours worked and wages earned. Plaintiff and his expert
24 calculated Defendant’s exposure as to this cause of action based on the
25 applicable labor code statute, Labor Code Section 226.3, which provide that:
26 “Any employer who violates subdivision (a) of Section 226 shall be subject to
27 a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
28 per violation in an initial citation and one thousand dollars (\$1,000) per

1 employee for each violation in a subsequent citation, for which the employer
2 fails to provide the employee a wage deduction statement or fails to keep the
3 records required in subdivision (a) of Section 226. The civil penalties provided
4 for in this section are in addition to any other penalty provided by law...” By
5 using the information provided by Defendant in advance of the mediation and
6 the records of Aggrieved Employees, Plaintiff and his expert were able to
7 calculate the exposure of Defendant for this cause of action. Specifically, by
8 4,057 pay periods of wage statement violation with \$250, Plaintiff and his
9 expert estimated that Defendant’s maximum exposure for this claim was
10 **\$1,014,250.**

11 b. Failure to Pay Minimum Wage for Non-Productive Hours Worked: Plaintiff’s
12 claims for failure to pay minimum wages due to are premised on the theory that
13 Defendant failed to pay Aggrieved Employees all minimum wages owed due to
14 Defendant’s alleged practice of failing to pay for non-productive time, such as
15 time spent on required meetings, training, administrative tasks and clerical
16 work. By using the information provided by Defendant in advance the
17 mediation and the records of Aggrieved Employees, Plaintiff and his expert
18 were able to calculate the exposure of Defendant for this causes of action.
19 Specifically, by multiplying 2,393 pay periods with \$100, Plaintiff and his
20 expert estimated that Defendant’s maximum exposure for this claim was
21 **\$239,300.**

22 c. Failure to Pay Overtime Wages Due to Regular Rate of Pay Issues: Plaintiff
23 also has overtime wages claim for failure to pay overtime wages premised on
24 the theory that Defendant failed to pay Aggrieved Employees all overtime
25 wages at the regular rate of pay. By using the information provided by
26 Defendant in advance of the mediation and the records of Aggrieved
27 Employees, Plaintiff and his expert were able to calculate the exposure of
28 Defendant for this cause of action. Specifically, by multiplying 272 pay periods

of underpaid overtime wages with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was **\$27,200**.

d. Failure to Pay Sick Pay Due to Regular Rate of Pay Issues: Plaintiff also has sick pay claim for failure to pay sick pay premised on the theory that Defendant failed to pay Aggrieved Employees all sick pay at the regular rate of pay. By using the information provided by Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his expert were able to calculate the exposure of Defendant for this cause of action. Specifically, by multiplying 214 pay periods of underpaid sick pay with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was **\$21,400**.

e. Failure to Provide Timely and Compliant Meal Periods: Plaintiff's claim for failure to provide timely and compliant meal periods is premised on the theory that Defendant failed to provide meal periods for each five hours worked, Plaintiff and Aggrieved Employees often worked through meal periods, meal periods were treated as on-duty by requiring Aggrieved Employees to be responsive to their cellular phones, and purported meal periods were often short, late or interrupted. By using the information provided by Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his expert able to calculate the exposure of Defendant for this cause of action. Specifically, by multiplying 5,741 pay periods of unique meal period violations with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was **\$574,100**.

f. Failure to Provide Timely and Compliant Rest Breaks: Plaintiff's claim for failure to provide timely and compliant rest breaks is premised on the theory that Defendant failed to authorize or permit ten-minute rest breaks for every four hours or major fraction thereof worked. By using the information provided by Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his expert were able to calculate the exposure of

Defendant for this cause of action. Specifically, by multiplying 5,842 pay periods of unique rest break violations with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure was **\$584,200**.

g. Failure to Timely Pay All Wages due to Terminated/Separated Employees: Plaintiff's claim for failure to timely pay all wages due to terminated/separated employees is premised on Defendant's failure to pay all final wages upon termination/separation. By using the information provided by Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his expert were able to calculate the exposure of Defendant for this cause of action. Specifically, by multiplying 129 pay periods of violations with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was **12,900**.

h. Failure to Reimburse All Reasonable and Necessary Business Expenses: Plaintiff's claim for failure to reimburse all reasonable and necessary business expenses is premised on the theory that Defendant failed to reimburse for all necessary business expenses, including but not limited to personal cell phone costs. By using the information provided by Defendant in advance of the mediation and the records of Aggrieved Employees, Plaintiff and his expert were able to calculate the exposure of Defendant for this cause of action. Specifically, by multiplying 131 pay periods of unreimbursed business expenses with \$100, Plaintiff and his expert estimated that Defendant's maximum exposure for this claim was **13,100**.

i. PAGA Exposure Summary: Thus, the maximum value of the PAGA claims in this action is **\$2,473,550**. The \$325,000 settlement amounts to 13.1 percent of the maximum value. Plaintiff submits this is a reasonable and fair settlement. In settling this case, Plaintiff recognizes that the Court could determine otherwise and significantly reduce the PAGA penalties, especially in light of Defendant's financial condition. This wide range of potential recovery and the

1 additional delays and risks of trial justified settling at this point for a reasonable
2 amount of recovery for the LWDA and per aggrieved employee.

3 23. On September 28, 2021, my office sent the LWDA a copy of the proposed
4 settlement, and on October 21, 2021, my office sent the LWDA this motion and supporting papers.
5 Attached as **Exhibit 5** is a true and correct copy of the receipts regarding these submissions to the
6 LWDA.

7 24. In this case, Plaintiff's counsel has billed a total of 209.1 hours prosecuting this
8 case. Plaintiff's counsel dedicated significant resources to this case by dividing the tasks required
9 according to skill level, the professional hours generated by each attorney are neither unreasonable
10 nor duplicative. Multiplying the total hours billed by Plaintiff's counsel to the litigation by their
11 reasonable hourly rates yields a lodestar of \$100,115, which results in a 1.08 multiplier. Attached
12 as **Exhibit 6** is the itemized billing records performed by Plaintiff's counsel.

13 25. My firm has incurred \$11,281.63 in costs for this matter. The request for
14 reimbursement of costs is fair, adequate, and reasonable, as all of these costs are documented and
15 reasonably incurred. Attached as **Exhibit 7** is an itemized list detailing the costs incurred for this
16 matter.

17 26. The Settlement Administrator CPT Group, Inc. costs for administration of this
18 Settlement is \$5,500. CPT Group, Inc. will perform duties in connection with this Settlement that
19 are integral in effectuating the Settlement and the Notice process. Among other things, CPT
20 Group, Inc. will calculate each aggrieved employee's individual settlement payment, format the
21 Notice Packets for mailing, mail Notice Packets to all aggrieved employees, and otherwise
22 administer the Settlement. CPT Group, Inc. was selected to administer this Settlement because it
23 is an experienced and well-respected settlement administrator and returned a bid at a competitive
24 rate. Attached as **Exhibit 8** is a true and correct copy of the quote my office received from CPT
25 Group, Inc.

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1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct. Executed on October 21, 2021 in the City
3 of Los Angeles in the State of California.

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6 JONATHAN M. LEBE
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