

1 **DAVID YEREMIAN & ASSOCIATES, INC.**

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8 Attorneys for Plaintiff Vivian Ly

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SACRAMENTO**

11 VIVIAN LY, on behalf of herself and others
12 similarly situated,

13 Plaintiff,

14 vs.

15 PRIME COMMS RETAIL, LLC, a Delaware
16 limited liability company; and DOES 1 through
17 50, inclusive

18 Defendants.

Case No. 34-2020-00281668

**DECLARATION OF DAVID
YEREMIAN IN SUPPORT OF
PLAINTIFFS' MOTION TO
APPROVE PAGA SETTLEMENT;**

Date: November 16, 2021

Time: 9:00 a.m.

Place: Dept. 54

Reservation No. 2591498

Judge: Hon. Christopher E. Krueger

Dept.: 54

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals. I have personal knowledge of the facts herein and if called as a witness, I could and would competently testify.

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

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

6. I am experienced in prosecuting employment matters, particularly class and representative PAGA actions. In addition to the present case, I am also class or PAGA counsel for other wage-and-hour class-action lawsuits pending in various counties throughout California (including in federal

1 courts). There follows a list of some of our recent class-action settlements that have received
2 preliminary or final approval: *Galavis v. Patina Restaurant Group, LLC* (LASC BC375225; class
3 size approx. 10,000; co-counsel); *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class
4 size approx. 2,000; lead counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC
5 BC398569; class size approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class
6 size approx. 1,400; lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size
7 approx. 887; lead counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class
8 size approx. 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600;
9 lead counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx.
10 600; lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size
11 approx. 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250;
12 lead counsel); *Utley v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
13 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
14 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead counsel);
15 *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel); *Ortega v. AJC*
16 *Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel); *Lulejyan v. Jim Falk*
17 *Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead counsel); *Rylko v. The*
18 *Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel); *Healy v. Siemens IT*
19 *Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479; class size approx. 60; lead
20 counsel).

21 7. This experience is helpful in assessing the reasonableness of settlements such as the one at
22 issue here, and from this experience Plaintiff's Counsel concluded that this lawsuit could not have
23 been settled on better terms than provided under the present settlement agreement given the financial
24 limitations of Defendants.

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

27 9. From Plaintiff's Counsel's review of the facts, strengths, and weaknesses of the case, the
28 risks and delays posed by further litigation, and Plaintiff's Counsel's own prior litigation experience,

1 Plaintiff's Counsel believes that the recovery is fair and reasonable taking into consideration the
2 amounts received in other PAGA actions, the risks inherent in litigation of this genre. Further, and
3 based on the settlement negotiations, which were extensive and conducted in good faith and at arm's
4 length between attorneys with substantial experience litigating PAGA actions, the Settlement
5 Agreement was the product of a non-collusive settlement process in which the parties were forced to
6 make significant compromises in the interest of reaching a full and complete settlement of the
7 lawsuit.

8 **REQUEST FOR ATTORNEYS' FEES**

9 10. Plaintiff's Counsel respectfully requests an order approving its attorneys' fees and costs
10 pursuant to the Settlement Agreement.

11 11. This request is fair, reasonable, and adequate to compensate Plaintiff's Counsel for the
12 substantial work they have put into this case and, moreover, the risk they assumed by taking it in the
13 first place. The attorneys' fees award is intended to reimburse Counsel for all uncompensated work
14 that they have already done and for all the work they will continue to do in carrying out and
15 overseeing the notification to the Aggrieved Employees, communicating with Aggrieved Employees
16 regarding their claims, and assisting in the administration of the settlement if it is approved.

17 12. Moreover, PAGA Counsel spent substantial time on this matter that was reasonable and
18 necessary to the prosecution of this case. Aside from drafting the initial complaint, PAGA Counsel
19 conducted informal discovery, reviewed and analyzed time and pay records, employment
20 handbooks, Plaintiff's personnel file, relevant policies and other documentation, researched the
21 applicable law and potential defenses, constructed damage models based on interpretations of
22 California law, reviewed information provided by Defendants at the mediation, engaged in meet and
23 confer efforts with Defendants, and ultimately drafted and revised the settlement agreement. My
24 billing rate is \$750.00 per hour (18 years out of law school and is less than the Laffey Matrix rate of
25 \$759.00), and I spent 37 hours on this matter. Roman Shkodnik's billing rate is \$575.00 (9 years out
26 of law school, Laffey Matrix rate of \$672.00) and he spent 80 hours on this matter. See **Exhibit 1**
27 (David Yeremian Time and Task Summary), and **Exhibit 2** attached hereto (Laffey Matrix); and the
28 Declaration of Roman Shkodnik concurrently filed herewith. The lodestar for David Yeremian &

1 Associates, Inc., is \$73,750 (\$27,750 for David Yeremian's time on the case and \$46,000 for Roman
2 Shkodnik's time on the case).

3 13. In light of the foregoing, the fee request in an amount equal to one-third of the settlement
4 in this case is well within the bounds that have been established by the above-cited authority.
5 Defendants have no objection to an award of fees in the amount requested.

6 **Costs**

7 14. As of the date of the filing of the instant motion, my firm has costs of \$4,239.61 See
8 Plaintiff's Counsel's Cost Log attached hereto and incorporated herein as **Exhibit 3**. Plaintiff's
9 Counsel incurred costs including, but not limited to, filing fees (e.g. complaint, stipulation, motions),
10 service of process, travel costs, mediation fees, expert analysis fees, attorney-service costs for court
11 filings, copy charges for documents, parking, and postage charges. The Settlement Agreement
12 provides for reimbursement to Counsel of up to \$30,000.00 and Counsel hereby requests \$4,239.61
13 which were all reasonably incurred in the prosecution of this action.

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

16 Executed this 12th day of October, 2021, at Glendale, California.

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18 _____
19 David Yeremian
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EXHIBIT 1

Tasks Performed	Atty Hours Est.	Date range
<u>1. Pre-Filing and Investigation Tasks</u> • Conference with client; review client docs; interview re: facts of case • Research case law and other cases, and research Defendant Prime Comms Retail, LLC • Draft retainer and opening file documents • Reviewed associate's factual and legal research into the merits of Plaintiff's claims	6.0	April 2020 – July 2020
<u>2. Filing the Complaint and Drafting and Sending the LWDA Letter Notice</u> • Review and revise complaint • Review and revise LWDA exhaustion letter re: PAGA Notice and claims and facts and theories and grounds for recovering civil penalties	2.5	July 2020
<u>3. Initial conferences and correspondence with Defendant's counsel and Initial scheduling conference and Filing Amended Complaint</u> • Review case initiation documents, conformed copies, and review initial Case Management Conference order and notice of CMC • Confer with defense counsel regarding notice and acknowledgement • Reviewing draft of Amended Complaint to a PAGA claim • Reviewed Adding Defendant Spring Communications Holdings LLC as a doe Defendant	3.0	July 2020 – March 2021
<u>4. Potential ADR Discussions and informal discovery requests</u> • Confer with defense counsel and exchange e-mails regarding decision to proceed with mediation and status of discovery and how to approach in light of agreement to mediate • Confer and correspond with Defendant Prime Comms Retail, LLC Defendant Spring Communications Holdings LLC and mediators regarding mediator selection and availability and scheduling • Agree upon mediator and draft multiple e-mails and respond regarding scheduling • Confer with Plaintiff regarding mediation and review multiple correspondences from Plaintiff regarding ongoing claims and issues to address with Defendants. • Confer with statistical analysis expert regarding production and review and information and items needed to provide conclusions and recommendations and provide documents to him; discuss case claims and approach to damages	4.5	November 2020 – April 2021
<u>5. Complete Initial Informal Discovery, Mediation Preparation, and Conduct Mediation and further discovery meet and confer –</u> • Review informal discovery requests • Complete informal discovery and production of documents and Aggrieved Employees' data • Review all production and file documents and policy documents and compile key exhibits and documents for mediation • Confer and correspond with Defendants' counsel regarding Aggrieved	16.5	April 2021

Detailed Time and Task Summary – David Yeremian

Employees' data and numbers agreed upon and extrapolated for mediation • Complete and draft calculations of Defendants' potential liability exposure and summarize defenses to each and alleged bases for reduction in calculated numbers • Provide Aggrieved Employees data and documents as necessary to expert and confer with expert regarding conclusions and numbers for Aggrieved Employees based on the provided information • Review and revise mediation brief, address background and procedure and discovery completed, address relevant policies of Defendants and each of Plaintiff's claims, and the facts and law supporting them, and research and calculate potential estimated damages and penalties exposure • Attend mediation • Conferences with defense counsel regarding Settlement and general terms • Review correspondence following mediation with mediator and confer regarding continued efforts to finalize settlement terms		
<u>6. Finalizing Settlement Agreement and Terms</u> – • Review and revise Memorandum of Agreement; conferences with counsel re same • Review stipulation to continue case management conference to complete Settlement Agreement and attend to filing • Review and revise long form Settlement Agreement and conduct multiple conferences and correspondence with defense counsel regarding detailed terms and revisions • Multiple correspondence and conferences with defense counsel regarding settlement terms and revisions and additions • Review Aggrieved Employees Notice and e-mails regarding same and finalizations after editing • Review administrator quotations and discuss with associate • Conduct multiple conferences with Plaintiff regarding Settlement and terms and responding to his questions and concerns. Address in detail with Plaintiff his ongoing employment and the implications of the Settlement and ensuring it does not impact his current employment status with Defendants • Reviewed stipulation to file consolidated complaint	2.0	April 2021 – August 2021
<u>7. Motion for PAGA Settlement Approval:</u> • Review and revise motion for PAGA approval of the Settlement and supporting documents and declarations and attend to filing • Review entire file, emails, and compile time summary	2.5	October 2021
TOTAL:	37.0 Hrs.	

EXHIBIT 2

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)
[Links](#)

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

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

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

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

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

EXHIBIT 3

Cost report for LY v. PRIME COMMS RETAIL, LLC

<i>Date</i>	<i>TaskCode</i>	<i>Payee</i>	<i>Description</i>	<i>Cost</i>	<i>Acct/Check No</i>
7/10/2020		Rapid Legal	SUMMONS & COMPLAINT - filing fee and coplex fee advanced	\$1,579.73	Filing
7/15/2020		LWDA	PAGA LETTER	\$75.00	PAGA LETTER
8/5/2020		Rapid Legal	PROCESS OF SERVICE - PRIME COMMS RETAIL, LLC	\$82.60	SERVICE
8/19/2020		Rapid Legal	NTC OF COURT RULING RE COMPLEX DETERMINATION	\$67.11	Filing
8/28/2020		Rapid Legal	NTC OF CMC AND COMPLEX CASE PROCEDURE	\$67.11	Filing
9/4/2020		Rapid Legal	STIP TO EXTEND RESP PLEADING DEADLINE - stip fee advanced	\$87.76	Filing
11/10/2020		Rapid Legal	FAC	\$98.09	Filing
11/24/2020		Rapid Legal	PROCESS OF SERVICE - PRIME COMMS RETAIL, LLC - FAC	\$82.60	SERVICE
11/30/2020		Rapid Legal	PROOF OF SERVICE	\$30.98	Filing
1/14/2021		LYNN FRANK	MEDIATION (2.25.21) - PORTION OF FEES	\$1,000.00	MEDIATION 4406
2/5/2021		Rapid Legal	CMS; POSTING JURY FEES - jury fees advanced	\$221.99	Filing
3/4/2021		Rapid Legal	DOE AMENDMENT	\$67.11	Filing
3/5/2021		Rapid Legal	STIP & ORDER TO CONT CMC	\$87.76	Filing
4/15/2021		Rapid Legal	NAR	\$67.11	Filing
4/16/2021		Rapid Legal	NTC OF CONT CMC	\$67.11	Filing
6/2/2021		Rapid Legal	REQ FOR DISMISSAL; DEC OF RS; [P]O	\$67.11	Filing
6/14/2021		Rapid Legal	JOINT CMS	\$67.11	Filing
6/21/2021		Rapid Legal	NTC OF CONT CMC	\$67.11	Filing
8/11/2021		Rapid Legal	JOINT CMC REPORT	\$72.28	Filing
8/13/2021		Rapid Legal	STIP FOR LEAVE TO FILE SAC; [P]O - stip fee advanced	\$180.69	Filing
8/25/2021		Rapid Legal	SECOND AMENDED CONSOLIDATED COMPLAINT	\$103.25	Filing

TOTAL COST **\$4,239.61**

Total Cost By Account

Filing	\$2,999.41
MEDIATION	\$1,000.00
PAGA LETTER	\$75.00
SERVICE	\$165.20