

1 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
2 Mengfei Sun (SBN 328829)
msun@gbdhlegal.com
3 GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 Galen T. Shimoda (SBN 226752)
attorney@shimodalaw.com
7 Justin P. Rodriguez (SBN 278275)
jrodriguez@shimodalaw.com
8 SHIMODA & RODRIGUEZ LAW, PC
9 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
10 Tel: (916) 525-0716
Fax: (916) 760-3733

11 Attorneys for Plaintiff TIFFANY DREYER
12 on behalf of herself and Aggrieved Employees

13
14 **SUPERIOR COURT OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**

16
17 TIFFANY DREYER, individually and on
behalf of all other similarly situated
18 employees,

19 Plaintiff,

20 vs.

21 AUTOMATION ANYWHERE, INC., a
22 California Corporation; and DOES 1 to 100,
23 inclusive,

24 Defendants.

Case No. 20CV372730

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS ACTION**

Date: September 1, 2022¹

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: October 26, 2020

FAC Filed: March 15, 2021

Trial Date: None Set

25
26
27
28 ¹ In connection with this motion, Defendant agreed to waive the additional two days' notice provided for electronic service under Civil Procedure Code section 1005(b).

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 1, 2022, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 1 of the above-entitled Court, Plaintiff Tiffany Dreyer ("Plaintiff")
4 will move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act ("PAGA") and, as such, was authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$35,000.00 Gross PAGA Settlement Amount and the PAGA Settlement
9 Agreement, which is incorporated by reference as if stated here in full;
- 10 3. Approving the application for payment to Plaintiff's Counsel of reasonable costs under the
11 PAGA Settlement Agreement in the amount of \$7,000.00;
- 12 4. Approving the appointment of ILYM Group, Inc., as the Settlement Administrator and for
13 payment to ILYM Group, Inc., for administering said settlement in an amount not to exceed
14 \$3,000.00;
- 15 5. Approving the application for payment to Plaintiff's Counsel of reasonable attorneys' fees
16 under the PAGA Settlement Agreement in the amount of \$10,000.00;
- 17 6. Approving as to form and content the proposed Notice of PAGA Settlement;
- 18 7. Approving the proposed procedures to notify, and deliver payment to, the individuals within
19 the scope of the PAGA Settlement Agreement by first class mail;
- 20 8. Directing Defendant to report employment information as necessary, including social
21 security numbers, to the Settlement Administrator to administer the settlement proceeds;
- 22 9. Directing that any residue from settlement checks that were not cashed by the check cashing
23 deadline be sent to the California State Controller's Office's Unclaimed Property Division to
24 be held as unclaimed funds in the PAGA Settlement Members' names; and
- 25 10. Approving and adopting the Proposed Order and its implementation schedule, which is filed
26 herewith and incorporated by reference.

27 This Motion is being made pursuant to California Labor Code section 2699(1)(2) on the grounds
28 that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the

1 asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement
2 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
3 points and authorities, the Declaration of Galen T. Shimoda, the Declaration of Laura L. Ho, the
4 Declaration of Tiffany Dreyer, exhibits, the record and files of this case, and any further oral or
5 documentary evidence introduced at the hearing of this motion.

6 Pursuant to Local Rule 8(E) and the Tentative Ruling Procedures adopted by Department 1,
7 tentative rulings issued by Department 1 will be accessible at
8 https://www.scsccourt.org/online_services/tentatives/tentative_rulings_Dept1.shtml after 2:00 p.m.
9 on the court day preceding the scheduled hearing. To access the online tentative rulings, click on
10 the appropriate link at that web address (Note: rulings will remain accessible until replaced by
11 successive rulings). If you do not have access to the Internet during the time period when the
12 rulings are posted and you wish to obtain your tentative ruling, please call (408) 882-2515 for
13 assistance.

14 Tentative rulings will become Orders of the Court unless contested. To arrange an appearance to
15 contest a tentative ruling, notify the Court at (408) 808-6856 before 4:00 p.m. on the court day
16 before the hearing. You may make your notification to the Court by leaving a message when
17 prompted to do so at the end of the recorded greeting. Messages shall be brief, no longer than 30
18 seconds. When you leave your message, state only: the case number, the case name, and the name
19 of the attorney, including phone number and area code. You must also notify opposing counsel.
20 Note: you do not need to call or leave a message if you are not contesting the ruling. Parties must
21 also notify the court and opposing counsel of any intended telephonic appearance.

22 Parties who do not call to contest the ruling before 4:00 pm on the court day before the hearing or
23 appear without notice to the Court and opposing counsel will not be heard. If no party has
24 requested oral argument, appearances are not required and the tentative ruling will be adopted as
25 the ruling of the Court.

26 Dated: August 10, 2022

Shimoda & Rodriguez Law, PC

27 By: 

Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff

1 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
2 Mengfei Sun (SBN 328829)
msun@gbdhlegal.com
3 GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 Galen T. Shimoda (SBN 226752)
attorney@shimodalaw.com
7 Justin P. Rodriguez (SBN 278275)
jrodriguez@shimodalaw.com
8 SHIMODA & RODRIGUEZ LAW, PC
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21 AUTOMATION ANYWHERE, INC., a
22 California Corporation; and DOES 1 to 100,
inclusive,

23 Defendants.
24
25
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27

Case No. 20CV372730

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS ACTION**

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Tiffany Dreyer (“Plaintiff”) seeks approval of a Private Attorneys General Act of 2004
3 (“PAGA”) (Cal. Lab. Code §§ 2698 *et seq.*) settlement in the gross amount of \$35,000.00 (the “Gross
4 PAGA Settlement Amount” or “GPSA”). *See generally* Exhibit A (Proposed PAGA Settlement
5 Agreement).² The PAGA Settlement Agreement seeks to resolve all PAGA Claims Plaintiff brought
6 against Defendant Automation Anywhere, Inc. (“AAI” or “Defendant”) (Plaintiff and Defendant
7 sometimes collectively referred to as the “Parties”) on behalf all current and former California based,
8 female employees at the Vice President level and below in the Marketing Department of AAI (“PAGA
9 Settlement Members”) who worked between August 19, 2019, and either (1) the date that the Court
10 enters an Order approving this PAGA Settlement Agreement and dismissing the Action, or (2)
11 September 6, 2022, whichever date is earlier (“PAGA Period”). *See id.* at §§ 4, 6(c)(i). There are
12 approximately fifty-two (52) PAGA Settlement Members.

13 In this Action, Plaintiff asserted eight (8) Individual Claims, including (1) California Equal Pay
14 Act (“Cal EPA”) Violation; (2) Retaliation (Cal. Lab. Code § 1102.5); (3) Retaliation (Cal. Lab. Code §
15 98.6); (4) Gender Discrimination in Violation of the Fair Employment and Housing Act (“FEHA”); (5)
16 Retaliation in violation of the FEHA; (6) Failure to prevent discrimination and retaliation; (7) Wrongful
17 Termination; and (8) Unfair Competition. *See generally* Exhibit B (Plaintiff’s First Amended
18 Complaint). The operative First Amended Complaint (“FAC”) also asserts a representative claim under
19 the PAGA for alleged violations of California Labor Code sections 1197.5 (Cal EPA), 1102.5, and 98.6.
20 *See id.* On April 12, 2022, Plaintiff filed an amended notice letter with the Labor and Workforce
21 Development Agency (“LWDA”) to assert an additional representative allegation that AAI violated
22 California Labor Code section 432.3 by considering prior salary history in determining the starting pay
23 for new hires. *See* Exhibit C (Plaintiff’s Ltrs. to the LWDA). Plaintiff has not amended her FAC to add
24 Labor Code section 432.3 to the PAGA claim but intended to do so if the case were not resolved at
25 mediation. *See* Declaration of Galen T. Shimoda (“Decl. Shimoda”), ¶¶ 2-3.

26 Defendant has denied all of Plaintiff’s allegations, has denied any liability or wrongdoing of any
27 kind, and asserts this case is not appropriate to proceed as a PAGA action due to manageability

28
² Any capitalized and/or defined terms herein have the same meaning as set forth in the PAGA Settlement Agreement.

1 concerns. *See* Decl. Shimoda, ¶ 6. Notwithstanding the substantial legal disputes, and after engaging in
2 substantial formal and informal discovery, the Parties participated in a full day of mediation with Lisa
3 Klerman and were able to resolve the Individual Claims and the PAGA Claims as the result of a
4 mediator's proposal. *See* Decl. Shimoda, ¶¶ 6-11. The PAGA Claims were resolved via the PAGA
5 Settlement Agreement and the Individual Claims were resolved via an Individual Settlement Agreement,
6 the terms of which are disclosed herein. *See* Exhibit A; Decl. Shimoda, ¶ 11; *infra*, Section V.c.vi.

7 Plaintiff and Plaintiff's Counsel believe the proposed PAGA Settlement Agreement is fair,
8 reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations,
9 applicable law, and a detailed knowledge of the issues in this case. *See* Decl. Shimoda, ¶¶ 7-17;
10 Declaration of Laura L. Ho ("Decl. Ho"), ¶¶ 4-19; Declaration of Tiffany Dreyer ("Decl. Dreyer"), ¶ 6.
11 This was a heavily contested, heavily litigated matter. *See* Decl. Shimoda, ¶¶ 7-9; Decl. Ho, ¶¶ 5-10.
12 The PAGA Settlement Agreement was entered into in good faith by the Parties and guarantees a
13 recovery for the PAGA Settlement Members and the LWDA. Accordingly, Plaintiff requests that the
14 Court: (1) make a finding that Plaintiff has exhausted all administrative remedies and is authorized to
15 enter into the proposed PAGA Settlement Agreement on behalf of the LWDA; (2) approve the proposed
16 PAGA Settlement Agreement as fair, reasonable, and adequate; (3) approve the proposed Notice of
17 PAGA Settlement; (4) approve the proposed procedures to notify the PAGA Settlement Members and
18 mail them their Individual PAGA Payments; and (5) adopt the proposed order, submitted herewith.

19 II. PROCEDURAL AND LITIGATION HISTORY

20 On August 19, 2020, Plaintiff filed with the LWDA to exhaust administrative remedies for
21 alleged violations of California Labor Code sections 1197.5, 1102.5, and 98.6. *See* Exhibit C. More
22 than sixty-five (65) days passed without the LWDA providing any notice of its intent to investigate,
23 resulting in Plaintiff becoming authorized to act as a private attorney general under the PAGA. *See* Cal.
24 Lab. Code § 2699.3(a)(2)(A). On October 26, 2020, Plaintiff filed her initial Complaint in Santa Clara
25 County Superior Court, which included the PAGA Claims set forth in the August 19, 2020, notice letter.
26 Plaintiff uploaded a copy of the filed Complaint to the LWDA shortly after receiving the filed copy back
27 from Court. *See* Decl. Shimoda, ¶ 3. An FAC was filed on March 15, 2021, which asserts eight (8)
28 individual causes of action in addition to the PAGA Claims. *See* Exhibit B.

1 In April 2021, Defendant filed a demurrer and motion to strike, arguing that Plaintiff's theory of
2 recovery under the PAGA was unmanageable due to the individualized assessment required to
3 determine liability as to each putatively aggrieved employee. On June 1, 2021, the Court declined to
4 dismiss the PAGA claim at the early pleading stage, but also noted "AAI's legitimate concerns about the
5 manageability of the specific claims at issue" and opined that the aggrieved employee definition was
6 "almost certainly overbroad," while also inviting AAI to "seek Court intervention to address these
7 concerns as the case proceeds," including requiring Plaintiff to submit a workable trial plan at an
8 appropriate juncture. *See* June 1, 2021, Order re Demurrer and Motion to Strike, pg. 7.

9 On April 12, 2022, Plaintiff filed an amended notice letter with the LWDA to assert an additional
10 allegation under the PAGA that Defendant violated Labor Code section 432.3 by considering prior
11 salary history in determining the starting pay of new hires. *See* Exhibit C. This amendment was based
12 on documents Defendant produced in discovery that were not previously known to Plaintiff. *See* Decl.
13 Shimoda, ¶¶ 2-3. The LWDA did not provide any notice of its intent to investigate the issues raised in
14 the amended notice either. *See* Decl. Shimoda, ¶ 3.

15 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

16 Plaintiff thoroughly investigated the merits of the PAGA Claims and potential damages for such
17 claims. *See id.* at ¶¶ 7-17; Decl. Ho, ¶¶ 6-16. Through formal discovery, Plaintiff propounded three sets
18 of requests for production, two sets of form interrogatories, and two sets of special interrogatories.
19 Plaintiff obtained personnel, compensation, and performance records for Plaintiff as well as company-
20 wide documents, such as bonus plans, salary setting and review trainings, equity plans, employee
21 handbooks, policy and training documents, internal complaint information, and information regarding
22 employee terminations. Decl. Ho, ¶¶ 8-9. Plaintiff also responded to 74 requests for production of
23 documents, 32 special interrogatories, and 29 form interrogatory – employment law interrogatories. *See*
24 Decl. Shimoda, ¶¶ 8-9; Decl. Dreyer, ¶ 3. The requests were broad and extensive, requiring review of
25 several thousand pages worth of documents to provide the requested information and/or determine
26 whether they were responsive or not. Ultimately, just over 400 were produced by Plaintiff in addition to
27 the written discovery responses. *See id.* The discovery requests and responses also generated multiple
28 rounds of meet and confer correspondence. *See* Decl. Shimoda, ¶ 8; Decl. Ho, ¶ 9. In addition to this

1 written discovery, Plaintiff sat for two days of deposition, which generated additional meet and confer
2 correspondence and informal discovery conferences to resolve. *See* Decl. Shimoda, ¶ 8.

3 The Parties engaged in further data exchanges in connection with mediation that included
4 relevant pay period and payroll statistics for PAGA Settlement Members. *See* Decl. Shimoda, ¶ 9. For
5 purposes of mediation, Defendant also produced anonymized compensation and termination data for the
6 PAGA Settlement Members and their alleged male comparators. *See* Decl. Ho, ¶ 10. Although the
7 substantial majority of the litigation focused on issues relating to Plaintiff's Individual Claims and her
8 status as an aggrieved employee, the Parties were in possession of all information necessary to evaluate
9 the strengths and weaknesses of the PAGA Claims, including merits issues, damages, the scope and
10 configuration of putative aggrieved employees, the content and implementation of the policies and
11 practices at issue, and issues relating to manageability. *See* Decl. Shimoda, ¶¶ 8-10; Decl. Ho, ¶¶ 6-19.
12 The information allowed Plaintiff to create an accurate damages model to assess the reasonableness of
13 any PAGA settlement. *See id.*

14 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

15 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

16 The final settlement occurred only after extended, and sometimes contentious, arm's length
17 negotiations. Over the course of nearly two (2) years, Plaintiff has been investigating the claims and
18 discussing with Defendant's counsel the merits of the claims and issues present in this case. *See* Decl.
19 Shimoda, ¶ 11. It was only after a full day mediation with Lisa Klerman, and a mediator's proposal, that
20 the parties were able to resolve all claims and enter into the PAGA Settlement Agreement. *See id.*

21 **b. The Terms of the Settlement**

22 1. The scope of individuals falling within the PAGA Settlement Agreement include all
23 current and former California-based, female employees at the Vice President level and below in the
24 Marketing Department of AAI who worked at any time between August 19, 2019, to either (1) the date
25 that the Court enters an Order approving the PAGA Settlement Agreement and dismissing the Action, or
26 (2) September 6, 2022, whichever is earlier. Based on data Defendant produced for mediation, there are
27 approximately fifty-two (52) PAGA Settlement Members. *See* Exhibit A, §§ 4, 6(c)(i); Decl. Shimoda,
28 ¶ 12.

1 2. Defendants will pay the GPSA of \$35,000.00 to resolve the PAGA Claims and any
2 additional claims under the PAGA that were asserted or that could have been asserted based on the facts
3 alleged in the Action and in the Complaint filed October 26, 2020, the FAC filed on March 23, 2021, the
4 LWDA notice letter filed August 19, 2020, and the amended LWDA notice letter filed April 12, 2022
5 arising between August 19, 2019, through the date the Court issues an order approving the PAGA
6 Settlement Agreement. *See* Exhibit A, §§ 6, 11.

7 3. The Parties agree the cost of administering PAGA Settlement Agreement shall be paid
8 from the GPSA and have allocated \$3,000.00 for these services. *See id.* at § 6(c). Subject to Court
9 approval, the parties selected ILYM Group, Inc. to act as the Settlement Administrator, who has
10 provided a maximum cost estimate of \$3,000.00. *See* Exhibit D (ILYM Group, Inc. Quote); Decl.
11 Shimoda, ¶ 35.

12 4. The parties agree that up to \$10,000.00 of the GPSA may be paid for Plaintiff's
13 attorneys' fees under the PAGA Settlement Agreement. *See* Exhibit A, § 6(a). Defendant will not
14 oppose any application for attorneys' fees under the PAGA Settlement Agreement, so long as it is within
15 this threshold. *See id.* Additionally, the parties agree that Plaintiff may seek to recover up to \$7,000.00
16 in litigation costs under the PAGA Settlement Agreement. *See id.*

17 5. The GPSA is an all-inclusive, non-reversionary gross amount that includes all payments
18 of any type under the PAGA Settlement Agreement, including but not limited to, payments to the PAGA
19 Settlement Members, payment to the LWDA pursuant to PAGA, Plaintiff's counsel's fees and costs
20 under the PAGA Settlement Agreement, and all Settlement Administrator costs. *See* Exhibit A, § 6.

21 6. The Settlement Administrator will perform searches to locate PAGA Settlement
22 Members based on the last contact information in Defendant's possession. *See id.* at § 9. The searches
23 will include reference to the U.S. Postal Service's National Change of Address Database and, for any
24 notice returned as undeliverable, skip tracing using the individual's social security number and other
25 pertinent identifying information. *See id.* at §§ 9-10(a). In addition to their Individual PAGA Payment,
26 PAGA Settlement Members will receive a Notice of PAGA Settlement that provides them with
27 information concerning all material terms of the PAGA Settlement Agreement. *See id.* at § 10(a);
28 Exhibit E (Proposed Notice of PAGA Settlement).

1 7. Within forty-five (45) days after the Effective Date, the Settlement Administrator will:
2 (1) mail the Notice of PAGA Settlement; (2) issue payment and tax forms to each PAGA Settlement
3 Member; (3) issue payment to the LWDA; (4) take payment of its administration costs and (5) issue
4 payment for Plaintiff's Counsel's attorneys' fees and costs under the PAGA Settlement Agreement. *See*
5 Exhibit A, § 10(a)-(d).

6 8. For any portion of the Net PAGA Settlement Amount ("NPSA") allocated to Individual
7 PAGA Payments that is not claimed by PAGA Settlement Members by cashing their respective
8 settlement checks within 90 days after issuance, such amounts shall be sent to the California State
9 Controller's Office's Unclaimed Property Division to be held as unclaimed funds in the PAGA
10 Settlement Members' names. *See* Exhibit A, § 10(e). No portion of the GPSA will revert to Defendant
11 for any reason and PAGA Settlement Members are not required to submit a claim form to receive their
12 share of the NPSA. *See id.* at § 10(a).

13 **c. Allocation of Settlement Funds**

14 Under the terms of the PAGA Settlement Agreement, a NPSA will be determined as follows.
15 *See* Exhibit A, § 6(c). The NPSA will be equal to the GPSA (\$35,000.00) less any Plaintiff's attorneys'
16 fees and costs and Settlement Administrator costs awarded under the PAGA Settlement Agreement. *See*
17 *id.* The NPSA will be divided as required by statute with 75% being paid to the LWDA and 25% of the
18 NPSA being paid to PAGA Settlement Members. *See* Cal. Lab. Code § 2699(i). Each PAGA
19 Settlement Members' share of the NPSA will be calculated by dividing the number of pay periods they
20 worked during the PAGA Period by the total number of pay period worked by all PAGA Settlement
21 Members during the PAGA Period and multiplying that fraction by the 25% portion of the NPSA. *See*
22 Exhibit A, §§ 6(c)-6(c)(iii).

23 **V. ARGUMENT**

24 **a. PAGA Settlements Are Subject To Court Review and Approval Under The California**
25 **Labor Code**

26 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
27 representative of the LWDA have been complied with and the Court has reviewed and approved the
28 terms of the PAGA settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c). The Court has broad

1 discretion in making the decision to approve or reject a settlement for civil penalties as the statutory
2 scheme authorizes the Court to determine whether, in certain circumstances, penalties should be
3 assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of
4 the case. *See id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must determine
5 “whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
6 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA,*
7 *Inc.*, 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same
8 established framework Courts use to evaluate whether class action settlements are fair, reasonable, and
9 adequate. *See id.*; *see also Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4 n.5
10 (E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O’Connor v. Uber*
11 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by
12 comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v.*
13 *NCI Group, Inc.*, 2018 WL 1409590, *1–*2 (C.D. Cal. 2018) (same). This framework has been used
14 many times over by multiple Courts. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS
15 14971, *6, n.4-5 (E.D. Cal. 2017); *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D. Cal.
16 2017); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017);
17 *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55,*
18 *Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*,
19 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL
20 2029061 at *2 (N.D. Cal. 2019). An important difference in the analysis, however, is that the evaluation
21 should focus on the amount of the settlement as a whole rather than any individual aggrieved
22 employee’s share because a PAGA lawsuit is fundamentally a law enforcement action where the “relief
23 is designed to protect the public[,] not to benefit private parties.” *See Moniz*, 72 Cal.App.5th at 74
24 (internal quotation and citations omitted).

25 **b. Plaintiff Has Met All Statutory Requirements For Proceeding With The PAGA Claims**

26 Prior to commencing a lawsuit under PAGA, an aggrieved employee must give written notice of
27 the facts, theories, and statutes supporting the violations to the LWDA by online filing and by certified
28 mail to the employer as well as pay a filing fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B),

(c)(1)(A)-(B). An “‘aggrieved employee’ means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” *id.* at § 2699(c). If the LWDA does not provide notice of its intent to investigate the violation of statutes identified in Labor Code section 2699.5 within 65 calendar days of the notice, the aggrieved employee may commence a civil action. *See id.* at § 2699.3(a)(2)(A). For alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5, an aggrieved employee may commence a civil action if the employer has not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

As set forth above, Plaintiff complied with all statutory requirements to commence a civil action. *See Decl. Shimoda* ¶ 3; Exhibit C. The notice letters to the LWDA sets forth all claims and theories of liability sought to be released under the PAGA Settlement Agreement as well as supporting facts. *See Exhibit C.* Plaintiff also paid the \$75.00 filing fee. *See Decl. Shimoda* ¶ 3. As the LWDA did not provide any notice of its intent to investigate within the required time frame and no cure under the statute took place, Plaintiff is authorized resolve those claims contained in the notice letters and the FAC. *See id.*; Exhibit B; Exhibit C. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire motion for approval to the LWDA for its consideration at the same time this motion was filed. *See Decl. Shimoda* ¶ 36; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).

c. The Terms of The Settlement Are Fair, Reasonable, and Adequate

Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. *See Chamberlain*, 2020 WL 4350207, *4 n.5; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.App.4th at

1 1802. Indeed, the law favors settlement of lawsuits, particularly complex litigation cases where
2 substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation.
3 *See Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*,
4 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

5 **i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length Negotiations**
6 **Between the Parties**

7 Settlement of the PAGA Claims was reached only after substantial litigation and extensive arm's
8 length negotiations lasting nearly two (2) years, which included a full day mediation and resolution
9 through a mediator's proposal. *See* Decl. Shimoda, ¶ 11; Decl. Ho, ¶ 5. At all times, the negotiations
10 were adversarial and contentious, although still professional in nature. *See id.*

11 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
12 **Information to Enter into an Informed and Reasonable Settlement**

13 The parties were in possession of all necessary information during the negotiations. The parties
14 engaged in substantial formal and informal discovery, which included all necessary components for
15 evaluating the PAGA Claims and creating an accurate damages model. *See* Decl. Shimoda, ¶¶ 7-12;
16 Decl. Ho, ¶¶ 8-10. Plaintiff was also in possession of this information prior to calculating any damages.
17 *See* Decl. Shimoda, ¶¶ 7-12. As a result, Plaintiff was able to make a reasonable estimation of
18 Defendant's potential liability for the PAGA Claims. *See id.* Thus, the settlement now before the Court
19 was reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of
20 their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal.
21 1979).

22 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

23 Plaintiff's Counsel have considerable experience in complex litigation such as class and PAGA
24 actions. *See* Decl. Shimoda, ¶¶ 19-27; Decl. Ho, ¶¶ 2-3, 32(a). This experience makes them acutely
25 aware of the risks of complex litigation and the hurdles the PAGA Claims may face if this matter
26 proceeded to trial. *See id.* Thus, Plaintiff's Counsel are qualified to evaluate the PAGA Claims, the
27 value of settlement versus moving forward with litigation, and viability of possible affirmative defenses.
28 Plaintiff's Counsel believe that the PAGA Settlement Agreement is fair, reasonable, and adequate in

light of the risks associated with the PAGA Claims, the uncertainties of complex litigation, and the secured benefit to the PAGA Settlement Members and LWDA that the PAGA Settlement Agreement provides. *See* Decl. Shimoda, ¶¶ 7-17; Decl. Ho, ¶¶ 4-19.

iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

A review of the PAGA Settlement Agreement's terms does not give rise to any doubts about its fairness. Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 7.6% of the PAGA Claims' maximum possible value and a net recovery of approximately 3.2% of the claims' maximum possible value. *See* Decl. Shimoda, ¶¶ 12-15. The \$35,000.00 GPSA is a reasonable compromise of the PAGA Claims, and exceeds approved settlement ranges in other PAGA cases comparing either absolute numbers or as a percentage of total available damages. *See Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement).

1 The net penalty amounts being paid to PAGA Settlement Members is also in line with what has
2 been approved by other Courts in PAGA settlements as the average net amount to be paid to PAGA
3 Settlement Members is \$72.11. *See* Decl. Shimoda, ¶ 15; *see also Gilmore v. McMillan-Hendryx Inc.*,
4 2022 WL 184004, *4 (E.D. Cal. 2022) (approving PAGA settlement with average payment of \$37.34
5 per employee); *Banks v. Floor and Décor Outlets of America, Inc.*, 2021 WL 4318317, *4 (C.D. Cal.
6 2021) (approving PAGA settlement with average payment of \$5 to each employee due to limited
7 number of alleged violations and challenges to proving them); *Hartley v. On My Own, Inc.*, 2020 WL
8 5017608, *4 (E.D. Cal. 2020) (approving PAGA settlement with average payment of \$61.18 per
9 employee).

10 Plaintiff's Counsel also contend that, after this action was filed, additional benefits to PAGA
11 Settlement Members came to fruition that further the purposes of the PAGA and are likely to deter any
12 potential future violations.³ *See* Decl. Shimoda, ¶ 13; Decl. Ho, ¶ 17. Based on data produced by
13 Defendant, PAGA Settlement Members who are current employees have seen an increase to their
14 salaries in 2021 and several were promoted after the filing of this Action. *See id.* Defendant has
15 conducted pay equity analyses, examined its salary bands, and has implemented guardrails and
16 procedures for promotions. *See id.* Defendant confirmed that it has not and will not inquire about a
17 candidate's prior pay and will comply with the DFEH's reporting requirements. Plaintiff's Counsel
18 contend that these actions, along with the amounts paid under the PAGA Settlement Agreement,
19 remediate the alleged labor law violations, deter potential future ones, and maximize enforcement of
20 state labor laws. *See id.*

21 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

22 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
23 information be presented in representative action settlements "to ensure that the recovery represents a
24 reasonable compromise, given the magnitude and apparent merit of the claims being released,
25 discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing
26 the litigation" *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th
27

28 ³ Defendant contends that all of these actions were or would have been taken in the normal course of business regardless of the present litigation.

399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* court found the record before the trial court was sufficient, having included the number of class members, relevant payroll data, declarations describing hours and overtime worked, as well as variances in duties and rest and meal period experience, and a companion action alleging less than \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.” *Id.* Plaintiff similarly relied upon pay period data, payroll data, and PAGA Settlement Member data to determine the realistic potential civil penalties at issue. *See* Decl. Shimoda ¶¶ 7-15. Ultimately, Plaintiff secured a percentage of the total demand for the PAGA Claims that is well within, and in fact exceeds, the range of what has been found to be sufficient in several other cases. *See, supra*, Section V.c.iv. This settlement represents a reasonable compromise given the facts of the case, potential defenses, and potential likely recoverable damages.

vi. Plaintiff’s Individual Settlement Agreement Reasonably Compensates Her In Exchange For A General Release Of Her Individual Claims And Objective Criteria Demonstrates That No Improper Preference Was Given To the Individual Claims Over The PAGA Claims In Resolving The Action

Plaintiff has entered into a separate Individual Settlement Agreement resolving her Individual Claims in the Action for three hundred thousand dollars (\$300,000) in exchange for a general release of any and all claims she may have against Defendant, known and unknown, including all Individual Claims asserted in the Action, and she is waiving all protections afforded by California Civil Code section 1542. *See* Decl. Shimoda, ¶ 16. In this case, Plaintiff has calculated the maximum PAGA penalties to be \$463,000.00 and Plaintiff’s individual damages to be \$713,842.00.⁴ *See* Decl. Shimoda, ¶¶ 12-13, 17. Although many of the issues affecting the merits applied to Plaintiff’s Individual Claims and the PAGA Claims equally, there were several specific issues that substantially affected the value of

⁴ Defendant contests these damages and penalty amounts.

1 the PAGA Claims compared to Plaintiff's Individual Claims. *See* Decl. Shimoda, ¶¶ 12-17. First, any
2 penalties awarded for the PAGA Claims are subject to discretionary reduction by the Court and the
3 discretion exercised ranges from 30% to 82% or more. *See* Cal. Lab. Code. §2699(e); *see, e.g.,*
4 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
5 *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
6 Plaintiff's Individual Claims are not subject to any similar type of discretionary reduction. Second, the
7 PAGA Claims are subject to manageability arguments that could completely eliminate Plaintiff's ability
8 to pursue them if accepted by the Court. *See* Decl. Shimoda, ¶¶ 12(a)-(c). Third, \$211,600 of the total
9 civil penalties calculated were based on the alleged violation of California Labor Code section 432.3.
10 *See* Decl. Shimoda, ¶ 12(c). However, this amount may be completely eliminated, if the Court were to
11 accept Defendant's argument that their recovery is time-barred under the statute of limitations and
12 Plaintiff's relation-back argument does not apply. *See id.* Fourth, the evidence indicated that Plaintiff's
13 Individual Claims are stronger than the PAGA Claims. For example, Plaintiff contends she is able to
14 identify the male comparator who was paid more than her and that the decision to lay her off was made
15 by the individual who was the subject of her gender discrimination complaint. Defendant disputes those
16 allegations but also contends Plaintiff was unable to demonstrate higher payments to males in the same
17 position for all putative aggrieved employees or widespread complaints that could have been met with
18 widespread retaliation. *See* Decl. Shimoda, ¶ 16.

19 After reducing the maximum PAGA penalty calculation consistent with *Fleming* (82%) to
20 account for risks solely affecting the PAGA Claims, the PAGA penalties constitute approximately 10%
21 of the total damages in the Action and Plaintiff's Individual Claims constitute approximately 90% of the
22 total damages in the Action. *See* Decl. Shimoda, ¶¶ 12-17. The same ratio is present in the amount paid
23 under the PAGA Settlement Agreement (10% of the total paid to resolve the Action) versus the amount
24 paid under the Individual Settlement Agreement (90% of the total paid to resolve the Action). Thus, any
25 further compromises in the value of the claims due to issues not uniquely affecting the PAGA Claims
26 have been applied equally between the PAGA Claims and Individual Claims. *See* Decl. Shimoda, ¶ 17.
27 Thus, in settling her Individual Claims, no improper preference was given to the Individual Claims over
28 the PAGA Claims.

vii. The Attorneys Fees, Costs, and Settlement Administrator's Costs Requested Under The PAGA Settlement Agreement Are Reasonable

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1977). Courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48 Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered on his behalf." *Id.* at 271 (citations omitted).

Although this litigation is under the PAGA and not a class action, the basis for a common fund applies with equal force. The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this case because there is a sufficiently identifiable class of beneficiaries (*e.g.* PAGA Settlement Members and the LWDA), the benefits can be accurately traced to the PAGA Settlement Agreement Plaintiff and her counsel were able to negotiate on behalf of the beneficiaries, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum of the common fund.

Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed. 1992), §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are generally approved as reasonable in representative litigation settlements below \$10 million. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011). Out of Plaintiff's

1 Counsel's total combined lodestar of \$437,423.50 incurred in litigating this Action, Plaintiff's Counsel
2 attribute approximately \$60,071.60 being incurred as a result of issues raised by the PAGA Claims as
3 opposed to those affecting Plaintiff's Individual Claims. *See* Decl. Shimoda, ¶¶ 30-32; Decl. Ho, ¶ 39.
4 The requested fee of \$10,000 is a reduction on Plaintiff's counsel's actual fees attributable to the PAGA
5 Claims. Plaintiff's Counsel also attributes \$7,959.87 out of the total costs incurred in the Action
6 (\$17,135.11) to the PAGA Claims, so the requested costs of seven thousand (\$7,000) is a reduction on
7 the costs attributed to PAGA. *See* Exhibit G (Shimoda & Rodriguez Law, PC, Itemized Costs); Decl.
8 Shimoda, ¶ 34; Decl. Ho, ¶ 41. In view of Plaintiff's Counsel's efforts and risks in pursuing the PAGA
9 Claims, the requested fees (28% of the GPSA) and costs under the PAGA Settlement Agreement are
10 well within ranges approved by Courts in other, similar cases. *See Vizcaino v. Microsoft Corp.*, 290
11 F.3d 1043, 1048-1049 (9th Cir. 2002).

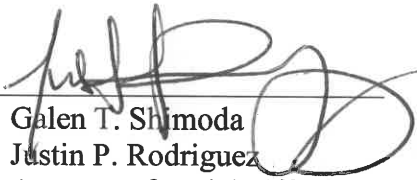
12 The \$3,000 allocated for Settlement Administrator costs is also within ranges approved by
13 Courts and should be approved in this case. *See Patel*, 2019 WL 2029061, *2 (\$5,261 for settlement
14 administrator's fees was not excessive where PAGA group consisted of 40 employees); Exhibit D; Decl.
15 Shimoda, ¶ 35.

16 VI. CONCLUSION

17 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
18 has met all statutory requirements to commence a PAGA civil action; approve the PAGA Settlement
19 Agreement; approve Plaintiff's Counsel's application for reasonable attorneys' fees and costs under the
20 PAGA Settlement Agreement; approve the notice and payment distribution procedures; and adopt the
21 implementation schedule identified in the proposed order, which is being filed concurrently herewith.

22 Dated: August 10, 2022

Shimoda & Rodriguez Law, PC

23
24 By: 

Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff

1 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
2 Mengfei Sun (SBN 328829)
msun@gbdhlegal.com
3 GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 Galen T. Shimoda (SBN 226752)
attorney@shimodalaw.com
7 Justin P. Rodriguez (SBN 278275)
jrodriguez@shimodalaw.com
8 SHIMODA & RODRIGUEZ LAW, PC
9 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
10 Tel: (916) 525-0716
Fax: (916) 760-3733

11 Attorneys for Plaintiff TIFFANY DREYER
12 on behalf of herself and Aggrieved Employees

13
14 **SUPERIOR COURT OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**
16

17 TIFFANY DREYER, individually and on
18 behalf of all other similarly situated
employees,

19 Plaintiff,

20 vs.

21 AUTOMATION ANYWHERE, INC., a
22 California Corporation; and DOES 1 to 100,
23 inclusive,

24 Defendants.

Case No. 20CV372730

**DECLARATION OF GALEN T. SHIMODA
IN SUPPORT OF MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS ACTION**

Date: September 1, 2022¹

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: October 26, 2020

FAC Filed: March 15, 2021

Trial Date: None Set

25
26
27
28 ¹ In connection with this motion, Defendant agreed to waive the additional two days' notice provided for electronic service under Civil Procedure Code section 1005(b).

1 I, Galen T. Shimoda, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California. My firm, Shimoda & Rodriguez Law, PC, as well as the law firm of Goldstein, Borgen,
4 Dardarian & Ho (“GBDH”) are counsel of record for Plaintiff Tiffany Dreyer (“Plaintiff”) herein. I am
5 making this declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private
6 Attorneys General Act Settlement and Dismiss Action (“Motion”). A true and correct copy of the
7 proposed settlement is being filed with this Motion as Exhibit A (PAGA Settlement Agreement).¹

8 2. In this case, Plaintiff is asserting both individual claims and claims under the Private
9 Attorneys General Act (“PAGA”) against Defendant Automation Anywhere, Inc. (“Defendant”).
10 Plaintiff’s Individual Claims include the following eight (8) causes of action: (1) California Equal Pay
11 Act (“Cal EPA”) Violation; (2) Retaliation (Cal. Lab. Code § 1102.5); (3) Retaliation (Cal. Lab. Code §
12 98.6); (4) Gender Discrimination in Violation of the Fair Employment and Housing Act (“FEHA”); (5)
13 Retaliation in violation of the FEHA; (6) Failure to prevent discrimination and retaliation; (7) Wrongful
14 Termination; and (8) Unfair Competition. Plaintiff’s PAGA Claims are based on alleged violations of
15 California Labor Code sections 1197.5 (Cal EPA), 1102.5, 98.6, and 432.3. A true and correct copy of
16 Plaintiff’s operative First Amended Complaint (“FAC”) is filed with this Motion as Exhibit B.
17 Although the section 432.3 claim is not presently in our FAC, this is because the claim was based on
18 documents produced well into this litigation during discovery and just before mediation. Had we not
19 resolved the claims through mediation, the FAC would have been amended to included them.

20 3. Plaintiff filed notice letters with the Labor and Workforce Development Agency
21 (“LWDA”) on August 19, 2020, and April 12, 2022, setting forth the facts and theories of liability
22 covering all PAGA Claims being released under the PAGA Settlement Agreement. A true and correct
23 copy of the notice letters filed with the LWDA are being filed with this Motion as Exhibit C. A copy of
24 the notice letters was also sent to Defendant via certified mail and the \$75.00 filing fee was remitted to
25 the LWDA with the initial filing. Plaintiff’s April 12, 2022, notice letter included the additional Labor
26 Code section 432.3 claim, which is based on Plaintiff’s allegation that Defendant violated the statute by
27 considering prior salary history in determining the starting pay for new hires. The LWDA has not
28

¹ Any capitalized and/or defined terms herein have the same meaning as set forth in the PAGA Settlement Agreement.

1 responded to either the August 19, 2020, or the April 12, 2022, notice letters, resulting in Plaintiff
2 becoming authorized to act as a private attorneys general with respect to all claims sought to be
3 released under the PAGA Settlement Agreement. Plaintiff uploaded copies of both her initial
4 Complaint, filed on October 26, 2020, and the FAC to the LWDA after receiving filed copies back
5 from Court.

6 4. Plaintiff is the only named representative in this matter. From our initial investigations
7 of Plaintiff's claims and documents, we believed there was substantial merit to the Individual Claims
8 and PAGA claims and that the PAGA Claims could be maintained as a PAGA action.

9 5. Because the settlement only concerns claims under the PAGA, no certification
10 procedures have or need to occur in the context of approving the PAGA Settlement Agreement
11 pursuant to *Arias v. Superior Court*, 46 Cal.4th 969, 975 (2009) and California Labor Code section
12 2699(1)(2). The proposed Notice of PAGA Settlement being provided to PAGA Settlement Members
13 identifies the scope of the settlement and that no other claims of the PAGA Settlement Members, class
14 or otherwise, are being compromised as part of the PAGA Settlement Agreement.

15 6. Defendant is represented in this matter by Alison L. Tsao and M. Leah Cameron of CDF
16 Labor Law LLP. From the beginning, Defendant has contested the merits of this case in its entirety, the
17 manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period for each
18 employee among other defenses and contentions they made challenging the propriety of this action.
19 Defendant further contended that, even assuming there was a finding supporting the imposition of
20 PAGA penalties, the Court would likely exercise its discretion to substantially reduce any such
21 penalties owed based on evidence of good faith attempts to comply with Labor Code obligations by
22 Defendant. Notwithstanding its agreement to settle this matter, Defendant believes the practices
23 Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully comply with
24 all state and federal employment laws with respect to Plaintiff and PAGA Settlement Members.

25 7. Based on the expected testimony from Plaintiff and PAGA Settlement Members, a
26 review of Defendant's policies and procedures and other documents relating to the alleged claims, the
27 substantial formal and informal discovery that took place in this matter, information on the number of
28 PAGA Settlement Members, the number of pay periods at issue, compensation and termination data

1 related to PAGA Settlement Members and their male comparators, the scope of the potential penalties at
2 issue in light of the claims alleged, and the negotiations that have taken place, I am convinced that the
3 proposed settlement is in the best interest of PAGA Settlement Members and the LWDA. The length
4 and risks of trial and other normal perils of complex litigation that impact the value of the claims were
5 also considered and weighed in reaching the proposed settlement. In addition, I carefully considered the
6 difficulties of complex litigation, and the lengthy process of establishing specific damages and various
7 possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that
8 penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was
9 successful on proving those claims and there was risk that a Court could find a substantial portion of the
10 PAGA Claim time barred based on the statute of limitations. Overall, I believe it is more beneficial to
11 secure a guaranteed benefit for PAGA Settlement Members and the LWDA now rather than to proceed
12 with litigation and potentially obtain zero funds due to legal or factual issues.

13 8. My office, including my partner, Justin P. Rodriguez, Esq., my former associate, Jessica
14 L. Hart, Esq., our paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the
15 merits and potential damages for the Individual Claims and the PAGA Claims. Our firm also co-
16 counseled with GBDH, working closely with Laura L. Ho, Esq. and Mengfei Sun, Esq., in litigating
17 these matters. The parties engaged in substantial formal and informal discovery in this heavily litigated
18 matter. For example, our office worked with Plaintiff to respond to 74 requests for production of
19 documents, 32 special interrogatories, and 29 form interrogatory – employment law interrogatories. In
20 responding to the broadly worded requests, our office reviewed several thousand pages of potentially
21 relevant documents, conducted witness interviews, had numerous discussions with Plaintiff, and
22 performed public records searches. In addition to the written responses, more than 500 pages of
23 documents were produced by Defendant and just over 400 were produced by Plaintiff. A substantial
24 majority of the time spent in this litigation focused on Plaintiff's individual claims and her status as an
25 aggrieved employee. Defendant issued several subpoenas to Plaintiff's former and required Plaintiff to
26 sit for two full days of deposition. The discovery responses and depositions generated multiple rounds
27 of meet and confer correspondence, including by phone, letter, and email, eventually resulting in an
28 informal discovery conference for several of the disputes. The parties were meeting and conferring over

1 several discovery disputes, including attendance at a third day of deposition before ultimately agreeing
2 to attend mediation.

3 9. The discovery conducted in this matter covered all aspects of the claims and defenses at
4 issue for an appropriate evaluation of the Individual Claims and the PAGA Claims. In addition to the
5 discovery mentioned above, Plaintiff and her counsel were in possession of personnel, compensation,
6 and performance data relating to Plaintiff as well as documentation relevant to pay disparity and gender
7 discrimination claims such as bonus plans, salary and equity pay information, handbooks, internal
8 complaints information, anonymized information regarding employee terminations and pay comparison
9 data and spreadsheets, as well as the relevant policy and training documents. A further informal
10 exchange of pay period data and statistics for PAGA Settlement Members was provided in connection
11 with mediation.

12 10. I believe the formal discovery and informal exchanges of information provided all
13 necessary information to evaluate the strengths and weaknesses of the PAGA Claims, including merits
14 issues, damages, the scope and configuration of putative aggrieved employees, the content and
15 implementation of the policies and practices at issue, and issues relating to manageability. The
16 information allowed Plaintiff to create an accurate damages model and assess the reasonableness of any
17 PAGA settlement.

18 11. Throughout this litigation there were numerous communications with Defendant's
19 Counsel discussing our respective positions and the strengths of the claims. The parties engaged in
20 mediation on May 18, 2022, using an experienced mediator, Lisa Klerman. It was only after nearly two
21 years of extensive litigation and, arm's length negotiations that the parties were able to reach a
22 settlement. The settlement of the Individual Claims and PAGA Claims was the result of mediator's
23 proposal after a full day of mediation. The Parties continued to negotiate and memorialize the terms of
24 the settlement, which resulted in Plaintiff's Individual Claims being resolved through the Individual
25 Settlement Agreement and the PAGA Claims being resolved through the PAGA Settlement Agreement.
26 The negotiations were at all times contentious and adversarial, though still professional in nature.

27 12. There are approximately fifty-two (52) PAGA Settlement Members. Based on the
28 formal and informal discovery, including the statistics for PAGA Settlement Members, an evaluation of

1 the range of PAGA penalties at issue and the risks facing each of the theories of PAGA liability is as
2 follows:

- 3 a) Violation of California Labor Code sections 1197.5: Plaintiff alleged that she and other
4 California based female employees were paid a lower wage than male counterparts with
5 similar skill, education, and experience for substantially similar work under similar
6 working conditions. Plaintiff calculated approximately 1,114 pay periods in which this
7 occurred. During our investigation, we did not find any prior Court or Labor
8 Commissioner decision finding that any Defendant's practices and policies at issue in
9 this litigation were unlawful. As such, all penalties Plaintiff calculated in this litigation
10 were calculated using an "initial violation" rate or the specific rate provided for in the
11 statute itself, as noted below. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal.App.5th 334,
12 356, (2021). Assuming Plaintiff was successful in proving a violation in every pay
13 period for each aggrieved employee, the calculated penalties for this PAGA theory of
14 liability is \$111,400. Defendant contends the statistical evidence does not support
15 Plaintiff's claim in that it does not demonstrate that female employees were actually
16 paid less than their male comparators. Defendant also contends that this PAGA theory
17 of liability will require a multitude of individualized assessments to compare each
18 female employee to her male comparator based on their pay, experience, education,
19 skills, responsibilities, accomplishments, training, and other relevant characteristics.
20 Defendant has taken the position that these individualized assessments would be
21 extremely time intensive and unmanageable, such that representative treatment should
22 not be allowed for this claim to proceed to trial. Putting aside risks associated with
23 manageability, the fact that the relevance and impact of the statistical evidence
24 underlying Plaintiff's equal pay violations is heavily disputed makes the potential
25 success of this claim on the merits uncertain;
- 26 b) Violation of California Labor Code section 1102.5 and 98.6: Plaintiff alleged that she
27 and other similarly aggrieved employees were retaliated and discriminated against for
28 making complaints about being underpaid and inappropriately selected for layoff

1 compared to their male counterparts. This theory of PAGA liability applied to PAGA
2 Settlement Members who were laid off, approximately 14 individuals. A specific civil
3 penalty of \$10,000 per violation is set forth in Labor Code sections 98.6(b)(3), and
4 1102.5(f). Thus, the calculated civil penalties for this theory of PAGA liability was
5 \$140,000. Defendant contends that the nature of this representative claim for retaliation
6 and discrimination is also highly individualized, such that it will be unmanageable to
7 prove on a representative basis at trial. In addition, Defendant contends the evidence
8 fails to establish that many of the putative aggrieved employees ever complained about
9 discrimination or unequal treatment or experienced any adverse employment action.
10 Furthermore, to the extent complaints were made, Defendant contends they were
11 anonymous and there is no affirmative evidence establishing that complainant identities
12 were ever revealed to any of the relevant decision makers in connection with the layoff
13 or that any adverse action was ever taken against them for such complaints. Connecting
14 the complaints made with the relevant decision makers to show causality in supporting
15 these claims presents a substantial risk to these claims for PAGA Settlement Members.

- 16 c) Violation of California Labor Code section 432.5: Plaintiff alleged that AAI considered
17 prior compensation history as a factor in determining the salary of new hires. This
18 theory of PAGA liability implicated 2,116 pay periods, which equates to \$211,600 in
19 civil penalties. Defendant contends that this claim is both time-barred by the statute of
20 limitations and lacks substantive merit due to Defendant's contention that it never
21 actually solicited prior salary information when determining starting pay. If the Court
22 were to reject Plaintiff's arguments that the relation-back doctrine is applicable to these
23 claims based on the facts of this case, the statute of limitations argument could
24 completely eliminate all civil penalties associated with this claim.

25 13. The total maximum civil penalties at issue, before considering any compromises or
26 reduction due to risks associated with the claims, is \$463,000. Again, this assumes Plaintiff will prove
27 every violation for every applicable pay period for each aggrieved employee. However, this is an
28 extremely unlikely occurrence in any litigation, let alone complex litigation where there are substantial

1 disputes and hurdles as noted above. Defendant also took several actions during the course of this
2 litigation that remediate many of the issues raised in this litigation. For example, PAGA Settlement
3 Members who are current employees have had pay increases in 2021 and several were promoted.
4 Defendant also conducted pay equity analyses, examined salary bands, and has implemented
5 procedures for promotions. Defendant confirmed that it has not and will not inquire about a
6 candidate's prior pay and will comply with reporting requirements. Furthermore, Defendant contends
7 it produced a substantial number of documents that show, at the least, attempted compliance with its
8 Labor Code obligations, if not actual compliance.

9 14. Good faith attempts at compliance are a factor considered in determining what
10 reduction, if any, may be applied to civil penalties. The statutorily authorized discretion that Courts
11 have used to reduce penalties ranges substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203
12 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS
13 154590, *9 (C.D. Cal. 2011) (82% reduction). Considering the risks on the merits unique to the PAGA
14 civil penalty claims as well as the range of Court discretion that may be applied to reduce any penalties
15 assessed, I believe the actual recovery of civil penalties in this matter would be closer to \$83,340. This
16 is also within the range of discretionary reduction percentages Courts have used separate and apart from
17 any reasonable reduction to the value of a claim based on the merits.

18 15. I believe the \$35,000 Gross PAGA Settlement Amount ("GPSA") represents a
19 reasonable compromise of claims based on the legal and factual disputes in this case. The GPSA
20 represents a gross value of 7.6 % of the maximum civil penalties that could be assessed. After reducing
21 the GPSA for requested attorney's fees, costs, and Settlement Administrator fees, the Net PAGA
22 Settlement Amount ("NPSA") represents a net value of 3.2% of the maximum civil penalties that could
23 be assessed. The value of the PAGA Settlement Agreement increases exponentially when compared to
24 the \$83,340 that is more likely to be achieved if the matter when to trial (42% gross value and 18% net
25 value). The average net amount paid to each of the PAGA Settlement Members from the NPSA, after
26 the LWDA is paid its 75% share, is approximately \$72.11.

27 16. Plaintiff entered into an Individual Settlement Agreement to resolve her Individual
28 Claims for \$300,000 in exchange for a general release of all claims, known and unknown, and waiver

1 of all protections afforded under Civil Code section 1542. In resolving Plaintiff's Individual Claims
2 and the PAGA Claims, there was no inappropriate preferential treatment given to Plaintiff's Individual
3 Claims over the PAGA Claims. Plaintiff's claims were stronger than PAGA Settlement Members in
4 general. Plaintiff contends she is able to identify the male comparator who was paid more than her and
5 that the decision to lay her off was made by the individual who was the subject of her gender
6 discrimination complaint. Defendant disputes those allegations but also contends Plaintiff was unable
7 to demonstrate higher payments to males in the same position for all putative aggrieved employees or
8 widespread complaints that could have been met with widespread retaliation. Additionally, many of
9 the risks that applied to the PAGA Claims had no application to Plaintiff's claims. Plaintiff's
10 Individual Claims are not subject to any manageability concerns, any damages she may be awarded are
11 not subject to further discretionary reduction by the Court, and none of her claims were subject to the
12 same statute of limitations issues raised for a significant portion of the PAGA civil penalties at issue.

13 17. Plaintiff's individual damages were calculated as \$713,842. This included \$208,394 in
14 lost wages, liquidated damages, and interest for Plaintiff's pay discrimination claims under Cal EPA
15 and the FEHA as well as \$505,448 in lost wages, bonuses, benefits (stock options, retirement), health
16 insurance premium costs, and emotional distress damages valued at the equivalent of one years'
17 earnings. The ratio of Plaintiff's individual damages compared to the likely civil penalties after
18 reduction for risks uniquely associated with the PAGA Claims was approximately 90/10. The same
19 ratio exists between the amount paid under the Individual Settlement Agreement and the PAGA
20 Settlement Agreement. I believe this demonstrates that the amount of any further compromises for
21 issues affecting both the Individual Claims and PAGA Claims were made equally. Thus, the Individual
22 Claims and the PAGA Claims are fairly valued.

23 18. In agreeing to represent Plaintiff and take on the case for all aggrieved employees, our
24 office agreed to take this case on a contingency basis, meaning that we would take a percentage of any
25 settlement or judgment should we recover a monetary amount. We took a risk that we would not
26 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
27 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
28 make sure employees are able to find affordable representation in order to ensure that employers are

1 complying with all their legal obligations towards employees and paying employees all their hard-
2 earned wages.

3 19. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
4 practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I
5 graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in
6 Asian Studies, with a minor in Japanese language. I then attended and graduated from the University
7 of the Pacific, McGeorge School of Law and received my J.D. degree in 2003. I graduated from
8 McGeorge in the top 5% of my class and was a member of the Order of the Coif and Traynor Honor
9 Society. Since graduating from McGeorge, I have authored a number of employment law articles for
10 journals and our firm regularly publishes articles on our firm's website.

11 20. I have been a regular panel speaker for the CEB (Continuing Education of the Bar)
12 Employment Review seminars from 2014 to the present. My speaking engagements include the
13 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
14 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
15 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
16 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
17 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
18 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
19 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
20 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
21 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
22 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
23 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
24 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
25 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
26 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
27 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
28 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);

1 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
2 Venue Roundup (May 17, 2019). I have been AV rated by Martindale Hubbell since 2013, was
3 recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a
4 Super Lawyer from 2014 to present.

5 21. I have practiced law in California since being admitted to the State Bar in 2003,
6 litigating wage and hour class actions and individual wage and hour litigation among other cases. I
7 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
8 I then switched to plaintiff class action work in 2005. My class action experience is in wage and hour
9 law. I have litigated several class action cases in California State and Federal Courts, including up to
10 certification, settlement, preliminary and final approval, and disbursement of monies, and have been
11 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA
12 cases I am litigating and/or have litigated as lead or co-counsel include the following:

- 13 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 14 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 15 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 16 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 17 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 18 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 19 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 20 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 21 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
22 Sup. Ct.);
- 23 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 24 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
25 Ct.);
- 26 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
27 Ct.);
- 28 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.

Sup. Ct.);

- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);

- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

22. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

23. My partner, Justin P. Rodriguez, Esq., worked with me on this matter and Mr. Rodriguez was critical in assisting with the litigation of this case. Mr. Rodriguez attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for

1 Academic Achievement in the Philosophy program. He was one of only two recipients of this award
2 out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of
3 the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He
4 graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge.
5 Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research
6 and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from
7 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being
8 an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal*
9 from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in
10 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for
11 the Latino Law Students Association from 2009 to 2010.

12 24. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
13 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
14 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
15 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). In
16 September 2018, he was a panel speaker for the Sacramento County Bar Association Labor and
17 Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment
18 Arbitration in California." In July 2020, he was a panel speaker for the Association of Defense
19 Counsel of Northern California & Nevada presentation of "Class Actions and PAGA Claims." His
20 practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and
21 Fair Labor Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation
22 handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating, including the
23 instant case, includes, but is not limited to, the following:

- 24 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 25 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 26 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 27 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 28 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080

(San Joaquin Sup. Ct.);

- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);

- 1 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 2 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 3 Ct.);
- 4 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 5 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 6 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 7 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 8 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 9 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 10 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 11 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 12 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 13 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 14 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 15 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 16 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 17 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 18 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 19 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-
- 20 EFB (E.D. Cal.);
- 21 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 22 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 23 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 24 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 25 00082201 (Sac Sup. Ct.);
- 26 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 27 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 28 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;

- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

25. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

26. My former associate, Jessica L. Hart, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Ms. Hart graduated from the University of California Davis School of Law. Prior to joining Shimoda & Rodriguez Law, PC, Ms. Hart worked alongside a number of attorneys in the Sacramento area focusing almost exclusively on plaintiff's side litigation and employment law. While with my firm, Ms. Hart worked on a variety of individual, class action, and PAGA cases. As an associate, some of the class action and/or PAGA cases Ms. Hart litigated include the following:

- *Afoa v. Milestone Retirement Communities, LLC., et al.*, Case No. 34-2020-00282555 (Sac. Sup. Ct.);
- *Cota v. Milestone Management (CA) – Meadows, LLC.*, Case No. 34-2020-00280648 (Sac. Sup. Ct.);
- *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD (E.D. Cal.);
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. Aquality Water Management, Inc.* Case No. 34-2021-00292794 (Sac. Sup. Ct.);

- 1 • *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- 2 • *Hussaini v. Integrated Resources, Inc, et al.*, Case. No. 34-2021-00297152 (Sac. Sup. Ct.);
- 3 • *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation, et al.*, Case. No.34-2020-00290072
- 4 (Sac. Sup. Ct.);
- 5 • *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-
- 6 0000543 (San Joaquin Sup. Ct.);
- 7 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 8 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
- 9 Sup. Ct.);
- 10 • *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP
- 11 (E.D. Cal.);
- 12 • *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin
- 13 Sup. Ct.);
- 14 • *Perez v. Too Infinity Management, LLC, et al.*, Case No. 34-2020-00285276 (Sac. Sup. Ct.);
- 15 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 16 and
- 17 • *Valentin v Sacramento Laundry Company, Inc.* Case.No. 34-2019-00270987 (Sac. Sup. Ct.);
- 18 and

19 27. The preceding list of cases does not include those where, for a variety of reasons, the
20 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
21 of the case.

22 28. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
23 believe it to be applicable amounts obtained under the PAGA Settlement Agreement pursuant to
24 *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480
25 (2016), and *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and
26 our firm have been able to secure an identifiable benefit on behalf of PAGA Settlement Members and
27 the LWDA. The \$35,000 GPSA provides an excellent result considering the risks faced by the PAGA
28 Claims.

29. I believe the request of \$10,000 for attorneys' fees under the PAGA Settlement Agreement is justified given the results obtained on behalf of PAGA Settlement Members and the LWDA as well as the time attributable to the PAGA Claims.

30. I have reviewed the billing entries with Justin P. Rodriguez and believe the hours reported are accurate. I, as well as all other individuals billing their time in the firm, use our firm's billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Everyone billing time in our firm is given instruction on how to utilize the software and instructed to record their time using this software. A summary of the hours and accompanying lodestar for each person working on this case in our firm up to present is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	79.6	\$675	\$53,730.00
Justin P. Rodriguez	97.1	\$525	\$50,977.5
Jessica L. Hart	173.2	\$325	\$56,290.00
Jennifer Livingston	15.3	\$150	\$2,295.00
Total:	365.2		\$163,292.50

31. This summary does not include any time spent for appearing at the approval hearing, working with a settlement administrator to implement any order approving the PAGA Settlement Agreement, or providing the Court with information relating to compliance with any approval order.

32. Throughout the litigation we coordinated efforts with GBDH to avoid duplication and litigate the claims as efficiently as possible. For example, my firm took the lead in responding to discovery, defending depositions, investigating the claims, communicating with Plaintiff and witnesses, preparing the settlement agreements and approval papers. Our firms worked together to delegate tasks even within complex multi-part assignments to maximize efficiency. The types of work performed by myself and the other attorneys and paralegal working on this matter included pre-filing client and witness interviews, document review and research, preparation and review of administrative filings, drafting pleadings, internal case review and strategy meetings, case management hearings and filings related thereto, legal research, formal and informal discovery and meet and confer efforts as noted

1 above, preparation for and attending mediation, preparing damages calculations, preparing settlement
2 agreement and approval paperwork, and communicating with Plaintiff, opposing counsel, and GBDH
3 regarding these issues over the course of the litigation. The substantial majority of time spent related to
4 Plaintiff's Individual Claims and her status as an aggrieved employee. I believe approximately 20% of
5 the time billed by my firm, the equivalent of approximately \$32,658.50 in fees, could be fairly
6 apportioned to litigation of the PAGA Claims more specifically, including the PAGA Settlement
7 Agreement and related approval paperwork.

8 33. On February 22, 2022, this Court approved the requested rates for myself and Justin P.
9 Rodriguez in the case of *Ferreira v. Point Digital Finance, Inc.*, Case No. 20CV373776. Ms. Hart has
10 not had a fee request considered and/or ruled upon in this County. However, she has four more years
11 of relevant litigation experience than did my associate in the *Ferreira* case, who was approved at a rate
12 of \$270 per hour. I believe the requested rate of \$325 per hour for Ms. Hart is reasonable given her
13 additional experience. Additionally, Ms. Hart was approved at this rate in Riverside County Superior
14 Court in June 2022. *See Franco v. Rancho Family Medical Group, Inc., et al.*, Case No. CVRI2102264
15 (Riverside Sup. Ct.). Ms. Jennifer Livingston is a senior paralegal at my firm with approximately 20
16 years of litigation experience covering both employment law and personal injury matters. I regularly
17 bill \$150.00 per hour for her time.

18 34. Our firm's total incurred and anticipated costs through any compliance hearing are
19 \$7,463.28. A true and correct copy of an itemization of our firm's incurred costs and expected costs
20 through the complete distribution of all settlement proceeds is filed with the Motion as Exhibit G.
21 Some of the items billed are purely related to PAGA Claims, such as the \$75.00 fee accompanying the
22 initial filing with the LWDA and filing fees related to the approval motion. Other items, such as our
23 portion of the mediation fee, the complaint filing fee, etc., I felt should be evenly apportioned between
24 the PAGA Claims and Individual Claims. For the remaining items, I am attributing 20% of the costs to
25 the PAGA Claims, consistent with the division of attorneys fees between the PAGA Claims and the
26 Individual Claims. In total, I believe \$3,123.95 of my firm's total costs are fairly attributable to the
27 PAGA Claims.

28 //

35. I have used several settlement administrator companies in the wage and hour class actions and PAGA actions I have resolved in the past and believe ILYM Group, Inc. (“ILYM”) will provide the best service to administer the proposed PAGA Settlement Agreement. A true and correct copy of a cost estimate provided by ILYM is filed with this Motion as Exhibit D. The cost estimate provided represents costs solely related to the administration of the PAGA Settlement Agreement. After obtaining the estimate solely for administering the PAGA Settlement Agreement, I asked whether there would be any added cost for ILYM to handle the distribution of funds related to Plaintiff’s Individual Settlement Agreement. ILYM informed me that there would be no additional costs associated with performing that service.

36. A copy of the proposed Agreement and the entire Motion to Approve the PAGA Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit F.

37. A true and correct copy of the proposed Notice of PAGA Settlement to be distributed to PAGA Settlement Members informing them of the settlement and all material terms is being filed with this Motion as Exhibit E.

38. GBDH and Shimoda & Rodriguez Law, PC, will divide fees 60 percent to GBDH and 40 percent to Shimoda & Rodriguez Law, PC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of August 2022 in Elk Grove, California.


Galen T. Shimoda

1 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
2 Mengfei Sun (SBN 328829)
msun@gbdhlegal.com
3 GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 Galen T. Shimoda (SBN 226752)
attorney@shimodalaw.com
7 Justin P. Rodriguez (SBN 278275)
jrodriguez@shimodalaw.com
8 SHIMODA & RODRIGUEZ LAW, PC
9 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
10 Tel: (916) 525-0716
Fax: (916) 760-3733

11 Attorneys for Plaintiff TIFFANY DREYER
12 on behalf of herself and Aggrieved Employees

13
14 **SUPERIOR COURT OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**
16

17 TIFFANY DREYER, individually and on
18 behalf of all other similarly situated
employees,

19 Plaintiff,

20 vs.

21 AUTOMATION ANYWHERE, INC., a
22 California Corporation; and DOES 1 to 100,
23 inclusive,

24 Defendants.

Case No. 20CV372730

**DECLARATION OF LAURA L. HO IN
SUPPORT OF MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS ACTION**

Date: September 1, 2022¹

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: October 26, 2020

FAC Filed: March 15, 2021

Trial Date: None Set

27
28 ¹ In connection with this motion, Defendant agreed to waive the additional two days' notice provided for electronic service under Civil Procedure Code section 1005(b).

1 I, Laura L. Ho, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and a partner at the
3 law firm of Goldstein, Borgen, Dardarian & Ho (“GBDH”), in Oakland, California. I, along with Galen
4 Shimoda and Justin Rodriguez of Shimoda and Rodriguez Law, PC, am counsel of record for the
5 Plaintiff in the above-captioned matter (together “Plaintiff’s Counsel”). I submit this declaration in
6 support of Plaintiff’s Motion to Approve Private Attorneys General Act (“PAGA”) Settlement and
7 Dismiss Action (“Motion”). I have personal knowledge of the facts set forth in this declaration and
8 could and would testify competently to them if called upon to do so.

9 **I. BACKGROUND & EXPERIENCE OF GOLDSTEIN, BORGEN, DARDARIAN & HO**

10 2. Goldstein Borgen Dardarian & Ho (“GBDH”) is a plaintiffs’ complex and class action
11 firm that was founded in 1972, in Oakland, California. GBDH long has been recognized as one of the
12 leading plaintiffs’ class action and employment litigation firms in the country. The National Law
13 Journal listed the firm in its “A National Who’s Who of the Top Lawyers in Employment Litigation.”
14 See “Bias Law Booms,” The National Law Journal (July 27, 1992) at 36 (referring to the firm as “[i]n a
15 league of their own”). Business Week published an article featuring the class action litigation our firm
16 has accomplished, referring to our firm as the “Swat Team of Bias Law.” More recently, *The Recorder*,
17 in San Francisco, listed all of the firm’s partners as among the “top attorneys” in employment law in the
18 San Francisco Bay Area. GBDH partners have been named “Northern California Super Lawyers” every
19 year since 2004.

20 3. My firm’s extensive experience in the prosecution and resolution of Private Attorneys
21 General Act (“PAGA”) actions in California state and federal courts not only assisted Plaintiff in
22 successfully litigating and eventually settling this case, but this expertise also confirms that this is a fair,
23 reasonable, and adequate result for the settlement class given the risks of complex litigation and the
24 hurdles that the PAGA Claims may face if this matter proceeded to trial.

25 **II. THE PAGA SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.**

26 4. For the reasons stated in Plaintiff’s Motion and the supporting declaration of Galen
27 Shimoda, filed herewith, and the reasons stated below, the Settlement is a fair, adequate, and reasonable
28 result for the PAGA Settlement Members.

1 5. Settlement of the PAGA Claims was reached after substantial litigation and extensive
2 arm's length negotiation, including a full-day mediation and resolution through a mediator's proposal.

3 6. Defendant has challenged Plaintiff's representative claims at every step of this Action,
4 including arguments that Plaintiff's representative claims are unmanageable, time-barred by the statute
5 of limitations, and lack substantive merit. While the Court overruled Defendant's demurrer, the Court
6 recognized that manageability could be an issue and Plaintiff recognizes that Defendant's manageability
7 arguments after discovery could render her PAGA claim vulnerable to dismissal or a court order
8 limiting the scope of the claim to be asserted at trial. Further litigation, including trial, will be costly
9 and could lead to a judgment that is potentially less beneficial than this settlement.

10 7. Only fifty-two (52) women make up the agreed upon PAGA Settlement Member group.
11 A trier of fact may find that only a fraction of these women were underpaid or retaliated against (if any),
12 such that the number of PAGA penalties to be assessed could be very small.

13 8. Through formal discovery, Plaintiff propounded three sets of requests for production,
14 two sets of form interrogatories, and two sets of special interrogatories.

15 9. Plaintiff obtained personnel, compensation, and performance records for herself as well
16 as company-wide documents, such as bonus plans, salary setting and review trainings, equity plans,
17 employee handbooks, policy and training documents, internal complaint information, and information
18 regarding employee terminations. The discovery requests and responses generated multiple rounds of
19 meet and confer correspondence.

20 10. The Parties have worked diligently through both formal and informal discovery to
21 provide relevant evidence to aid the evaluation of the PAGA claim, including company employment
22 policy and procedure documents, putative aggrieved employee pay and personnel data as well as
23 analogous male comparator pay and personnel data, correspondence, and internal complaint
24 documentation.

25 11. Plaintiff has analyzed the discovered evidence to reasonably value the PAGA claims.
26 Plaintiff understands and acknowledges that the statistical evidence regarding whether or not female
27 employees were paid a lower wage than male comparators is disputed, such that it is unclear if Plaintiff
28 could succeed at trial on her California Equal Pay Act ("Cal EPA") PAGA claim.

1 12. Similarly, the evidence of retaliation has been disputed, and there is little evidence of
2 complaints by putative aggrieved employees that were met with retaliation.

3 13. With respect to Plaintiff's claim that Defendant Automation Anywhere, Inc. ("AAI")
4 considered prior compensation history as a factor in determining the salary of new hires, Defendant has
5 presented arguments, which, if successful, would establish that this claim is both time-barred by the
6 statute of limitations and lacks substantive merit because evidence produced by AAI reflects that it
7 never solicited prior salary compensation from prospective employees.

8 14. Even if successful at trial on any one of these theories, there is a chance that the
9 penalties assessed would still be drastically reduced below the statutory maximum. *See* Lab. Code
10 § 2699(e)(2) (a court may award a lesser amount than the maximum penalty, if based on the facts and
11 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
12 and oppressive, or confiscatory).

13 15. The foregoing present serious risks to success or significant recovery on the PAGA
14 claims. The legal uncertainties associated with Plaintiff's PAGA claims support settlement on the
15 agreed upon terms.

16 16. In preparation for mediation, Plaintiff calculated the maximum PAGA exposure to be
17 \$463,000, but Plaintiff recognizes the litigation risks noted above, including that the Parties dispute the
18 proper comparators to use for the Cal EPA claim and thus how many women are paid less than men, as
19 well as the fact that many women may actually be paid more than men, and a significant portion of that
20 exposure is related to the retaliation claim, which assumes that all PAGA Settlement Members who
21 were laid off suffered retaliation. Plaintiff also understand that a discretionary reduction is possible
22 given the practice changes implemented after this case was filed.

23 17. Based on data produced by Defendant, PAGA Settlement Members who are current
24 employees have seen an increase to their salaries in 2021 and several were promoted after the filing of
25 this Action. Defendant has conducted pay equity analyses and examined its salary bands and has
26 implemented guardrails and procedures for promotions. Defendant confirmed that it has not and will
27 not inquire about a candidate's prior pay and will comply with the DFEH's reporting requirements.

1 These changes, along with the PAGA Settlement Amount awarded, remediates the allegations of Labor
2 Code violations.

3 18. The PAGA settlement amount of \$35,000 represents 7.6% of the maximum value, and
4 the average recovery amount is \$72.11 for each PAGA Settlement Member, which is within the range
5 approved by other courts, as explained in Plaintiff's Motion.

6 19. As such, Plaintiff has agreed to accept from Defendant the Gross PAGA Settlement
7 Amount ("GPSA") of \$35,000 in exchange for a PAGA-only release on behalf of the fifty-two PAGA
8 Settlement Members. Settlement on the agreed upon terms reasonably values the PAGA claims and
9 ensures compensation for the PAGA Settlement Members, which is favorable considering the facts and
10 challenges presented.

11 **III. THE PARTIES HAVE ENTERED INTO A SEPARATE INDIVIDUAL SETTLEMENT**
12 **AGREEMENT.**

13 20. Plaintiff has entered into a separate Individual Settlement Agreement resolving her
14 individual claims in the Action for three hundred thousand dollars (\$300,000), inclusive of statutory
15 attorney fees and costs, wherein Plaintiff is providing a general release of any and all claims she may
16 have against Defendant, known and unknown, including all claims asserted in the Action.

17 21. The vast majority of evidence produced, analyzed, and investigated by the Parties to
18 resolve this matter involved individualized issues related to Plaintiff's employment, work experiences,
19 and other evidence supporting her eight (8) individual claims, and the evidence indicates that Plaintiff's
20 individuals claims are stronger than the representative action.

21 22. For example, Plaintiff contends she is able to identify the male comparator who was
22 paid more than her and that the decision to lay her off was made by the individual who was the subject
23 of her gender discrimination complaint. Defendant disputes those allegations but also contends Plaintiff
24 was unable to demonstrate higher payments to males in the same position for all putative aggrieved
25 employees or widespread complaints that could have been met with widespread retaliation. Further,
26 due to several rounds of layoffs, many of the PAGA Settlement Members signed severance agreements
27 and general releases of any claims against Defendant. Plaintiff was one of the rare few who did not sign
28 the offered severance agreement.

1 23. As such, Plaintiff's individual recovery is fair, reasonable, and justified due to the
2 strength of her claims, the risks she faces in pursuing litigation against a former employer, and the
3 substantial time and effort Plaintiff spent assisting in the resolution of this Action.

4 24. Plaintiff's Counsel will be separately compensated for their work attributed to
5 Plaintiff's individual claims as part of the Individual Settlement Agreement reached by the Parties.

6 **IV. THE REQUESTED FEE IS REASONABLE BASED ON THE RESULTS ACHIEVED**
7 **AND CONTINGENT RISK.**

8 25. As explained above, the positive results obtained for the PAGA Settlement Members
9 are amplified when considered against the risks faced with continued litigation, including uncertainties
10 on: the proper comparator for PAGA Settlement Members, whether any of the PAGA Settlement
11 Members submitted complaints of gender discrimination and were subject to adverse action, and
12 whether Defendant used prior salary in setting current salary.

13 26. In addition, the fee request is supported by the fact that GBDH undertook the financial
14 risk and burden of prosecuting this case on a contingency basis. The firm devoted substantial resources
15 to this matter, and we have received no payment for any of the more than 466 hours of services
16 performed or the thousands of dollars in out of pocket costs and expenses that my firm committed to the
17 litigation of this case. We did this, with no guarantee of repayment, because of the importance of this
18 case and the benefits it would bring to PAGA Settlement Members and the potential of recovering a fee
19 if we succeeded. Moreover, given GBDH's resources, we can take on only a limited number of cases.
20 Thus, GBDH was required to forego other financial opportunities to litigate this case.

21 27. Plaintiff's Counsel efficiently litigated the PAGA claims by reaching this settlement
22 within two years of filing the case, despite the challenges of litigating the case during the ongoing
23 pandemic. Plaintiff's Counsel have: investigated and filed the complaint; defended against Defendant's
24 demurrer; engaged in formal discovery, including informal discovery conferences with the court;
25 prepared a detailed mediation submission briefing the merits of the case; and negotiated a great
26 settlement result with the assistance of mediator Lisa Klerman.

27 //

28 //

1 **V. THE REQUESTED FEE IS REASONABLE AS A PERCENTAGE OF THE GPSA AND**
2 **UNDER THE LODESTAR METHOD.**

3 28. Plaintiff's Counsel's attorneys' fee request of \$10,000 is justified as a percentage of the
4 GPSA because (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be
5 accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting.

6 29. Further, the requested award is significantly lower than Plaintiff's Counsel's lodestar.

7 **GBDH'S REASONABLE HOURLY RATES**

8 30. In addition to litigating my firm's entitlement to attorneys' fees and costs in our own
9 cases, my firm also litigates fee applications on behalf of other counsel. Because of the importance of
10 recovery of attorney fee awards in such cases to a plaintiffs' contingency practice firm such as mine, my
11 firm keeps current on federal and California state law developments on the subject of attorneys' fees.
12 Accordingly, GBDH is familiar with the prevailing market rates for leading attorneys in California for
13 trial court, complex and class action litigation of important issues.

14 31. GBDH periodically establishes hourly rates for the firm's billing personnel. GBDH
15 establishes the rates based on prevailing market rates for attorneys and law firms in the San Francisco
16 Bay Area that have attorneys and staff of comparable skill, experience, and qualifications. GBDH
17 obtains information concerning market rates from other attorneys in the area that have similar
18 experience doing similar work, from information that occasionally appears in the local press and
19 national bar publications, and in orders awarding attorneys' fees in similar cases

20 32. My firm's billing rates are charged to and paid by fee-paying clients of our firm, and by
21 defendants with whom we have settlement agreements that require monitoring, and are paid by the hour
22 on a regular billing basis. They are also the rates we claim in our fee applications in all of our
23 contingent, fee shifting cases. I have calculated our attorneys' fees in this matter using 2022 rates.

24 a. I have practiced law since 1994, with an emphasis in employment litigation. I
25 have been with GBDH since October 1998, became a partner in January 2005, and became a named
26 partner in January 2013. From October 1998 until December 2004, I was an associate at GBDH.
27 During my time at GBDH, I have been responsible for all facets of class action employment and other
28 complex litigation, from pre-filing investigation through trial and appeal. Since approximately October

1 1998, I have spent most of my time representing workers in wage and hour and discrimination matters,
2 both individually and in class, collective and representative actions, leading to favorable settlements
3 that have recouped millions of dollars for plaintiffs and recovered civil penalties on behalf of the State
4 of California. I have also lectured on subjects relating to class and collective actions, litigation practice
5 and procedure, ethical issues in class actions, and the fair employment and wage and hour laws at
6 numerous programs sponsored by the American Bar Association, the National Employment Lawyers'
7 Association, the California Employment Lawyers' Association, the Practicing Law Institute, and the
8 Impact Fund, among others. My 2022 rate is \$1,015 per hour.

9 b. Mengfei Sun is an associate at GBDH. Ms. Sun graduated from the University
10 of California – Berkeley School of Law in 2019. Ms. Sun's 2022 rate is \$500 per hour.

11 c. Kristen Burzynski was an associate at GBDH. Ms. Burzynski graduated from
12 the University of California – Irvine School of Law in 2016. Ms. Burzynski's 2022 rate is \$540 per
13 hour.

14 d. Scott G. Grimes is a statistician and senior paralegal at GBDH. He has a
15 master's degree in statistics and also has 33 years of case management and complex litigation
16 experience. His 2022 rate as Statistician is \$425 per hour. His 2022 rate as senior paralegal is \$395 per
17 hour.

18 e. Stuart Kirkpatrick was a paralegal at GBDH with eight years of complex
19 litigation experience. His 2022 rate is \$350 per hour.

20 33. These rates are consistent with, if not lower than, the rates charged by comparable
21 attorneys in the San Francisco Bay Area and numerous other locales within California for similar class
22 action work and complex litigation, including particular firms that regularly prosecute or defend
23 employment class actions and other complex litigation. We have determined that the rates we charge
24 are reasonable for attorneys of our experience, reputation and expertise practicing complex and class
25 action litigation in the San Francisco Bay Area.

26 34. Additionally, GBDH's hourly rates have been approved in both state and federal courts
27 in Northern California. For example, GBDH's 2020 hourly rates were approved in *Wellinger v. Live*
28 *Nation Worldwide, Inc.*, Case No. 19STCV04397 (Los Angeles County Superior Court, June 29, 2021).

GBDH's 2019 hourly rates were approved in *Nevarez v. Forty-Niners Football Company*, Case No. 16-CV-07013-LHK (N.D. Cal. July 23, 2020); *Foster v. Advantage Sales and Marketing, LLC*, Case No. 3:18-cv-07205-LB (N.D. Cal. May 28, 2020); and *Flowers v. Twilio, Inc.*, Case No. RG16804363 (Alameda Cnty. Super. Ct., June 13, 2019). GBDH's 2018 hourly rates were approved in *Kaku v. City of Santa Clara*, No. 17-CV-319862 (Santa Clara Cnty. Super. Ct., Jan. 22, 2019). GBDH's 2017 hourly rates were approved in *Willey v. Techtronic Indus. N. Am.*, No. RG 16806307 (Alameda Cnty. Super. Ct.) and *Carrillo-Hueso v. Ply Gem Indus. Inc.*, No. 34-2016-00195734-CU-OE-GDS (Sacramento Cnty. Super. Ct. June 29, 2017).

GBDH'S REASONABLE TIME SPENT AND NATURE OF ITS REPRESENTATION OF THE PLAINTIFF CLASS

35. All attorneys and legal staff at GBDH are instructed to maintain contemporaneous time records reflecting the time spent on this and other matters. In all instances, the time keeper indicates the date and amount of time spent on a task to one-tenth of an hour; describes the work that was performed during the indicated time period; and identifies the case to which the time should be charged.

36. GBDH made every effort to litigate this matter efficiently by coordinating the work of GBDH's attorneys and paralegals, minimizing duplication, and assigning tasks in a time and cost efficient manner, based on the time keepers' experience levels and talents.

a. I was the primary attorney handling this case on behalf of GBDH. I supervised a team of attorneys and paralegals from GBDH in performing the work necessary to successfully litigate and negotiate the settlement herein. I also coordinated litigation and settlement strategy with attorneys from Shimoda & Rodriguez Law, PC, who also serve as Plaintiff's Counsel in this matter. I was involved in case investigation, case strategy, writing and editing pleadings, court submissions, and the settlement conference statement, settlement negotiations, the settlement agreement, and reviewing and revising the approval motion.

b. Ms. Sun assisted in case investigation, drafting the EEOC charge, legal research, drafting the opposition to Defendant's demurrer and motion to strike, drafting discovery requests, reviewing document productions, drafting meet and confer letters on discovery requests, drafting the

1 amended PAGA letter, drafting the mediation statement, and drafting the motion and supporting papers
2 for approval.

3 c. Ms. Burzynski assisted in legal research, reviewing document productions,
4 drafting meet and confer letters, and appearing for the informal discovery conference.

5 d. Mr. Grimes assisted in calculating damages in preparation for mediation and
6 settlement negotiations. He was also the primary paralegal working on this case, with some assistance
7 from Mr. Kirkpatrick. Their primary duties included brief production, including cite checking, the
8 compiling of exhibits, managing the case calendar, and filings.

9 e. A summary of hours expended by GBDH's time keepers is as follows:

Professional	Title	Billable Hours	Billable Fees
Laura L. Ho	Senior Partner	82.4	\$83,636.00
Kristen Burzynski	Associate	101.5	\$54,810.00
Mengfei Sun	Associate	230.0	\$115,000.00
Scott G. Grimes	Statistician	8.5	\$3,612.50
Scott G. Grimes	Senior Paralegal	39.5	\$15,602.50
Stuart Kirkpatrick	Paralegal	4.2	\$1,470
GBDH Subtotal		466.1	\$274,131.00

16
17 37. The hours GBDH billed were properly and necessarily spent on the firm's assigned
18 tasks and projects.

19 38. GBDH divided tasks with co-counsel to avoid duplication of effort. For example,
20 GBDH took the lead on drafting discovery requests and meet and confer letters, reviewing Defendant's
21 productions, and drafting the settlement conference statement, while Shimoda & Rodriguez Law, PC
22 took the lead in investigating the case, communicating with Plaintiff, responding to discovery requests
23 to Plaintiff, including defending her deposition, and drafting the settlement agreements and approval
24 papers.

25 39. The total estimated lodestar of my firm, after the exercise of billing judgment is
26 \$274,131. Of my firm's total lodestar, I estimate that the portion attributable to the PAGA claims is
27 approximately 10 percent.

40. The requested fee award of \$10,000 is significantly lower than the lodestar attributable to the PAGA claims and necessary to compensate Plaintiff's Counsel for their work on the PAGA portion of case.

VI. THE LITIGATION EXPENSES WERE REASONABLY INCURRED.

41. Plaintiff's Counsel further ask the Court to approve payment of \$7,000 in costs, which is also less than the actual costs incurred to date. As of the date of this declaration, GBDH has incurred a total of \$9,671.83 in actual costs. The costs and expenses identified in GBDH's costs summary are reflected in the accounting books and records GBDH maintains in the ordinary course of business, which are prepared from expense vouchers and check records. The costs include: (1) \$60.90 for in-house printing and copying; (2) \$1,288.50 for court, filing, and service fees; (3) \$3,022.30 in costs for computerized research services to do legal research necessary to litigate this case; (4) \$7.38 for postage; (5) \$194.74 for telephone charges; (6) \$4,800 for mediation costs; and (7) \$298.01 for other litigation costs. All costs incurred here were necessary to the prosecution of this litigation and would normally have been billed to a client paying for the firm's services on a non-contingent basis. I estimate that half of the total costs incurred in the Action, or \$4,835.92, are attributable to the PAGA claims.

42. I have reviewed the billing and expense records described above and certify to the Court that the work was reasonably and necessarily performed and expenses reasonably and necessarily incurred in connection with the litigation of this matter.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this 8th day of August, 2022, in Oakland, CA.


Laura L. Ho

Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Mengfei Sun (SBN 328829)
msun@gbdhlegal.com
GOLDSTEIN, BORGES, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Galen T. Shimoda (SBN 226752)
attorney@shimodalaw.com
Justin P. Rodriguez (SBN 278275)
jrodriguez@shimodalaw.com
SHIMODA & RODRIGUEZ LAW, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Tel: (916) 525-0716
Fax: (916) 760-3733

Attorneys for Plaintiff TIFFANY DREYER
on behalf of herself and Aggrieved Employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

TIFFANY DREYER, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

AUTOMATION ANYWHERE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 20CV372730

**DECLARATION OF PLAINTIFF TIFFANY
DREYER IN SUPPORT OF PLAINTIFF'S
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT SETTLEMENT
AND DISMISS ACTION**

Date: September 1, 2022¹

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: October 26, 2020

FAC Filed: March 15, 2021

Trial Date: None Set

¹ In connection with this motion, Defendant agreed to waive the additional two days' notice provided for electronic service under Civil Procedure Code section 1005(b).

1 I, Tiffany Dreyer, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion To Approve Private Attorneys General Act Settlement and Dismiss Action.

5 2. I worked for Defendant Automation Anywhere, Inc. ("Defendant") from approximately
6 June 26, 2019, to June 3, 2020, in the Marketing Department as a non-exempt employee. During my
7 tenure, I worked as a Creative Director. I was subject to all of Defendant's policies and practices that
8 have been alleged as unlawful in the complaint and the notice sent to the Labor and Workforce
9 Development Agency ("LWDA"), including the following: (1) California Equal Pay Act Violations; (2)
10 Retaliation for Reporting Unlawful Activity; (3) Violation of Labor Code section 98.6 (discharge,
11 discrimination, or retaliation); (4) Gender Discrimination in Violation of the Fair Employment and
12 Housing Act ("FEHA"); (5) Retaliation in Violation of the FEHA; (6) Failure to Prevent
13 Discrimination and Retaliation; (7) Wrongful Discharge in Violation of Public Policy; (8) Unfair
14 Competition; and (9) Retaliation for Reporting a Reasonable Suspicion of Unlawful Activity.

15 3. I have actively participated in the litigation of this case. Prior to the lawsuit being filed I
16 met with my attorneys to review the potential claims and documents I had that I felt supported the
17 claims. With the help of my attorneys, I reviewed and responded to Defendant's written discovery
18 requests, including 74 requests for production of documents, 32 special interrogatories, and 29 form
19 interrogatory – employment law interrogatories. The requests were broad and extensive, requiring
20 review of several thousand documents to provide the requested information and/or determine whether
21 they were responsive or not. Ultimately more than 400 pages of documents were produced by me in
22 addition to the written discovery responses. I also worked with my attorneys to provide several rounds
23 of supplemental responses that were agreed to as a result of meet and confer efforts between my
24 attorneys and the attorneys for Defendant. In addition to the written discovery, I sat for two days of
25 deposition. I have given a detailed account of all the facts related to my employment and the claims
26 asserted in the Complaint. I provided extensive documentation in support of the claims brought against
27 Defendant. Overall, I believe I've spent approximately 100-120 hours of my own time in litigating this
28 matter to date.

4. My attorneys explained to me the risks and benefits of bringing a representative action. I understood that I took on the risk, both professionally and financially, in pursuing the case as a representative action. I understood that pursuing the case as a representative action in addition to my own individual claims meant that it would take substantially longer than pursuing a claim on a purely individual basis, but I believed it was important to make sure that Defendant followed the law for everyone.

5. I maintained communication with my attorneys throughout the litigation, discussing the facts and policies at issue in the case. I asked questions when I needed clarification about various aspects of this case to make sure there were continually steps taken to advance the interests underlying the lawsuit for similarly situated aggrieved employees as well as myself, namely preventing gender discrimination and retaliation as well as promoting equal pay regardless of gender. When my attorneys contacted me asking for more information or documents related to the case, I made myself available and tried to give or obtain any additional information I could. I participated in the negotiations and settlement discussions in this case, including being present at mediation, regularly communicating with my attorneys to answer questions, providing any additional information needed to assist the negotiations, and discussing the potential terms of the PAGA Settlement Agreement to evaluate its adequacy.

6. I have reviewed the PAGA Settlement Agreement, discussed the terms with my attorneys, and asked my attorney any questions I had. I believe the settlement terms and allocations are fair and reasonable given the facts of the case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of August 2022 in Dublin, California.

DocuSigned by:
Tiffany Dreyer
8F71B1CDECD41B...
Tiffany Dreyer

1 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
2 Mengfei Sun (SBN 328829)
msun@gbdhlegal.com
3 GOLDSTEIN, BORGES, DARDARIAN & HO
155 Grand Avenue, Suite 900
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 Galen T. Shimoda (SBN 226752)
attorney@shimodalaw.com
7 Justin P. Rodriguez (SBN 278275)
jrodriguez@shimodalaw.com
8 SHIMODA & RODRIGUEZ LAW, PC
9 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
10 Tel: (916) 525-0716
Fax: (916) 760-3733

11 Attorneys for Plaintiff TIFFANY DREYER
12 on behalf of herself and Aggrieved Employees

13
14 **SUPERIOR COURT OF CALIFORNIA**
15 **FOR THE COUNTY OF SANTA CLARA**

16 TIFFANY DREYER, individually and on
17 behalf of all other similarly situated
18 employees,

19 Plaintiff,

20 vs.

21 AUTOMATION ANYWHERE, INC., a
22 California Corporation; and DOES 1 to 100,
inclusive,

23 Defendants.

Case No. 20CV372730

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS ACTION**

Date: September 1, 2022¹

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: October 26, 2020

FAC Filed: March 15, 2021

Trial Date: None Set

27
28 ¹In connection with this motion, Defendant agreed to waive the additional two days' notice provided for electronic service under Civil Procedure Code section 1005(b).

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed PAGA Settlement Agreement
B	Plaintiff's First Amended Complaint
C	Plaintiff's Letters to the Labor and Workforce Development Agency ("LWDA")
D	ILYM Group, Inc., Quote
E	Proposed Notice of PAGA Settlement
F	Proof of Submission of Proposed PAGA Settlement Agreement to LWDA
G	Shimoda & Rodriguez Law, PC, Itemized Costs

Dated: August 10, 2022

Shimoda & Rodriguez Law, PC

By:

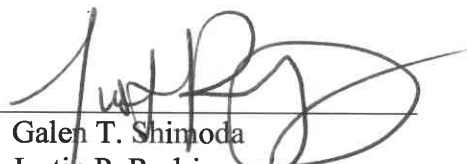

 Galen T. Shimoda
 Justin P. Rodriguez
 Attorneys for Plaintiff

Exhibit A

PAGA SETTLEMENT AGREEMENT

This PAGA SETTLEMENT AGREEMENT is made by and between Defendant Automation Anywhere, Inc., and Plaintiff Tiffany Dreyer ("Plaintiff") (collectively referred to as the "Parties"), on behalf of herself, all PAGA Settlement Members as set forth herein, and the State of California. The Parties hereby agree that the PAGA Claims in the Action as defined and described below shall be settled on the terms and conditions set forth herein and that this PAGA Settlement Agreement is intended to be a full and final resolution of the PAGA Claims in the Action and the Released Claims as detailed below.

RECITALS

- A. WHEREAS, Plaintiff was employed by Defendant from June 2019 to June 2020.
- B. WHEREAS, on October 26, 2020, Plaintiff filed her initial Complaint and filed a First Amended Complaint ("FAC"), the operative complaint in this case, on March 15, 2021 in the Superior Court of Santa Clara County, entitled Tiffany Dreyer, as an individual and on behalf of Aggrieved Employees v. Automation Anywhere, Inc., County of Santa Clara Superior Court Case No. 20-CV-372730 (the "Action"). In the FAC, Plaintiff asserted various individual claims for alleged retaliation, discrimination, failure to prevent retaliation and discrimination, wrongful discharge, unfair competition, and violation of the California Equal Pay Act ("Individual Claims"), as well as claims on behalf of the State of California and Defendant's California-based, female-employees who worked for Defendant from August 19, 2019, to the date of judgment (the putative aggrieved employees) under two separate theories: for Defendant's alleged violation of the California Equal Pay Act and for alleged retaliation pursuant to Labor Code sections 1102.5 and 98.6 ("PAGA Claims").
- C. WHEREAS, on April 12, 2022, Plaintiff filed an Amended Labor Workforce Development Agency ("LWDA") letter giving notice of a third theory of PAGA recovery pursuant to Labor Code section 432.3 for Defendant's alleged reliance on employee candidates' prior salary when setting new hire salaries.
- D. WHEREAS, through the litigation of this Action, the Parties have engaged in extensive informal and formal discovery. On May 18, 2022, the Parties mediated the Action with Lisa Klerman and agreed to settle the entire Action through an executed Memorandum of Understanding ("MOU"), which was agreed to be further memorialized by this PAGA Settlement Agreement and a separate Individual Settlement Agreement and was intended to be a full and final resolution of the Action. The Parties have reached this PAGA Settlement Agreement, and the separately executed Individual Settlement Agreement, only after discovery and investigation was performed, as well as mediation negotiations with the assistance of a neutral mediator.
- E. WHEREAS, Defendant generally denies all of Plaintiff's allegations in the Action and, more specifically, denies that it undertook any actions that were wrongful, unlawful, or that it caused damage to Plaintiff or the putative aggrieved employees.

F. WHEREAS, Plaintiff is represented in the Action by:

Galen T. Shimoda, Esq.
Justin P. Rodriguez, Esq.
Shimoda & Rodriguez Law, PC
9401 Stockton Boulevard, Suite 120
Elk Grove, CA 95624

Laura L. Ho, Esq.
Mengfei Sun
Goldstein, Borgen, Dardarian & Ho
155 Grand Avenue, Suite 900
Oakland, CA 94612

G. WHEREAS, Defendant is represented by:

Alison L. Tsao, Esq.
M. Leah Cameron, Esq.
CDF Labor Law LLP
600 Montgomery St., Suite 440
San Francisco, CA 94111

H. WHEREAS, in order to avoid the expense of further litigation, and the uncertainty as to any recovery, the Parties wish to effectuate a full and complete resolution of the PAGA Claims in the Action as set forth in this PAGA Settlement Agreement.

I. WHEREAS, the Parties acknowledge that the execution of this PAGA Settlement Agreement is the result of compromise and negotiations between the Parties, that this PAGA Settlement Agreement is entered into in good faith by the Parties, and that this PAGA Settlement Agreement shall never be considered at any time or for any purpose as an admission of liability by Defendants.

J. WHEREAS, Plaintiff represents that she is satisfied that her legal counsel have used their best efforts to pursue and resolve her claims against Defendants in a manner that is fair to her and the PAGA Settlement Members.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises made by Plaintiff, on the one hand, and Defendant, on the other hand, as more fully detailed below, the Parties agree as follows:

1. No Admission of Liability

By entering into this PAGA Settlement Agreement, Defendant does not admit to any wrongdoing or liability. Nothing contained herein shall be deemed to constitute an admission or evidence of liability on the part of Defendant.

2. Settlement Administrator

The Parties have selected ILYM Group, Inc., (the "Settlement Administrator") to administer this PAGA Settlement Agreement, as well as the Individual Settlement Agreement. The

Settlement Administrator shall acknowledge that it has fiduciary obligations to the Plaintiff, the PAGA Settlement Members, and Defendant. The Settlement Administrator shall attest that it will not allow any disbursements to be made from the QSF (defined below), except as expressly authorized by this PAGA Settlement Agreement or as ordered by the Court.

3. Defendant Automation Anywhere, Inc.

“Defendant” as referenced herein and as released in this PAGA Settlement Agreement includes Automation Anywhere, Inc., a California corporation; as well as Automation Anywhere, Inc., a Delaware corporation; and their present and former officers, directors, members, managers, shareholders, agents, parents, subsidiaries, affiliated entities, insurers, operators, partners, joint ventures, successors or assignees (“AAI”).

4. PAGA Settlement Members

“PAGA Settlement Members” means all current and former California based, female employees at the Vice President level and below in the Marketing Department of AAI who worked between August 19, 2019 and either (1) the date that the Court enters an Order approving this PAGA Settlement Agreement and dismissing the Action, or (2) September 6, 2022, which represents 90 days after the fully executed Memorandum of Understanding, whichever date is earlier. Based on data produced by Defendant for the mediation, there are approximately 52 PAGA Settlement Members.

5. Consideration

Plaintiff and her counsel have conducted necessary discovery and performed a thorough analysis of the law and facts relating to the claims asserted in the Action. Based upon their investigation and discovery, and taking into account the sharply contested issues, the expense and time necessary to pursue the Action, the risks and costs of further prosecution of the Action, the uncertainties of complex litigation, the prior experience of Plaintiff’s counsel in similar cases, and the benefits to the PAGA Settlement Members, the Plaintiff and her counsel believe that a settlement with Defendant on the terms set forth herein is fair, reasonable, and adequate and in the best interest of the PAGA Settlement Members. Plaintiff, on her own behalf and on behalf of the PAGA Settlement Members and the State of California, has agreed to settle the Action on the terms set forth herein.

In addition to the other covenants, promises and agreements documented in this PAGA Settlement Agreement and the Individual Settlement Agreement, Defendant has agreed to pay a Total Settlement Amount (“TSA”) of three hundred and thirty-five thousand dollars (\$335,000.00), which is conditioned on Court approval of this PAGA Settlement Agreement, which is meant to resolve the Action in its entirety for all Individual Claims and PAGA Claims, and which is inclusive of civil penalties recoverable under PAGA payable to the LWDA and PAGA Settlement Members. The TSA is an all-inclusive, non-reversionary gross amount that includes all payments of any type required under this PAGA Settlement Agreement and the Individual Settlement Agreement. The TSA is divided as follows: three hundred thousand dollars (\$300,000.00) is allocated as consideration for the resolution of the Individual Claims as documented in the separate Individual Settlement Agreement and thirty-five thousand dollars (\$35,000.00) is allocated as consideration for the resolution of the PAGA Claims (“Gross PAGA Settlement Amount” or “GPSA”) as documented in this PAGA Settlement Agreement and is

allocated as set forth herein. The TSA shall be deposited into an account from which all amounts required under the PAGA Settlement Agreement shall be paid.

Payment of the TSA by Defendant is strictly for the purpose of compromising disputed matters and shall not be construed as compensation for purposes of determining eligibility for any employee benefit provided by Defendant or by law, including but not limited to vacation, holiday, sick leave, 401(k) deferred or matching funds, or other health and welfare benefit.

6. Allocation of the Gross PAGA Settlement Amount

Defendant agrees to pay the GPSA in the amount of thirty-five thousand dollars (\$35,000.00) to resolve the PAGA Claims. The GPSA is an all-inclusive, non-reversionary gross amount that includes all payments of any type required under the PAGA Settlement Agreement. The GPSA shall be allocated as follows:

a. Attorneys' Fees and Costs

In consideration for settling the Action and in exchange for the release by the PAGA Settlement Members, and subject to final approval by the Court, Defendant will not oppose Plaintiff's application to the Court for attorneys' fees under this PAGA Settlement Agreement in an amount not to exceed ten thousand dollars (\$10,000.00). Defendant will also not oppose Plaintiff's application to the Court for attorneys' costs under this PAGA Settlement Agreement in an amount not to exceed seven thousand dollars (\$7,000.00). All amounts awarded as attorneys' fees or costs under this PAGA Settlement Agreement shall be paid by the Settlement Administrator out of the GPSA. Except as provided in this section, Plaintiff, PAGA Settlement Members, the State of California, and Defendant shall bear his, her, or its own attorneys' fees and costs. The allowance, disallowance, or modification by the Court of the application of Plaintiff's Counsel for an award of attorneys' fees and costs will not constitute a failure to grant approval of this PAGA Settlement Agreement. Rather, any amount of attorneys' fees and costs allocated under this PAGA Settlement Agreement that is not awarded by the Court will become part of the NPSA (defined below).

b. Settlement Administrator's Costs

The Settlement Administrator will administer this PAGA Settlement Agreement for an amount not to exceed three thousand dollars (\$3,000). All administration costs approved by the Court shall be paid out of the GPSA. If the costs of administration are less than \$3,000, the difference shall be held as a contingency for unanticipated items for 60 days. Whatever is left after 60 days shall be used to pay any later-discovered PAGA Settlement Members and if none, turned over to Equal Rights Advocates. If the costs of administration are greater than three thousand dollars (\$3,000.00), the amount that exceeds three thousand dollars (\$3,000.00) will be deducted from the GPSA only subject to the Parties' and the Court's approval.

c. Net PAGA Settlement Amount

After deducting from the GPSA the amounts approved by the Court for the attorneys' fees and costs and the Settlement Administrator's costs, the remainder of the thirty-five thousand dollars ("Net PAGA Settlement Amount" or "NPSA") will be distributed as follows: 75% to the LWDA as required by statute ("LWDA Payment"), and the remaining 25% shall be paid to the PAGA Settlement Members. The 25% portion of NPSA meant to be paid to PAGA Settlement Members shall be distributed as follows:

i. The PAGA Period

The “PAGA Period” shall mean the period from August 19, 2019 to either (1) the date that the Court enters an Order approving the PAGA Settlement Agreement and dismissing the Action, or (2) September 6, 2022, whichever is earlier.

ii. Total and Individual PAGA Pay Periods

The “Total PAGA Pay Periods” for purposes of this PAGA Settlement Agreement shall be the total number of pay periods worked by all PAGA Settlement Members during the PAGA Period according to Defendant’s business records. “Individual PAGA Pay Periods” will be the total number of pay periods worked by an individual PAGA Settlement Member during the PAGA Period according to Defendant’s business records.

iii. Individual PAGA Payments

The formula for determining each Individual PAGA Payment will be calculated by dividing a PAGA Settlement Member’s Individual PAGA Pay Periods by the Total PAGA Pay Periods and multiplying this result by the 25% portion of the NPSA.

iv. Tax Treatment

Each Individual PAGA Payment will be allocated 100% as penalties. The Settlement Administrator (and not Defendant) shall issue an IRS Form 1099 to each PAGA Settlement Member for each individual amount allocated to penalties. The Parties each understand, agree and intend that the TSA will qualify and be characterized as a Qualified Settlement Fund (“QSF”), that the QSF will be taxed as a separate entity for purposes of all federal, state and local taxes, that they will treat the QSF on a basis consistent therewith, that the QSF will be characterized as the employer of all PAGA Settlement Members for purposes of determining all tax obligations associated with any and all payments out of the QSF, and the QSF will bear full responsibility for all taxes associated with the QSF and settlement payments to PAGA Settlement Members under the terms of this PAGA Settlement Agreement. The Settlement Administrator shall be responsible for ensuring that all taxes associated with the PAGA Settlement Agreement are timely paid to the appropriate tax authorities and for the filing of all Federal, state and local employment tax returns, income tax returns, and any other tax returns associated with employer and employee or other taxes associated with the payments to PAGA Settlement Members. As required by law, the Settlement Administrator shall be solely responsible for timely issuing an appropriate IRS Form 1099 to each PAGA Settlement Member for his or her Individual PAGA Payment, and complying with any tax obligations of the QSF under Federal, state and/or local law. To verify the Settlement Administrator’s compliance with the foregoing withholding and reporting requirements, as soon as administratively practicable, the Settlement Administrator shall furnish Defendant with copies of all tax returns and information returns filed by the QSF, and a final accounting adequate to demonstrate full compliance with all tax withholding, payment, and reporting obligations. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph. Such elections shall be made in compliance with the procedures and requirements contained in applicable QSF regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver all necessary documentation for signature, as may be required, and thereafter to cause the appropriate filing of such documentation to occur. To the

extent that, for any period of time, the QSF is not treated as a QSF by any party for any purpose, the Settlement Administrator shall promptly notify counsel for the Parties of that fact.

v. Tax Liability

Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel make no representations or warranties as to the tax consequences, treatment, or legal effect of any payments made under this PAGA Settlement Agreement, do not intend anything contained in this PAGA Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this PAGA Settlement Agreement be relied on as such. Plaintiff, on behalf of the State of California and PAGA Settlement Members, understands and agrees that Plaintiff and PAGA Settlement Members will be solely responsible for correctly characterizing any compensation received under the settlement on his/her personal income tax returns and paying any and all taxes due for any and all amounts paid to them under the settlement.

vi. No Tax Advice Provided By Plaintiff's Or Defense Counsel

Neither Defendant, Defendants' Counsel, Plaintiff, nor Plaintiff's Counsel intend anything contained herein (or in any other document pertaining to the Action) to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall it be relied upon as such. The tax issues for each PAGA Settlement Member are unique, and each PAGA Settlement Member is advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this PAGA Settlement Agreement.

vii. No Liability for Disbursements Related to the QSF

Neither Defendant, Defendants' Counsel, Plaintiff, nor Plaintiff's Counsel shall have any responsibility or liability whatsoever with respect to the distribution of the QSF, the determination, administration, calculation or payment of claims, the payment, withholding, reporting and/or filing of any taxes related to the QSF, the payment of any taxes, distribution of residual settlement funds, or any losses incurred in connection with the foregoing. No person shall have any claim against Plaintiff, Plaintiff's Counsel, the Settlement Administrator, Defendant, or Counsel for Defendant based upon the distributions made substantially in accordance with this PAGA Settlement Agreement, the allocation of the QSF among PAGA Settlement Members hereunder, and/or further orders of the Court.

7. Process for Court Approval

The Parties will work together expeditiously to obtain approval of the PAGA Settlement Agreement from the Court.

a. Motion for PAGA Settlement Approval

As soon as practicable after the execution of this PAGA Settlement Agreement, Plaintiff will move the Court for approval of this PAGA Settlement Agreement and will provide the LWDA with notice of this PAGA Settlement Agreement pursuant to Labor Code § 2699(1)(2). In moving for approval of this PAGA Settlement Agreement, Plaintiff shall seek dismissal with prejudice as to all PAGA Settlement Members and dismissal without prejudice as to all other putative aggrieved employees as alleged in the Action. Defendant will prepare the initial draft of the motion for court approval, but Plaintiff's counsel will prepare any additional or subsequent briefing or filings that maybe required to obtain court approval of this PAGA Settlement Agreement. The Parties mutually agree to support and not oppose the motion for approval of this

PAGA Settlement Agreement. At the hearing on the Plaintiff's Motion for Approval of PAGA Settlement, the Parties will jointly appear (if so ordered by the Court), support the granting of the motion, and submit to an order granting the motion.

Plaintiff will disclose the Individual Settlement Agreement to the Court as necessary in connection with obtaining approval of the PAGA Settlement Agreement.

b. Impact Of Non-Approval

If this PAGA Settlement Agreement is not approved for any reason, then the Parties agree to work together in good faith to expeditiously address any concerns raised by the Court to secure court approval. If the Parties are unsuccessful at securing court approval, then the entire PAGA Settlement Agreement, as well as the separately executed Individual Settlement Agreement, will become null and void and the litigation will return to its status quo ante such that all Parties to this PAGA Settlement Agreement shall stand in the same position, without prejudice, as if the PAGA Settlement Agreement had been neither entered into nor filed with the Court. However, a reduction in the amount of the requested attorneys' fees and costs under the PAGA Settlement Agreement or Settlement Administrator's Costs will not constitute a failure to grant approval of this PAGA Settlement Agreement.

c. Waiver of Right to Appeal

Provided that the Court's approval of this PAGA Settlement Agreement is consistent with the material terms of this PAGA Settlement Agreement, the Parties hereby waive any and all rights to appeal the approval of this PAGA Settlement Agreement, and the order approving this PAGA Settlement Agreement therefore will become non-appealable at the time it is entered.

8. Settlement Funding

Defendant shall deposit the TSA, which includes the GPSA, with the Settlement Administrator within twenty-one (21) calendar days after the Effective Date. The Effective Date means the date by which this PAGA Settlement Agreement is approved as provided herein and the Court's order and judgment becomes binding and no longer subject to appeal. The approval order and judgment become binding and no longer subject to appeal upon the latter of (a) 60 days after the Court files a signed order approving the PAGA Settlement Agreement provided no notice of appeal of the approval order and judgment and/or of an order denying any motion to intervene has been filed with the California Court of Appeal; (b) if such an appeal is filed, and the appeal is resolved through any order affirming the approval order and judgment, the day after the last day for filing a petition for review with the California Supreme Court passes and no such petition is filed; (c) if a petition for review regarding the California Court of Appeal's decision affirming the approval order and judgment is filed, the day after the petition is denied with prejudice and/or no further review of the decision can be requested; or (d) if the petition for review is accepted, the day after the California Supreme Court affirms the approval order and judgment.

The Settlement Administrator shall place the TSA in an account or accounts that is/are not market-dependent and that are federally guaranteed or federally insured to maintain the principal without any risk of loss whatsoever. All funds held by the Settlement Administrator shall remain subject to the jurisdiction of the Court until such time as such funds shall be disbursed pursuant to this PAGA Settlement Agreement and/or further order(s) of the Court. In no event shall the

Settlement Administrator disburse any portion of the QSF before the Effective Date. The Settlement Administrator shall make all required payments in accordance with the provisions of this PAGA Settlement Agreement or pursuant to any superseding court order. Individual PAGA Payments collectively paid to all PAGA Settlement Members shall not exceed the balance of the NPSA.

9. Contact Information of PAGA Settlement Members

Within thirty (30) calendar days of the court's order approving this PAGA Settlement Agreement and dismissing the action, Defendant will provide the last known contact information for the PAGA Settlement Members to the Settlement Administrator in the form(s) requested by the Settlement Administrator. Using the provided information and after making any updates as necessary, within forty-five (45) calendar days of the court's order approving this PAGA Settlement Agreement and dismissing the action, the Settlement Administrator will perform an address-check via the UPS National Change of Address database and update any necessary addresses for PAGA Settlement Members.

10. Issuance of Checks

The Settlement Administrator will issue all checks out of the GPSA to pay all obligations under the PAGA Settlement Agreement.

a. Notice and Individual PAGA Payment Checks

Forty-five (45) calendar days after the Effective Date, the Settlement Administrator will mail the Notice of PAGA Settlement ("Notice"), along with each PAGA Settlement Member's share of his/her settlement check(s), and any appropriate tax forms by first class mail. The Notice is attached hereto as **Exhibit A**. The Settlement Administrator will perform one search using the social security numbers of the PAGA Settlement Members for more current addresses if notice packets and settlement checks are returned and will re-mail the notice and check packet to an updated address (if any) within five (5) calendar days of receipt of the returned mail. The Parties intend that reasonable, but not extraordinary, means be used to locate PAGA Settlement Members. If an address is not found, or if the notice and check packet is returned a second time, no further action is required.

The Parties agree that the PAGA Settlement Members are not required to submit claim forms in order to receive their share of the NPSA.

The Parties agree there is no statutory right for PAGA Settlement Members to opt out of this PAGA Settlement Agreement.

b. LWDA Payment

Forty-five (45) calendar days after the Effective Date, the Settlement Administrator shall transmit payment to the LWDA of the LWDA Payment.

c. Attorney's Fees and Costs Payment

Forty-five (45) calendar days after the Effective Date, the Settlement Administrator shall transmit payment of court approved attorneys' fees and costs to Plaintiff's Counsel. The Settlement Administrator (and not Defendant) shall issue an IRS Form 1099 to Plaintiff's counsel reflecting the attorneys' fees and costs awarded to them under this PAGA Settlement Agreement. Plaintiff agrees that payment of the attorneys' fees and costs under this PAGA Settlement

Agreement resolves all claims for attorneys' fees and costs incurred by Plaintiff and any attorneys representing her in the prosecution and settlement of the asserted PAGA claims.

d. Settlement Administrator's Costs Payment

Forty-five (45) calendar days after the Effective Date, the Settlement Administrator shall take payment of its administration costs.

e. Uncashed Funds

Checks for Individual PAGA Payments will remain valid for ninety (90) days from the date of issuance. To the extent that: (a) the Notice and the Individual PAGA Payment Amount checks are undeliverable, or (b) the Individual PAGA Settlement Amount checks are uncashed 90 days after the date listed on the check ("90-Day Period"), such amounts shall be sent to the California State Controller's Office's Unclaimed Property Division to be held as unclaimed funds in the PAGA Settlement Members' names.

11. Release of Claims by PAGA Settlement Members

Upon the Effective Date of this PAGA Settlement Agreement, Plaintiff, on behalf of the State of California and all PAGA Settlement Members, shall be deemed to have fully, finally, and forever released, relinquished, and discharged all claims for recovery of any kind under the California Private Attorneys General Act of 2004, which is codified at California Labor Code Section 2699, *et. Seq.* ("PAGA"), that were asserted or that could have been asserted based on the facts alleged in the Action and in the Complaint filed October 26, 2020, the First Amended Complaint filed on March 23, 2021, the LWDA letter filed August 19, 2020, and the Amended LWDA letter filed April 12, 2022, arising between August 19, 2019 through the date the Court issues an order approving this PAGA Settlement Agreement, including but not limited to any and all PAGA claims and any and all civil penalties or other remedies recoverable thereunder arising for alleged violations of California Labor Code § 1197.5 (California Equal Pay Act); California Labor Code § 1102.5 (retaliation for reporting a reasonable suspicion of unlawful activity); California Labor Code § 98.6 (discharge, discrimination, or retaliation); California Labor Code § 432.3 (considering prior salary history); as well as any other statute providing for civil penalties for the alleged violations that were asserted or that could have been asserted based on the facts alleged, as well as interest, attorneys' fees and costs based thereon ("Released Claims").

12. No Publicity

Plaintiff and her counsel agree not to publicize the amount or the terms of this PAGA Settlement Agreement in any way, including through social media, press releases, initiating contact with the press, responding to any press inquiries, or communicating with the press. Neither Plaintiff nor her counsel shall hold a press conference or otherwise seek to affirmatively publicize the terms of this PAGA Settlement Agreement. If contacted by the media regarding this PAGA Settlement Agreement, Plaintiff and her counsel will state, "It was a fair settlement and we are happy with the results" or something to that effect. Additionally, neither Plaintiff nor her counsel shall engage in any disparagement of Defendant of any type related to this PAGA Settlement Agreement.

13. No Representations/No Modifications

The Parties hereto represent and acknowledge that in executing this PAGA Settlement Agreement, they have not relied upon any representation or statement not set forth herein, except

as may be set forth in the separately executed Individual Settlement Agreement. This PAGA Settlement Agreement, as well as the Individual Settlement Agreement, sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior or contemporaneous agreements or understandings between the Parties hereto pertaining to the subject matter of this PAGA Settlement Agreement. This PAGA Settlement Agreement may not be modified, waived, rescinded, or amended in any manner except by a writing executed by all Parties to this PAGA Settlement Agreement.

14. Voluntariness

This PAGA Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity. The Parties have cooperated in the negotiation and preparation of this PAGA Settlement Agreement and each of its terms. This PAGA Settlement Agreement shall not be construed against any Party on the basis that the Party, or Party's counsel, was the drafter or participated in drafting this Agreement.

15. Assignment

None of the rights, commitments, or obligations recognized under this PAGA Settlement Agreement may be assigned by any Party, PAGA Settlement Member, the State of California Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this PAGA Settlement Agreement are for the sole benefit of the Parties under this PAGA Settlement Agreement, the PAGA Settlement Members, and the State of California and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this PAGA Settlement Agreement.

16. Severability

The provisions of this PAGA Settlement Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

17. Interpretation

The descriptive headings in this PAGA Settlement Agreement are purely for convenience and are not to be used as an aid in interpreting its terms. The Parties agree that they participated equally in the negotiating of the terms of this PAGA Settlement Agreement and that this PAGA Settlement Agreement shall not be construed against either Party as the author or drafter of this PAGA Settlement Agreement.

18. California Law and Governing Law

This PAGA Settlement Agreement shall be subject to and governed by the laws of the State of California. Pursuant to California Code of Civil Procedure § 664.6, the Parties agree that the Court shall retain jurisdiction over the Parties, and over this PAGA Settlement Agreement, in order to: (1) monitor and enforce compliance of this PAGA Settlement Agreement, and/or (2) resolve any disputes over this PAGA Settlement Agreement or the administration of the benefits of this PAGA Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this PAGA Settlement Agreement on the date set forth below.

DEFENDANT AUTOMATION ANYWHERE, INC.



James Laufman
EVP, General Counsel and Corporate Secretary
Automation Anywhere, Inc.

August 08, 2022

Date

PLAINTIFF TIFFANY DREYER

DocuSigned by:

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Tiffany Dreyer

8/7/2022

Date

CDF LABOR LAW LLP


Margaret Leah Cameron (Aug 8, 2022 10:47 PDT)

Alison L. Tsao Esq.
M. Leah Cameron Esq.
Attorneys for Defendant Automation Anywhere, Inc

August 08, 2022

Date

GOLDSTEIN, BORGAN, DARDARIAN & HO

Laura L. Ho Esq.
Mengfei Sun Esq.
Attorneys for Plaintiff Tiffany Dreyer
and the PAGA Settlement Members

Date

IN WITNESS WHEREOF, the Parties have executed this PAGA Settlement Agreement on the date set forth below.

DEFENDANT AUTOMATION ANYWHERE, INC.

James Laufman
EVP, General Counsel and Corporate Secretary
Automation Anywhere, Inc.

Date

PLAINTIFF TIFFANY DREYER

Tiffany Dreyer

Date

CDF LABOR LAW LLP

Alison L. Tsao Esq.
M. Leah Cameron Esq.
Attorneys for Defendant Automation Anywhere, Inc

Date

GOLDSTEIN, BORGEN, DARDARIAN & HO

Laura L. Ho Esq.
Mengfei Sun Esq.
Attorneys for Plaintiff Tiffany Dreyer
and the PAGA Settlement Members

August 6, 2022

Date

SHIMODA & RODRIGUEZ LAW, PC

DocuSigned by:

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Galen T. Shimoda Esq.

Justin P. Rodriguez Esq.

Attorneys for Plaintiff Tiffany Dreyer
and the PAGA Settlement Members

8/6/2022

Date

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

TIFFANY DREYER, as an individual and on behalf of
Aggrieved Employees,

v.

AUTOMATION ANYWHERE, INC., a California
Corporation; and DOES 1 to 100, inclusive.

Case No. 20CV372730

**COURT-APPROVED NOTICE
OF SETTLEMENT OF PAGA CLAIMS**

Judge: Hon. Sunil R. Kulkarni

Dept.: 1

Re: *Dreyer v. Automation Anywhere, Inc., et al.*
Santa Clara County Superior Court No.: 20CV372730
Your Portion of Court-Ordered PAGA Settlement Proceeds

Dear <<FirstName>> <<LastName>>:

Automation Anywhere, Inc. ("Automation Anywhere" or "Company") has provided your name and last-known address because its records indicate that you are or were one of the company's California based, female employees in its marketing department at the vice president level or below between August 19, 2019 and INSERT DATE. We provide the enclosed check to you pursuant to the INSERT DATE order of the Santa Clara County Superior Court (the "Order") in the above numbered case ("Action") resolving all claims that any such employees have or may have against Automation Anywhere under California's Private Attorneys General Act of 2004 ("PAGA") for alleged violations of California Labor Code sections 98.6, 432.3, 1102.5, and 1197.5 during the relevant time period.

Pursuant to the terms of the PAGA Settlement Agreement, you are to receive payment of \$<<Individual PAGA Settlement Amount>> which includes your portion of the Gross PAGA Settlement Amount, representing civil penalties, as set forth in further detail below.

**YOU ARE NOT REQUIRED TO TAKE ANY ACTION TO RECEIVE YOUR
SETTLEMENT SHARE.**

Pursuant to California's Private Attorneys General Act of 2004, an employee may seek to recover civil penalties for California Labor Code violations committed by an employer on behalf of himself or herself and other current and former employees. Ms. Tiffany Dreyer initiated a PAGA action on August 19, 2020 by sending a notice to the Labor Workforce Development Agency ("LWDA"), with copies provided to Automation Anywhere ("PAGA Notice") and by then subsequently filing a Complaint with the Santa Clara Superior Court on October 26, 2020, and a First Amended Complaint on March 15, 2021. Ms. Dreyer also filed an amended notice to the LWDA on April 12, 2022 ("Amended PAGA Notice").

While Automation Anywhere fully disputed – and continues to fully dispute – all PAGA claims, Automation Anywhere, Plaintiff Tiffany Dreyer, and their lawyers reached a settlement regarding the PAGA claims through mediation on May 18, 2022, and thereafter reached a formal PAGA Settlement Agreement.

Pursuant to the requirements of PAGA, the Santa Clara Superior Court reviewed and approved the settlement terms in the Order. You are entitled to a portion of the proceeds of the settlement. The Santa Clara County Superior Court's Order approved the PAGA Settlement Agreement for a total of thirty-five thousand dollars (\$35,000) ("Gross PAGA Settlement

Amount”), to be paid by Automation Anywhere and deposited with the Settlement Administrator.

The Order divides the Gross PAGA Settlement Amount into specified portions, including payments to: (1) the State of California; (2) Plaintiff’s attorneys’ fees and costs, (3) the Settlement Administrator’s costs to administer the settlement; and (4) a remaining amount to be divided between employees who are or were one of Automation Anywhere’s California based, female employees in its marketing department at the vice president level or below between August 19, 2019 and **INSERT DATE** (“Net PAGA Settlement Amount”).

The Order directs the apportionment of the Net PAGA Settlement Amount to covered employees by using a formula that establishes each employee’s individual payment amount. The formula for determining your payment is based off the number of pay periods you worked between August 19, 2019 and **INSERT DATE** as compared against the total pay periods worked by all covered employees during that same period.

Automation Anywhere has reported approximately Total PAGA Pay Periods worked by the covered employees. Automation Anywhere has also reported your Individual PAGA Pay Periods as **<<PayPeriods>>**. Thus, Automation Anywhere calculates your individual settlement payment amount to be \$ **<<IndivPAGA>>**.

In consideration of Automation Anywhere’s payment of the Gross PAGA Settlement Amount, the Order and the PAGA Settlement Agreement also directs that all PAGA Settlement Members shall be deemed to have fully, finally, and forever released, relinquished, and discharged all claims for recovery of any kind under the California Private Attorneys General Act of 2004, which is codified at California Labor Code Section 2699, *et. Seq.* (“PAGA”), that were asserted or that could have been asserted based on the facts alleged in the Action and in the Complaint filed October 26, 2020, the First Amended Complaint filed on March 23, 2021, the LWDA letter filed August 19, 2020 , and the Amended LWDA letter filed April 12, 2022, arising between August 19, 2019 through **[the date the Court issues an order approving this PAGA Settlement Agreement]**, including but not limited to any and all PAGA claims and any and all civil penalties or other remedies recoverable thereunder arising for alleged violations of California Labor Code § 1197.5 (California Equal Pay Act); California Labor Code § 1102.5 (retaliation for reporting a reasonable suspicion of unlawful activity); California Labor Code § 98.6 (discharge, discrimination, or retaliation); California Labor Code § 432.3 (considering prior salary history); as well as any other statute providing for civil penalties for the alleged violations that were asserted or that could have been asserted based on the facts alleged, as well as interest, attorneys’ fees and costs based thereon (“Released Claims”).

However, nothing in the Order or the PAGA Settlement Agreement releases any other claims any covered employees might have against Automation Anywhere or any and all of those related entities and individuals that are not encompassed within the definition of “Released Claims.”

You may call the Settlement Administrator, ILYM Group, Inc., at (888) 250-6810 with any questions. Please inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment. Checks for your settlement payment will remain valid for ninety (90) days from the date of issuance. To the extent that (a) this Notice and the settlement check are undeliverable, or (b) the settlement check is uncashed 90 days after the date listed on the check (“90-Day Period”), such amounts shall be sent to the California State Controller’s Office’s Unclaimed Property Division to be held as unclaimed funds in your name.

You can find and review the full text of the Order, the PAGA Settlement Agreement, Ms. Dreyer’s Complaint, the First Amended Complaint, and all other publicly filed papers in the Action through the Santa Clara County Superior Court’s online portal:

<https://portal.scscourt.org/>. You can also examine all such papers at any time during regular business hours at the Office of the Clerk, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113.

Counsel for Plaintiff and the PAGA Settlement Members are	
Laura L. Ho, lho@gbdhlegal.com Mengfei Sun, msun@gbdhlegal.com GOLDSTEIN,BORGEN, DARDARIAN & HO 155 Grand Avenue, Suite 900 Oakland, CA 94612 Telephone: (510) 763-9800 Facsimile: (510) 835-1417	Galen T. Shimoda, Justin P. Rodriguez, SHIMODA & RODRIGUEZ LAW, PC 9401 East Stockton Boulevard, Suite 120 Elk Grove, CA 95624 Telephone: (916) 525-0716 Facsimile: (916) 760-3733
Counsel for Defendant for AUTOMATION ANYWHERE, INC. is	
Alison L. Tsao, atsao@cdflaborlaw.com M. Leah Cameron, lcameron@cdflaborlaw.com CDF LABOR LAW LLP 600 Montgomery Street, Suite 440 San Francisco, CA 94111 Telephone: (415) 981-3233	

PLEASE DIRECT ALL QUESTIONS REGARDING THE ORDER OR THE SETTLEMENT AGREEMENT TO THE SETTLEMENT ADMINISTRATOR. PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING THESE MATTERS.

Sincerely,
Settlement Administrator

Dreyer v. Automation Anywhere, Inc.
Settlement Administrator – ILYM Group, Inc.
14751 Plaza Dr. Ste J
Tustin, CA 92780

<<FirstName>> <<LastName>>
<<Address1>>
<<Address2>>
<<City>> <<ST>> <<ZIP>>-<<Zip4>>

Exhibit B

Laura L. Ho (Cal. State Bar No. 173179)
lho@gbdhlegal.com
Mengfei Sun (Cal. State Bar No. 328829)
msun@gbdhlegal.com
GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Telephone: (510) 763-9800 | Fax: (510) 835-1417

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Jessica L. Hart (Cal State Bar No. 331441)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff TIFFANY DREYER
on behalf of herself and Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

TIFFANY DREYER, as an individual and
on behalf of Aggrieved Employees,

Plaintiff,

vs.

AUTOMATION ANYWHERE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 20CV372730

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES:**

1. California Equal Pay Act Violations
(Labor Code § 1197.5)
2. Retaliation for Reporting Unlawful
Activity (Labor Code § 1102.5)
3. Violation of Labor Code § 98.6
4. Gender Discrimination in Violation
of the FEHA
5. Retaliation in Violation of the FEHA
6. Failure to Prevent Discrimination
and Retaliation
7. Wrongful Discharge in Violation of
Public Policy (*Tameny* Claim)
8. Private Attorneys General Act of
2004 (Labor Code §§ 2698, *et seq.*)
9. Unfair Competition Law (Business &
Professions Code §§ 17200, *et seq.*)

REQUEST FOR JURY TRIAL

1 Plaintiff TIFFANY DREYER (hereinafter referred to as "Plaintiff") hereby files this First
2 Amended Complaint against Defendant AUTOMATION ANYWHERE, INC., a California Corporation
3 (hereinafter referred to as "Defendant" or "the Company") and DOES 1 to 100, inclusive. On
4 information and belief, Plaintiff alleges the following:

5 **JURISDICTION AND VENUE**

6 1. The Santa Clara County Superior Court has jurisdiction in this matter due to alleged
7 violations of the California Labor Code and common law.

8 2. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that
9 Plaintiff is informed and believes that Defendant conducts business in Santa Clara County, which is also
10 where the substantive wrongs against Plaintiff and other Aggrieved Employees took place.

11 3. For all causes of action falling within the Fair Employment and Housing Act,
12 Government Code section 12900 *et seq.* ("FEHA"), Plaintiff has exhausted administrative remedies by
13 filing a claim with the Equal Employment Opportunity Commission ("EEOC") against Defendant
14 concerning all claims asserted herein. Plaintiff received notice of the right to sue from the California
15 Department of Fair Employment and Housing ("DFEH") on December 17, 2020 and is filing this
16 lawsuit within one (1) year of receiving the right to sue notice.

17 4. Plaintiff has also sought permission pursuant to Labor Code sections 2698, *et seq.*, to
18 pursue the claims set forth in this Complaint against Defendant as a Private Attorney General on behalf
19 of herself and other Aggrieved Employees. Plaintiff defines "Aggrieved Employees" as follows:

20 All of Defendant's California-based, female employees who have or
21 continue to work for Defendant from August 19, 2019 to the date
judgement is entered.

22 Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to
23 the Labor and Workforce Development Agency ("LWDA") on August 19, 2020. In this written notice,
24 Plaintiff provided facts and legal bases for her claims within the notice to the LWDA on all violations
25 asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00
26 filing fee. The notice was also sent via certified mail to Defendant on the same day it was uploaded to
27 the LWDA. Plaintiff is informed and believes that, to date, the LWDA has not provided any response to
28 Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that she has exhausted

1 all administrative remedies pursuant to the Private Attorneys General Act (“PAGA”) and may bring this
2 action on behalf of herself and all other Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
3 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

4 PARTIES

5 5. Plaintiff is over the age of eighteen (18) and is a resident and domiciliary of the State of
6 California.

7 6. Plaintiff is informed and believes, and thereon alleges, that AUTOMATION
8 ANYWHERE, INC., a California Corporation, is now and/or at all times mentioned in this Complaint,
9 was the owner and operator of an industry, business and/or facility licensed to do business and actually
10 doing business in the State of California.

11 7. Plaintiff is further informed and believes, and thereon alleges, that Defendant is a Silicon
12 Valley based company whose products combine traditional Robotic Process Automation (“RPA”) with
13 cognitive elements such as natural language processing and reading unstructured data. Although
14 Defendant market themselves as a start-up company, Defendant has been in existence, under the name
15 AUTOMATION ANYWHERE, INC., since 2010. As of 2018, Defendant customers included Google,
16 LinkedIn, and GM.

17 8. DOES 1 through 100 are affiliates, subsidiaries, parent corporations, integrated
18 enterprises, joint employers, joint ventures, and related entities and the alter egos of AUTOMATION
19 ANYWHERE, INC., corporate or otherwise, who participated in and are liable for the actions herein
20 alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these
21 DOE Defendant when they are ascertained. At all times mentioned herein, each Defendant was the
22 agent or employee of each of the other Defendants and was acting within the course and scope of such
23 agency or employment. Defendants are jointly and severally liable to Plaintiff.

24 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
25 other Defendant and was acting within the course and scope of such agency or employment. The
26 Defendant are jointly and severally liable to Plaintiff.

27 10. Defendant, and each of them, are now and/or at all times mentioned in this Complaint,
28 were members of and/or engaged in a joint employment, joint venture, partnership and common

1 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
2 joint venture, partnership and common enterprise.

3 11. Defendant, and each of them, now and/or at all times mentioned in this Complaint,
4 approved, ratified, acquiesced, aided, or abetted the acts and omissions alleged in this Complaint.

5 **GENERAL ALLEGATIONS**

6 12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as though
7 fully set forth herein.

8 13. In this Complaint, Plaintiff and Aggrieved Employees allege that Defendant, acting
9 through their agents and employees, engaged in a pattern and practice of discriminating against Plaintiff
10 and Aggrieved Employees by systematically paying them less wages and bonuses than male employees
11 and disparately targeting them for layoffs and hostile, demeaning treatment.

12 14. Specifically, Plaintiff and Aggrieved Employees allege male employees in Director
13 positions are regularly paid upwards of \$200,000.00 per year as a starting wage, whereas Defendant paid
14 similarly situated women in this position (including Plaintiff), a wage of, at least, ten (10) to fifteen (15)
15 thousand dollars per year less. A similar wage disparity between male and female employees is true for
16 Mangers, Senior Managers, and Vice Presidents, particularly in the Marketing Department(s).

17 15. Plaintiff and Aggrieved Employees are aware of, at least, one instance where a female
18 Director made, and is making, a significantly lower wage than a male employee with less experience, in
19 a lower ranked position as Senior Manager.

20 16. In addition to the wage disparity that exists between male and female employees, there
21 are also significantly fewer women than men working at the Company. For instance, Plaintiff and
22 Aggrieved Employees estimate that the workforce at the Company is approximately seventy (70)
23 percent male. This disparity is even more pronounced in the Executive and Vice President positions,
24 where females occupy less than five (5) percent of the positions. Additionally, since the April and June
25 2020 layoffs targeted many higher-level female employees, this gender disparity has only become more
26 pronounced over the last year.

27 17. Defendant's workplace culture is also toxic and demeaning towards women. Women are
28 looked at as assistants, not leaders. Women are told to "stay in your lane" and "know your place."

1 Women are frequently cut off and ignored in meetings, and if they do speak up, they are considered
2 “bitchy and emotional.” Women are often excluded from projects and men are given credit for tasks
3 they did not complete. Women are scrutinized for taking vacation while men are left alone. Despite
4 meeting the objective standards set out in Objective and Key Results, women are given poor
5 performance ratings and pushed out of the company.

6 18. In fact, in the summer of 2020, Defendant held a roundtable discussion for female
7 professionals. In this roundtable forum, one of the top executives at the Company suggested – behind a
8 veil of concern over the work/life balance for working women with children in the Covid-19 era – that
9 women may want to consider the option of reducing their hours and taking a pay reduction. This
10 “suggestion” was not put forth to male employees.

11 19. Due to concerns over disparate treatment and hostility in the workplace over the last six
12 (6) plus months, Plaintiff and Aggrieved Employees, filed ethics complaints and reports with the
13 Company. These reports/complaints included concerns about wage disparity and a disparity in treatment
14 between male and female employees. Specifically, Plaintiff and Aggrieved Employees reported: (1)
15 they were unjustly receiving negative performance ratings in early 2020; (2) they did not receive earned
16 bonus payments; (3) they were having their job duties removed from them in favor of male counterparts;
17 (4) they were being ignored and sabotaged in their efforts to complete their job duties; and (5) they
18 regularly did not receive credit for work performed and, in some cases, the credit was directly mis-
19 attributed to their male co-workers.

20 20. Unfortunately for Plaintiff and Aggrieved Employees, their efforts to bring the
21 Company’s attention to this disparity and toxic culture were ignored. Even worse, in some cases,
22 including Plaintiff’s, such reports were followed by Defendant’ notice of termination, either in the first
23 layoff in April 2020, or the following layoff in June 2020.

24 21. Plaintiff started working for Defendant on June 26, 2019, with the title of “Creative
25 Director.” Plaintiff was initially paid an annual salary of \$185,000, which was increased to \$191,000 in
26 or around November 2019, after she received a stellar performance review from her, then, female
27 supervisor. Plaintiff’s job duties included building and managing an in-house creative content team
28 consisting of graphic design, motion graphics, and video production work in addition to art direction of

1 global support agencies. In March 2020, Defendant demoted Plaintiff and stripped her of her
2 management responsibilities, even though she had demonstrated she was capable of, and excelling at,
3 performing her job duties.

4 22. Not long after Plaintiff started working for Defendant, Defendant brought in a new Chief
5 Marketing Officer (CMO) Riadh Dridi. Within a few months at his new post, Dridi launched a
6 restructuring campaign at the Company, which included Company layoffs and power shifting. Although
7 Defendant claimed that these layoffs and restructuring were due to Covid-19, the Company
8 reorganization was an excuse to push out senior and mid-level female employees, including Plaintiff,
9 and replace them with men.

10 23. As part of these initial layoffs, Defendant laid off Plaintiff's former supervisor Annalisa
11 Camarillo, as well as Vice Presidents, Kristen Diamond, and Kristy Junio.

12 24. Defendant then brought in a man to replace Plaintiff. Initially, Defendant led Plaintiff
13 to believe that they were bringing in a new Vice President to replace Ms. Camarillo and that he would
14 help Plaintiff in building up her content/creative team. Instead, Dridi hired one of his former Ring
15 Central colleagues, Michael Baumert, and put him in an almost identical position to Plaintiff, with the
16 title "Director of Creative Services". Apart from some additional experience in the technical industry,
17 Mr. Baumert held the equivalent experience and education as Plaintiff. Despite being in an equivalent
18 position to Mr. Baumert, Plaintiff is informed and believes that Defendant paid Mr. Baumert a higher
19 wage per year than Plaintiff.

20 25. Shortly after Mr. Baumert's arrival, Defendant demoted Plaintiff by stripping her of all
21 management responsibilities for her creative team, which consisted of six (6) employees and one (1)
22 contractor. Due to Plaintiff's concerns over these developments, and the appearance of gender and wage
23 discrimination in the workplace, Plaintiff initially reported her concerns to the Senior Vice President of
24 Human Resources, Tom Brown, via email in both February and early March 2020, when it first started
25 to become evident what was happening. Plaintiff also met with Mr. Brown in person on March 2, 2020.
26 At the meeting, Plaintiff reiterated her concerns over the toxic and biased workplace culture, as well as
27 her concern over being discriminated against. Plaintiff also directly expressed her fear that speaking out
28 would result in some sort of retaliation. In this conversation, Mr. Brown did express concern over what

1 Plaintiff was going through but could not entirely allay Plaintiff's concerns over potential retaliation.
2 Mr. Brown further informed Plaintiff that this was not the first time he had received complaints of this
3 nature about upper management at the Company.

4 26. In March and April 2020, the situation at work only continued to deteriorate. For
5 instance, in late March 2020, management at the Company gave an explicit directive to Plaintiff's
6 former team members and the executive staff that they should only be reporting to, and working directly
7 with, Mr. Baumert. In other words, by the end of March 2020, there was no doubt that Mr. Baumert had
8 entirely taken over Plaintiff's position at the Company.

9 27. In response to this continued devolution in Plaintiff's position, Plaintiff sent another
10 email to Mr. Brown in or around April 2, 2020. In this email, Plaintiff expressed her frustration over the
11 fact that nothing was being done to correct the disparate and unfair treatment she and others in the
12 Company had reported. She also directly expressed her fear of retaliation and termination. These
13 reports, however, continued to "fall on deaf ears", as Plaintiff explicitly stated they would.

14 28. Worse, in June 2020, Plaintiff was notified by Defendant that she was being laid-off.
15 And, the man that Dridi handpicked to "work with" Plaintiff to help build her team ended up entirely
16 eliminating Plaintiff's position and, ultimately, replacing her.

17 CAUSES OF ACTION

18 FIRST CAUSE OF ACTION 19 VIOLATION OF CALIFORNIA'S EQUAL PAY ACT 20 (As Against Defendant)

21 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
22 set forth herein.

23 30. Labor Code section 1197.5, states that, "[a]n employer shall not pay any of its employees
24 at wage rates less than the rates paid to employees of the opposite sex for substantially similar work,
25 when viewed as a composite of skill, effort, and responsibility, and performed under similar working
26 conditions..."

27 31. Labor Code section 1197.5, subdivision (c) further states that, "[a]ny employer who
28 violates [this section] is liable to the employee affected in the amount of the wages, and interest thereon,
of which the employee is deprived by reason of the violation, and an additional equal amount as

1 liquidated damages.”

2 32. Here, Plaintiff was systematically paid lower wages than male employees with similar
3 skill, education, and experience for substantially similar work under similar working conditions.

4 33. Plaintiff, therefore, suffered damages proximately caused by Defendant, and each of their
5 agent’s acts as stated in the section below entitled “DAMAGES,” which is incorporated here to the
6 extent pertinent as if set forth here in full.

7 **SECOND CAUSE OF ACTION**
8 **RETALIATION IN VIOLATION OF LABOR CODE § 1102.5**
9 **(As Against Defendant)**

10 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully
11 set forth herein.

12 35. California Labor Code section 1102.5(a) states that an employer may not, “make, adopt,
13 or enforce any rule, regulation, or policy preventing an employee from disclosing information to a . . .
14 person with authority over the employee, or to another employee who has authority to investigate,
15 discover, or correct the violation or noncompliance, . . . if the employee has reasonable cause to believe
16 that the information discloses a violation of state or federal statute, or a violation of or noncompliance
17 with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part
18 of the employee’s job duties.”

19 36. An employer also may not, “retaliate against an employee for disclosing information, or
20 because the employer believes that the employee disclosed or may disclose information, to a
21 government or law enforcement agency, to a person with authority over the employee or another
22 employee who has the authority to investigate, discover, or correct the violation or noncompliance, . . . if
23 the employee has reasonable cause to believe that the information discloses a violation of state or federal
24 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
25 whether disclosing the information is part of the employee’s job duties.” Cal. Labor Code § 1102.5(b).

26 37. Lastly, an employer may, “not retaliate against an employee for refusing to participate in
27 an activity that would result in a violation of state or federal statute, or a violation or noncompliance
28 with a state or federal rule or regulation.” Cal. Labor Code § 1102.5(c).

38. Plaintiff had a reasonable, good faith belief that Defendant’s practice treating her male

1 colleague, Michael Baumert, more favorably than her was against the law and reported this to
2 Defendant. Specifically, in February and March of 2020, Plaintiff reported to Human Resources that her
3 male colleague was taking over her job duties even though he had the same job classification and
4 experience. A few months later, Defendant terminated Plaintiff.

5 39. Defendant's aforesaid acts of retaliating against and terminating Plaintiff for reporting
6 unlawful activity were malicious, oppressive, despicable, and in conscious disregard of Plaintiff's rights.
7 As such, punitive damages are warranted against Defendant to punish them and make an example of
8 their actions.

9 40. Plaintiff suffered damages proximately caused by these Defendant's wrongful acts as
10 stated in the section below entitled "DAMAGES" which is incorporated here to the extent pertinent as if
11 set forth in full.

12 **THIRD CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 98.6**
(As Against Defendant)

14 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
15 set forth herein.

16 42. A person "shall not discharge an employee or in any manner discriminate, retaliate, or
17 take any adverse action against any employee or applicant for employment because the employee or
18 applicant engaged in any conduct delineated in this chapter, including the conduct described in
19 subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or
20 because the employee or applicant for employment has filed a bona fide complaint or claim . . . under or
21 relating to his or her rights that are under the jurisdiction of the Labor Commissioner . . . or because of
22 the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any
23 rights afforded him or her." See Labor Code § 98.6. As described above, Defendant violated Labor
24 Code section 1102.5, by terminating Plaintiff's employment after she reported to Defendant that they
25 were treating her male colleague, Michael Baumert, more favorably than her in violation of the law.

26 43. Defendant's aforesaid acts of retaliating against and terminating Plaintiff for reporting
27 unlawful activity were malicious, oppressive, despicable, and in conscious disregard of Plaintiff's rights.
28 As such, punitive damages are warranted against Defendant to punish them and make an example of

1 their actions.

2 44. Plaintiff suffered damages proximately caused by these Defendant's wrongful acts as
3 stated in the section below entitled "DAMAGES" which is incorporated here to the extent pertinent as if
4 set forth in full.

5 **FOURTH CAUSE OF ACTION**
6 **DISCRIMINATION BASED ON GENDER/SEX IN VIOLATION OF GOVERNMENT**
7 **CODE SECTION 12490, et seq.**
8 **(As Against Defendant)**

9 45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully
10 set forth herein.

11 46. At all times herein mentioned, California Government Code section 12900, *et seq.* (Fair
12 Employment and Housing Act, "FEHA") was in effect and binding upon Defendant. This section, *inter*
13 *alia*, required Defendant to refrain from discriminatory practices against any employee based on
14 gender/sex.

15 47. A *prima facie* case for discrimination under the FEHA requires a plaintiff to show: 1) she
16 is a member of a protected class; 2) she was qualified for the position; 3) she suffered an adverse
17 employment action; and 4) some other circumstances which suggest discriminatory motive on the
18 employer's part. *See Guz v. Bechtel Nat'l, Inc.*, 24 Cal.4th 317, 355 (2000).

19 48. At all times herein mentioned, Plaintiff was qualified for her position and was performing
20 well. Despite this, Plaintiff hired a male employee, Michael Baumert, with similar qualifications and
21 experience, to replace Plaintiff. Initially, Defendant led Plaintiff to believe that Mr. Baumert would be
22 working with her and her team; however, shortly after Defendant hired Mr. Baumert, Defendant stripped
23 Plaintiff of all her team management duties in favor of Mr. Baumert. By the end of March 2020,
24 Plaintiff was completely cut-off from her team and the executive staff. Although Plaintiff complained to
25 HR about the apparent disparate treatment between her and Mr. Baumert, nothing was done to correct
26 and remedy the problem. In fact, in June 2020, Defendant terminated Plaintiff's employment and
27 replaced her with Mr. Baumert.

28 49. At all relevant times, Defendant had actual and constructive knowledge of the
discriminatory conduct described and alleged herein, and condoned, ratified and participated in the
discrimination.

50. As a direct and proximate result of Defendant's willful, knowing, and intentional discrimination against Plaintiff and creation of a hostile environment, Plaintiff has suffered mental distress, anguish, and indignation and past and future wage loss.

51. As such, Plaintiff suffered damages legally caused by Defendant's acts as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

52. Defendant's discriminatory employment practices alleged herein, including removing Plaintiff's job duties and then terminating her, were malicious, oppressive, despicable, and in conscious disregard of Plaintiff's rights. As such, punitive damages are warranted against Defendant to punish it and make an example of its actions.

FIFTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940, et seq.
(As Against Defendant)

53. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 52 as though fully set forth herein.

54. At all times herein mentioned, California Government Code section 12900, *et seq.* (Fair Employment and Housing Act, “FEHA”) was in effect and binding upon Defendant. This section, *inter alia*, required Defendant to refrain from retaliating against any employee who reasonably reports a potential violation of the FEHA.

55. A *prima facie* case for retaliation under the FEHA requires Plaintiff to show: 1) she engaged in a protected activity, including opposing practices she reasonably believed violated the FEHA; 2) Defendant subjected Plaintiff to an adverse employment action; and 3) a causal link exists between the protected activity and the employer's action. *See Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1044.

56. Plaintiff engaged in a protected activity under FEHA when she reported verbally and in writing to HR that she was being treated less favorably than a similarly situated male employee. Specifically, Plaintiff reported to HR that she was having her duties and access to her team removed in favor of Mr. Baumert. Plaintiff further reported that other employees shared some similar concerns.

1 57. Shortly after making this report, Defendant only further undermined Plaintiff's
2 position and then terminated her in June 2020.

3 58. As a direct and proximate result of Defendant's willful, knowing, and intentional
4 retaliation against Plaintiff, Plaintiff has suffered mental distress, anguish, and indignation and past and
5 future wage loss.

6 59. As such, Plaintiff suffered damages legally caused by Defendant's acts as stated in the
7 section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth
8 here in full.

9 60. Defendant's retaliatory employment practices alleged herein, including removing
10 Plaintiff's job duties and then terminating her, were malicious, oppressive, despicable, and in conscious
11 disregard of Plaintiff's rights. As such, punitive damages are warranted against Defendant to punish it
12 and make an example of its actions.

13 **SIXTH CAUSE OF ACTION**
14 **FAILURE TO PREVENT DISCRIMINATION/RETALIATION IN VIOLATION OF**
 GOVERNMENT CODE SECTION 12940, *et seq.*
 (As Against Defendant)

15 61. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though
16 fully set forth herein.

17 62. Pursuant to the FEHA, Defendant was obligated to, "take all reasonable steps
18 necessary to prevent discrimination and harassment from occurring." *See* Cal. Gov't Code 12940(k).

19 63. As detailed herein, Plaintiff advised Defendant that she was being discriminated
20 against and treated less favorably than her male colleague. Instead of taking any action to prevent
21 and remedy further discrimination from occurring, Defendant failed to take any action. In fact, after
22 reporting discriminatory treatment, Defendant took further action to remove Plaintiff's job duties and
23 then terminated her.

24 64. Defendant, by and through its agents, acquiesced and ratified this discriminatory
25 practice.

26 65. As a direct and proximate result of Defendant's willful, knowing, and intentional failure
27 to act to prevent discrimination, Plaintiff has suffered mental distress, anguish, and indignation and past
28 and future wage loss.

66. As such, Plaintiff suffered damages legally caused by Defendant's acts as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SEVENTH CAUSE OF ACTION
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY
(As Against Defendant)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. An employer's violation of a statute on a particular subject is a violation of public policy. *See, e.g., Jie v. Liang Tai Knitwear Co.*, 89 Cal.App.4th 654, 660-61 (2001); *See Stevenson v. Sup. Ct. (Huntington Mem. Hosp.)*, 16 Cal.4th 880 (1997).

69. Thus, a violation of the California Labor Code and the FEHA is a violation of public policy.

70. An employee need not prove that the employer actually violated the law; rather, “it suffices if the employer fired him for reporting his ‘reasonably based suspicions’ of illegal activity.” *Green v. Ralee Engineering Co.*, 19 Cal. 4th 66, 87 (1998). In this case, the employee may still bring a wrongful discharge tort claim. *Id.*

71. Here, Defendant discharged Plaintiff in violation of public policy, as found in California Labor Code section 1102.5 and Government Code section 12940, *et seq.*, protecting employees from retaliation, as well as the general public policy of the State of California to keep workplaces free from discrimination based on sex/gender.

72. In this case, Plaintiff is specifically alleging that Defendant retaliated and discriminated against her by terminating her employment after she reported a reasonable suspicion of gender/sex discrimination and then replaced her with a comparable male employee.

73. Defendant's decision to wrongfully discharge Plaintiff was malicious, oppressive, despicable, and in conscious disregard of Plaintiff's rights. As such, punitive damages are warranted against Defendant to punish them and make an example of their actions.

//

//

74. Plaintiff suffered damages proximately caused by Defendant's wrongful acts as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As Against Defendant)

75. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 74 as though fully set forth herein.

76. Plaintiff has alleged to the LWDA that Defendant has violated the following provision(s) of the Labor Code in their dealing with Plaintiff and Aggrieved Employees:

- Violation of Labor Code section 1197.5 (Violation of the California Fair Pay Act);
- Violation of Labor Code section 1102.5 (Retaliation for Reporting a Reasonable Suspicion of Unlawful Activity); and
- Violation of Labor Code § 98.6 (Discharge, Discrimination, or Retaliation).

77. Plaintiff has received authorization, based on the LWDA's failure to send notice of its intent to pursue Plaintiff's claims, to act on behalf of the Labor Commissioner to assess civil penalties against Defendant.

78. Plaintiff seeks default civil penalties against Defendant pursuant to Labor Code section 2699(f)(2) to the extent there is no enumerated penalty provision for the specific section cited above.

79. Plaintiff seeks these penalties on behalf of herself and Aggrieved Employees from Defendant pursuant to Labor Code sections 2699(a) and 2699.3.

NINTH CAUSE OF ACTION
UNFAIR COMPETITION
(As Against Defendant)

80. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 79 as though fully set forth herein.

81. Unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See California Business and Professions ("B&P") Code §§ 17200, et seq.*

82. As alleged above, Plaintiff was denied equal wages and discriminated and retaliated against because of her gender and for reporting potentially unlawful activity in violation of California Labor Code and the California Government Code sections 12940, *et seq.*

83. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code section 17200, *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 173-78 (2000) and *Herr v. Nestle U.S.A., Inc.*, 109 Cal.App.4th 779, 789–90 (2003) (holding that a pattern and practice of discrimination in violation of the FEHA could support a UCL claim).

84. As a direct and legal result of the Defendant's conduct, as alleged herein, pursuant to the UCL (including B&P Code § 17203), Plaintiff is entitled to restitution, including, but not limited to, interest and penalties, as well as injunctive relief pursuant to Business & Professions Code sections 17203, 17208, for violations of California Labor Code sections 1197.5, 1102.5 and California Government Code sections 12940, *et seq.*, all in an amount as yet unascertained but subject to proof.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. Plaintiff requests a jury trial;
2. As to the First Cause of Action (Cal. Labor Code § 1197.5):
 - a. For wages that Plaintiff was deprived of due to Equal Pay Act violations and any interest thereon, according to proof;
 - b. For liquidated damages in an equal amount, according to proof;
 - c. For reasonable attorney's fees and costs pursuant to Labor Code section 1197.5 (h);
3. As to the Second and Third Causes of Action (Cal. Labor Code §§ 98.6, 1102.5):
 - a. For compensatory damages, including lost wages, earnings, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts;
 - b. For a money judgment for mental pain and anguish and emotional Distress, according to proof;

- c. Penalties in the amount of \$10,000.00 pursuant to Labor Code sections 1102.5(f) and 98.6 (b)(3);
 - d. For an award of punitive damages, according to proof;
 - e. For reasonable attorney's fees according to Labor Code section 1102.5 (j);
4. As to the Fourth Through Sixth Cause of Action (Gender Discrimination, Retaliation and Failure to Prevent in Violation of the FEHA):
 - a. For compensatory damages, including lost wages, earnings, retirement benefits and other employee benefits, and all other sums of money, together with interest on these amounts, according to proof;
 - b. For a money judgment for mental pain and anguish and emotional distress, according to proof;
 - c. For an award of punitive damages, according to proof;
 - d. For reasonable attorneys' fees and costs pursuant to Government Code sections 12970 and 12965(b),
5. As to the Seventh Cause of Action (Wrongful Termination in Violation of Public Policy):
 - a. For compensatory damages, including lost wages, earnings, retirement benefits and other employee benefits, and all other sums of money, together with interest on these amounts, according to proof;
 - b. For a money judgment for mental pain and anguish and emotional distress, according to proof;
 - c. For an award of punitive damages, according to proof;
4. As to the Eighth Cause of Action: (Cal. Labor Code § 2698, *et seq.*, (PAGA)):
 - a. Penalties as enumerated by statute;
 - b. Default penalties according to the following schedule: for any initial violation, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period; for any subsequent violation, two hundred dollars (\$200.00) for each Aggrieved Employee per pay period;

- 1 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).
2 5. For such other and further relief as this Court may deem just and proper, including, but
3 not limited to:
4 a. Special and general damages;
5 b. Injunctive and declaratory relief;
6 c. Attorney's fees and costs; and
7 d. Pre and Post Judgment Interest.
8

9 Dated: March 15, 2021

Shimoda Law Corp.

10
11 By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Jessica L. Hart
Attorneys for Plaintiff

1 *Dreyer v Automation Anywhere, Inc., et al.*
2 *Santa Clara Superior Court Case No. 20CV3727330*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

5 I, Melissa A. Phillips, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party
7 to the within above-entitled action.

8 On March 15, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages and Penalties

10 Leah Cameron (SBN 274637)
11 Alison Tsao (SBN 198250)
12 Candace DesBaillets (SBN 315284)
13 600 Montgomery Street, Suite 440
14 San Francisco, CA 94111
Phone: (415) 981-3233
Email: lcameron@cdflaborlaw.com;
atsao@cdflaborlaw.com;
cdesbaillets@cdflaborlaw.com;
mkrutulis@cdflaborlaw.com;

Laura L. Ho (SBN 173179)
Mengfei Sun (SBN 328829)
Goldstein, Borgen, Dardarian & Ho
155 Grand Ave, Ste 900,
Oakland, CA 94612-3767
Phone: (510) 763-9800
Email: lho@gbdhlegal.com
msun@gbdhlegal.com

15 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
16 processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action
by placing a true copy thereof enclosed in a sealed envelope with postage
thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Sacramento, California, addressed as set forth
above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the
21 office of the addressee above.

22 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
shown above. No error was reported by the e-mail service that I used.

23 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
24 personally delivered via the following overnight courier service:_____.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct, and that this declaration was executed on March 15, 2021, at
Sacramento, California.

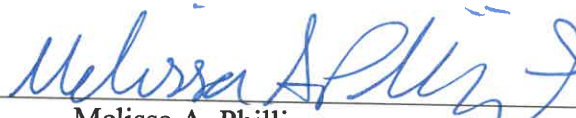
27 
28 Melissa A. Phillips

Exhibit C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

August 19, 2020

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Dreyer v. Automation Anywhere, Inc., et al*

Dear Labor Commissioner,

As counsel for Tiffany Dreyer (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Automation Anywhere, Inc.
633 River Oaks Parkway
San Jose, CA 95134

Automation Anywhere, Inc., doing Business as Automation
Anywhere Parent, Inc.
633 River Oaks Parkway
San Jose, CA 95134

Mihir Shukla
633 River Oaks Parkway
San Jose, CA 95134

Ankur Kothari
633 River Oaks Parkway
San Jose, CA 95134

Riadh Dridi
633 River Oaks Parkway
San Jose, CA 95134

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Automation Anywhere, Inc., Automation Anywhere, Inc., doing Business as Automation Anywhere Parent, Inc., Mihir Shukla, Ankur Kothari, and Riadh Dridi (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the



following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but are not limited to, the following: All current and former female employees that work for Defendants in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff Tiffany Dreyer was hired by Automation Anywhere, Inc. (hereinafter “AA”) as a Creative Director in or around June 26, 2019. AA is a Silicon Valley based company whose products combine traditional Robotic Process Automation (“RPA”) with cognitive elements such as natural language processing and reading unstructured data. These include bots with machine-learning capabilities. Although AA markets itself as a start-up company, it has been in existence, under the name AA since approximately 2010. As of 2018, AA’s customers included Google, LinkedIn, and GM.

When AA initially hired Plaintiff in June 2019, AA paid her an annual salary of \$185,000.00, which was, thereafter, increased to \$191,000.00 in October 2019. Plaintiff came to AA with over fifteen (15) years of experience developing and executing marketing, brand, and digital campaign strategies for technology, non-profit, and educational organizations. Plaintiff also holds a Bachelor of Science (BS) Degree in Graphic Design.

As a Creative Director, Plaintiff’s job duties included building and managing an in-house creative content team consisting of graphic design, motion graphics, and video production work in addition to art direction of global support agencies.

Not long after Plaintiff started working for AA, AA brought in a new Chief Marketing Officer (CMO) Riadh Dridi. Within a few months at his new post, Mr. Dridi launched a restructuring campaign at AA, which included company layoffs and power shifting. Although AA claimed that these layoffs and restructuring were due to Covid-19, AA’s company reorganization was actually an excuse to push out AA’s senior and mid-level female employees and replace them with men that Dridi had hand-picked.

As part of these initial layoffs, AA laid off Plaintiff’s former supervisor Annalisa Camarillo, as well AA Vice Presidents, Kristen Diamond, and Kristy Junio.

AA then brought in a man to replace Plaintiff. Initially, AA led Plaintiff to believe that it was bringing in a new Vice President to replace Ms. Camarillo and that he would help Plaintiff in building up her content/creative team. Instead, Mr. Dridi hired one of his former Ring Central



colleagues, Michael Baumert and put him in an almost identical position to Plaintiff, with the title Director of Creative Services. Apart from some additional experience in the technical industry, Mr. Baumert had equivalent experience and education as Plaintiff. Despite this, Plaintiff has reasonable grounds for believing that AA paid Mr. Baumert a higher wage per year than Plaintiff.

Shortly after Mr. Baumert's arrival, AA demoted Plaintiff by stripping her of all management responsibilities for her creative team, which consisted of six (6) employees and one (1) contractor. Due to Plaintiff's concerns over these developments, and the appearance of gender and wage discrimination in the workplace, Plaintiff reported her concerns to the Senior Vice President of Human Resources, Tom Brown, via email in both February and March 2020. Plaintiff also made a report through the company's ethics hotline. These reports, however, fell on deaf ears.

Plaintiff's concerns were not unique to her, as many of the female employees at AA have felt targeted and discriminated against since AA's hiring of the new CMO, Riadh Dridi. One of the chief concerns is the appearance of a pay disparity between male and female employees at AA.

For instance, Plaintiff and Aggrieved Employees have reported that males in Director positions are regularly paid upwards of \$200,000.00 per year as a starting wage, whereas AA paid females in this position (including Plaintiff), a wage of, at least, ten (10) to fifteen (15) thousand dollars per year less. Based on Plaintiff's investigation, a similar wage disparity between male and female employees at AA is likely true for Managers, Senior Managers, and Vice Presidents, particularly in the Marketing Department(s).

Indeed, Plaintiff is aware of an instance where an Aggrieved Employee in a Director position made, and is making, a significantly lower wage than a male employee with less experience, in a lower ranked position as Senior Manager.

In addition to the wage disparity that exists at AA between male and female employees, there are also significantly fewer women than men working at AA. For instance, one Aggrieved Employee estimated that the workforce at AA is approximately 70 percent male. This disparity is even more pronounced in the Executive and Vice President positions, where females only occupy about 3% of the positions. Additionally, since the April and June 2020 layoffs targeted many higher-level female employees, this gender disparity has likely only become more pronounced over the last year.

Due to Plaintiff's and other Aggrieved Employees' concerns over disparate treatment and hostility in the workplace over the last six (6) plus months, many Aggrieved Employees, including Plaintiff, filed ethics complaints and reports with the company. These reports/complaints included concerns about wage disparity and a disparity in treatment between male and female employees. Specifically, Plaintiff and other Aggrieved Employees reported



that: (1) they were unjustly receiving negative performance ratings in early 2020; (2) they did not receive earned bonus payments; (3) they were having their job duties removed from them in favor of their male counterparts; (4) they were being ignored and sabotaged in their efforts to complete their job duties; and (5) they regularly did not receive credit for work performed and, in some cases, the credit was directly mis-attributed to their male counterparts.

Unfortunately for Plaintiff and other Aggrieved Employees, their efforts to bring the company's attention to this disparity and toxic culture were ignored. Even worse, in some cases, including Plaintiff's, such reports were followed by AA's notice of termination, either in the first layoff in April 2020 or the following layoff in June 2020.

In fact, this is exactly what happened to Plaintiff in June 2020, when she was notified by AA that she was being terminated. Not surprisingly, the man that Riadh Dridi handpicked to "work with" Plaintiff to help build her team ended up usurping her creative team and, ultimately, replacing her entirely.

B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code § 1197.5 (Wage Discrimination)

Labor Code section 1197.5, states that, "[a]n employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions..."

Section 1197.5, subdivision (c) further states that, "[a]ny employer who violates [this section] is liable to the employee affected in the amount of the wages, and interest thereon, of which the employee is deprived by reason of the violation, and an additional equal amount as liquidated damages."

Here, Plaintiff and other Aggrieved Employees were systematically paid lower wages than employees of the opposite sex for substantially similar work and/or work that was performed in a lower job classification. This is in violation of the law.

Count 2 – Violation of Labor Code § 1102 (Whistleblower Retaliation)

Labor Code section 1102.5(a) states that an employer may not "make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a . . . person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or



a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

An employer also may not "retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. *See* Labor Code § 1102.5(b).

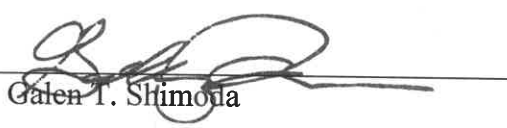
Lastly, an employer may "not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation." *See* Labor Code § 1102.5(c).

Here, Plaintiff and other Aggrieved Employees were discriminated and retaliated against, up to and including termination, shortly after they reported gender discrimination, including wage discrimination, in the workplace. This is in violation of the law.

Very truly yours,

Shimoda Law Corp.

By: _____


Galen T. Shimoda

GTS/jh

cc: Client via e-mail

1 *Dreyer v. Automation Anywhere, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Rashelle M. Cota, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On August 19, 2020, I served the following documents on the party below:

- 8 • Amended Private Attorney General Act Letter

9

10 Automation Anywhere, Inc. 633 River Oaks Parkway San Jose, CA 95134	Automation Anywhere, Inc., doing Business as Automation Anywhere Parent, Inc. 633 River Oaks Parkway San Jose, CA 95134
12 Mihir Shukla 633 River Oaks Parkway San Jose, CA 95134	Ankur Kothari 633 River Oaks Parkway San Jose, CA 95134
14 Riadh Dridi 633 River Oaks Parkway San Jose, CA 95134	

16

17 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
18 and processing of correspondence for mailing with the United States Postal
19 Service and that each day's mail is deposited with the United States Postal
20 Service that same day in the ordinary course of business. On the date set forth
21 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

22 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

23 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
24 above. No error was reported by the e-mail service that I used.

25 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
26 personally delivered via the following overnight courier service: _____.

27

28

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct, and that this declaration was executed on August 19, 2020, at Elk Grove,
3 California.



Rashelle M. Cota

Shareholders
Linda M. Dardarian
Laura L. Ho
James Kan
Andrew P. Lee



Of Counsel
Barry Goldstein
David Borgen
Morris J. Baller

April 12, 2022

Via Online Filing

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Dreyer v. Automation Anywhere, Inc., et al*
Case No. LWDA-CM-803220-20

Dear Labor Commissioner,

This letter amends the letter originally submitted on August 19, 2020 by our co-counsel, Shimoda & Rodriguez Law, for Tiffany Dreyer (“Plaintiff”). I am writing to provide you and the following employer and its counsel notice pursuant to California Labor Code section 2699.3:

Automation Anywhere, Inc.
633 River Oaks Parkway
San Jose, CA 95134

Counsel for Automation Anywhere, Inc.
Alison Tsao
Leah Cameron
CDF Labor Law LLP
400 Montgomery Street, Suite 440
San Francisco, CA 94111

We write to supplement the “facts and theories” to support a violation of Labor Code section 432.3. Labor Code section 432.3(a) states that an employer “shall not rely on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant.” After her August 19, 2020 letter, and within one year of today’s date, Plaintiff discovered information not previously known to her – which is that Automation Anywhere, Inc. considers the candidate’s prior salary history as a factor in determining the starting salary of new hires.

Please notify us of your intent to investigate any or all of the claims alleged herein against Automation Anywhere, Inc. Should you decide not to investigate, we request that you allow us to bring a civil action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but are not limited to, the following: All current and former employees that work for Defendants in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim

for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

Sincerely,

A handwritten signature in black ink, appearing to read 'Mengfei Sun', with a long horizontal stroke extending to the right.

Mengfei Sun

MS/gc

cc: Alison L. Tsao (via Certified Mail)
M. Leah Cameron (via Certified Mail)

Exhibit D

Case Name: Dreyer v. Automation Anywhere

Requesting Attorneys Name:	Justin Rodriguez
E-Mail:	jrodriguez@shimodalaw.com
ILYM Contact:	Jonathan Paul
E-Mail:	Jonathan@ilymgroup.com
Contact Number:	310.948.7117

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Estimated # of Class Members	55
Estimated Percentage of Remails	10%
Unclaimed Funds Escheat to State Controller	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	1	\$120.00
NCOA	Flat Rate	\$150.00	1	\$150.00
Toll-Free Call Center	Flat Rate	\$75.00	1	\$75.00
Storage, Photocopies, Deliveries	Flat Fee	\$309.75	1	\$309.75
Subtotal				\$804.75

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$2.00	55	\$110.00
USPS First Class 1oz Postage	Per Piece	\$0.55	55	\$30.25
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$10.00	6	\$55.00
Preparation of Taxes	Hourly	\$125.00	1	\$125.00
Annual Filing of Tax Return	Per Year	\$500.00	1	\$500.00
Subtotal				\$1,370.25

*Additional Bank fees may apply

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds to State Controller	Flat Fee	\$600.00	1	\$600.00
Declaration	Hourly	\$125.00	1	\$125.00
Subtotal				\$825.00

TOTAL CASE COST - NOT TO EXCEED:	\$3,000.00
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Exhibit E

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

TIFFANY DREYER, as an individual and on behalf of
Aggrieved Employees,

v.

AUTOMATION ANYWHERE, INC., a California
Corporation; and DOES 1 to 100, inclusive.

Case No. 20CV372730

**COURT-APPROVED NOTICE
OF SETTLEMENT OF PAGA CLAIMS**

Judge: Hon. Sunil R. Kulkarni

Dept.: 1

Re: *Dreyer v. Automation Anywhere, Inc., et al.*
Santa Clara County Superior Court No.: 20CV372730
Your Portion of Court-Ordered PAGA Settlement Proceeds

Dear <<FirstName>> <<LastName>>:

Automation Anywhere, Inc. (“Automation Anywhere” or “Company”) has provided your name and last-known address because its records indicate that you are or were one of the company’s California based, female employees in its marketing department at the vice president level or below between August 19, 2019 and **INSERT DATE**. We provide the enclosed check to you pursuant to the **INSERT DATE** order of the Santa Clara County Superior Court (the “Order”) in the above numbered case (“Action”) resolving all claims that any such employees have or may have against Automation Anywhere under California’s Private Attorneys General Act of 2004 (“PAGA”) for alleged violations of California Labor Code sections 98.6, 432.3, 1102.5, and 1197.5 during the relevant time period.

Pursuant to the terms of the PAGA Settlement Agreement, you are to receive payment of **\$<<Individual PAGA Settlement Amount>>** which includes your portion of the Gross PAGA Settlement Amount, representing civil penalties, as set forth in further detail below.

**YOU ARE NOT REQUIRED TO TAKE ANY ACTION TO RECEIVE YOUR
SETTLEMENT SHARE.**

Pursuant to California’s Private Attorneys General Act of 2004, an employee may seek to recover civil penalties for California Labor Code violations committed by an employer on behalf of himself or herself and other current and former employees. Ms. Tiffany Dreyer initiated a PAGA action on August 19, 2020 by sending a notice to the Labor Workforce Development Agency (“LWDA”), with copies provided to Automation Anywhere (“PAGA Notice”) and by then subsequently filing a Complaint with the Santa Clara Superior Court on October 26, 2020, and a First Amended Complaint on March 15, 2021. Ms. Dreyer also filed an amended notice to the LWDA on April 12, 2022 (“Amended PAGA Notice”).

While Automation Anywhere fully disputed – and continues to fully dispute – all PAGA claims, Automation Anywhere, Plaintiff Tiffany Dreyer, and their lawyers reached a settlement regarding the PAGA claims through mediation on May 18, 2022, and thereafter reached a formal PAGA Settlement Agreement.

Pursuant to the requirements of PAGA, the Santa Clara Superior Court reviewed and approved the settlement terms in the Order. You are entitled to a portion of the proceeds of the settlement. The Santa Clara County Superior Court’s Order approved the PAGA Settlement Agreement for a total of thirty-five thousand dollars (\$35,000) (“Gross PAGA Settlement

Amount”), to be paid by Automation Anywhere and deposited with the Settlement Administrator.

The Order divides the Gross PAGA Settlement Amount into specified portions, including payments to: (1) the State of California; (2) Plaintiff’s attorneys’ fees and costs, (3) the Settlement Administrator’s costs to administer the settlement; and (4) a remaining amount to be divided between employees who are or were one of Automation Anywhere’s California based, female employees in its marketing department at the vice president level or below between August 19, 2019 and **INSERT DATE** (“Net PAGA Settlement Amount”).

The Order directs the apportionment of the Net PAGA Settlement Amount to covered employees by using a formula that establishes each employee’s individual payment amount. The formula for determining your payment is based off the number of pay periods you worked between August 19, 2019 and **INSERT DATE** as compared against the total pay periods worked by all covered employees during that same period.

Automation Anywhere has reported approximately Total PAGA Pay Periods worked by the covered employees. Automation Anywhere has also reported your Individual PAGA Pay Periods as **<<PayPeriods>>**. Thus, Automation Anywhere calculates your individual settlement payment amount to be \$ **<<IndivPAGA>>**.

In consideration of Automation Anywhere’s payment of the Gross PAGA Settlement Amount, the Order and the PAGA Settlement Agreement also directs that all PAGA Settlement Members shall be deemed to have fully, finally, and forever released, relinquished, and discharged all claims for recovery of any kind under the California Private Attorneys General Act of 2004, which is codified at California Labor Code Section 2699, *et. Seq.* (“PAGA”), that were asserted or that could have been asserted based on the facts alleged in the Action and in the Complaint filed October 26, 2020, the First Amended Complaint filed on March 23, 2021, the LWDA letter filed August 19, 2020 , and the Amended LWDA letter filed April 12, 2022, arising between August 19, 2019 through **[the date the Court issues an order approving this PAGA Settlement Agreement]**, including but not limited to any and all PAGA claims and any and all civil penalties or other remedies recoverable thereunder arising for alleged violations of California Labor Code § 1197.5 (California Equal Pay Act); California Labor Code § 1102.5 (retaliation for reporting a reasonable suspicion of unlawful activity); California Labor Code § 98.6 (discharge, discrimination, or retaliation); California Labor Code § 432.3 (considering prior salary history); as well as any other statute providing for civil penalties for the alleged violations that were asserted or that could have been asserted based on the facts alleged, as well as interest, attorneys’ fees and costs based thereon (“Released Claims”).

However, nothing in the Order or the PAGA Settlement Agreement releases any other claims any covered employees might have against Automation Anywhere or any and all of those related entities and individuals that are not encompassed within the definition of “Released Claims.”

You may call the Settlement Administrator, ILYM Group, Inc., at (888) 250-6810 with any questions. Please inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment. Checks for your settlement payment will remain valid for ninety (90) days from the date of issuance. To the extent that (a) this Notice and the settlement check are undeliverable, or (b) the settlement check is uncashed 90 days after the date listed on the check (“90-Day Period”), such amounts shall be sent to the California State Controller’s Office’s Unclaimed Property Division to be held as unclaimed funds in your name.

You can find and review the full text of the Order, the PAGA Settlement Agreement, Ms. Dreyer’s Complaint, the First Amended Complaint, and all other publicly filed papers in the Action through the Santa Clara County Superior Court’s online portal:

<https://portal.sccscourt.org/>. You can also examine all such papers at any time during regular business hours at the Office of the Clerk, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113.

Counsel for Plaintiff and the PAGA Settlement Members are	
Laura L. Ho, lho@gbdhlegal.com Mengfei Sun, msun@gbdhlegal.com GOLDSTEIN,BORGEN, DARDARIAN & HO 155 Grand Avenue, Suite 900 Oakland, CA 94612 Telephone: (510) 763-9800 Facsimile: (510) 835-1417	Galen T. Shimoda, Justin P. Rodriguez, SHIMODA & RODRIGUEZ LAW, PC 9401 East Stockton Boulevard, Suite 120 Elk Grove, CA 95624 Telephone: (916) 525-0716 Facsimile: (916) 760-3733
Counsel for Defendant for AUTOMATION ANYWHERE, INC. is	
Alison L. Tsao, atsao@cdflaborlaw.com M. Leah Cameron, lcameron@cdflaborlaw.com CDF LABOR LAW LLP 600 Montgomery Street, Suite 440 San Francisco, CA 94111 Telephone: (415) 981-3233	

PLEASE DIRECT ALL QUESTIONS REGARDING THE ORDER OR THE SETTLEMENT AGREEMENT TO THE SETTLEMENT ADMINISTRATOR. PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING THESE MATTERS.

Sincerely,
Settlement Administrator

Dreyer v. Automation Anywhere, Inc.
Settlement Administrator – ILYM Group, Inc.
14751 Plaza Dr. Ste J
Tustin, CA 92780

<<FirstName>> <<LastName>>
<<Address1>>
<<Address2>>
<<City>> <<ST>> <<ZIP>>-<<Zip4>>

Exhibit F

Exhibit G

Shimoda Rodriguez Law, PC

9401 E Stockton Blvd.

Suite 120

Elk Grove, CA 95624

<u>Date</u>	<u>Description</u>	<u>Amount</u>
7/2/2020	Flat Admin Fee (Annual) - Postage, Copying, Scanning, Westlaw Legal Research	\$ 300.00
8/20/2020	Payment to LWDA - PAGA Filing Fee	\$ 75.00
8/20/2020	Postage - Certified PAGA Letters to Employers	\$ 21.00
10/26/2020	Payment to Court - Complaint Fee Superior Court	\$ 435.00
10/26/2020	E-Filing Charge - Complaint via One Legal	\$ 30.11
12/9/2020	One Legal Service Fee - Proof of Service of Summons to Court	\$ 15.67
2/3/2021	Odyssey E-Filing Charge - Notice of Disassociation of Counsel (RK)	\$ 5.72
2/19/2021	Court Call Appearance ID 11104050 - 3/4/21 Case Management Conference	\$ 94.00
2/26/2021	Payment to Court - Jury Fees	\$ 150.00
2/26/2021	E-Filing Charge - Notice of Depositing Jury Fees	\$ 10.22
3/15/2021	E-Filing Charge - First Amended Complaint	\$ 5.72
5/14/2021	Court Call Appearance - ID 11218698 Demurrer	\$ 94.00
7/2/2021	Flat Admin Fee (Annual) - Postage, Copying, Scanning, Westlaw Legal Research	\$ 300.00
8/26/2021	One Legal Service Fee - Stipulated Protective Order to Court	\$ 24.06
8/26/2021	Payment to Court - Stipulated Protective Order	\$ 20.00
10/19/2021	Court Call Appearance - Case Management Statement IDL 11370516	\$ 94.00
10/20/2021	Deposition - Lunch for GS and Client	\$ 42.35
11/10/2021	Deposition - Depo Day 2 Lunch	\$ 44.35
11/10/2021	Deposition - Tiffany Dreyer - inv 20210045107-11 US Legal	\$ 1,396.25
1/14/2022	E-Filing Charge - Notice of Disassociation	\$ 12.00
1/14/2022	Payment to Court - Notice of Disassociation	\$ 6.24
2/7/2022	One Legal Service Fee - Notice of Firm Name Change	\$ 23.39
2/15/2022	Mediation - Lisa Klerman 40% of \$8000	\$ 3,200.00
5/9/2022	Mediation - GS flight for mediation	\$ 282.20
7/2/2022	Flat Admin Fee (Annual) - Postage, Copying, Scanning, Westlaw Legal Research	\$ 300.00
Anticipated	One Legal Filing Fee/Service Fee - PAGA Settlement Approval Motion	\$ 150.00
Anticipated	Court Call Appearance - PAGA Approval Motion	\$ 94.00
Anticipated	One Legal Filing Fee/Service Fee - CMC Statement	\$ 25.00
Anticipated	Court Call Appearance - CMC Hearing	\$ 94.00
Anticipated	One Legal Filing Fee/Service Fee - Compliance Declaration	\$ 25.00
Anticipated	Court Call Appearance - Compliance Hearing	\$ 94.00

Total: \$ 7,463.28

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Tiffany Dreyer
2. Title of the proposed order:
[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO APPROVE PAGA SETTLEMENT AND DISMISS ACTION
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion to Approve PAGA Settlement And Dismiss Action
 - b. Date and time: September 1, 2022, 1:30 PM
 - c. Place: Department 1
191 North First Street
San Jose, CA 95113
4. The proposed order was served on the other parties in the case.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:

Dreyer v. Automation Anywhere, Inc.

CASE NUMBER:

20CV372730

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action**.

a. My residence or business address is (*specify*):

9401 E. Stockton Blvd., Suite 120, Elk Grove, CA, 95624

b. My electronic service address is (*specify*): etapia@shimodalaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

For Defendant: M. Leah Cameron (lcameron@cdflaborlaw.com), Alison Tsao (atsao@cdflaborlaw.com), and Morgan Krutulis (mkrutulis@cdflaborlaw.com); For Plaintiff: Laura L. Ho (lho@gbdhlegal.com), Mengfei Sun (msun@gbd), Kristen Burzynski (kburzynski@gbdhlegal.com)

b. To (*electronic service address of person served*): See 2(a) above.

c. On (*date*): 8/10/22

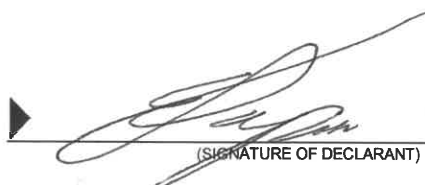
☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: 8/10/22

Elias Tapia

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Mengfei Sun (SBN 328829)
msun@gbdhlegal.com
GOLDSTEIN, BORGES, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Galen T. Shimoda (SBN 226752)
attorney@shimodalaw.com
Justin P. Rodriguez (SBN 278275)
jrodriguez@shimodalaw.com
SHIMODA & RODRIGUEZ LAW, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Tel: (916) 525-0716
Fax: (916) 760-3733

Attorneys for Plaintiff TIFFANY DREYER
on behalf of herself and Aggrieved Employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

TIFFANY DREYER, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

AUTOMATION ANYWHERE, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 20CV372730

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISS ACTION**

Date: September 1, 2022¹

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: October 26, 2020

FAC Filed: March 15, 2021

Trial Date: None Set

¹ In connection with this motion, Defendant agreed to waive the additional two days' notice provided for electronic service under Civil Procedure Code section 1005(b).

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 Plaintiff Tiffany Dreyer's ("Plaintiff") Motion to Approve Private Attorneys General Act
3 Settlement and Dismiss Action ("Motion") in the above referenced case ("Action") came before this
4 Court for hearing on September 1, 2022, at 1:30 p.m. in Department 1, the Honorable Sunil R. Kulkarni
5 presiding. Defendant Automation Anywhere, Inc. ("Defendant" or "AAI") did not oppose the Motion.
6 Plaintiff and Defendant are sometimes collectively referred to herein as the "Parties." The Court, having
7 received and considered Plaintiff's Motion, the declarations in support, the PAGA Settlement
8 Agreement, the Notice of PAGA Settlement, and other evidence, HEREBY ORDERS AND MAKES
9 DETERMINATIONS AS FOLLOWS:

10 1. All capitalized and/or defined terms contained herein shall have the same meaning as set
11 forth in the PAGA Settlement Agreement. The Labor Code Private Attorneys General Act of 2004,
12 codified at California Labor Code sections 2698, *et seq.*, is hereinafter referred to as "PAGA."

13 2. The Action consists, in part, of PAGA Claims Plaintiff brought against Defendant for
14 alleged violations of California Labor Code § 1197.5 (California Equal Pay Act hereinafter referred to as
15 "Cal EPA"); California Labor Code § 1102.5 (retaliation for reporting a reasonable suspicion of
16 unlawful activity); and California Labor Code § 98.6 (discharge, discrimination or retaliation) and for
17 civil penalties on behalf of the State of California and putative aggrieved employees. These claims were
18 identified in Plaintiff's August 19, 2020, notice letter filed with the Labor and Workforce Development
19 Agency ("LWDA"). On April 12, 2022, Plaintiff filed an amended notice letter with the LWDA to
20 assert an additional representative allegation that AAI violated California Labor Code section 432.3 by
21 considering prior salary history in determining the starting salary for new hires. Plaintiff has not yet
22 amended the operative complaint in the Action to add the section 432.3 claim, but Plaintiff states she
23 would have done so had the case not settled.

24 3. The Action also consists, in part, of Plaintiff's Individual Claims brought against
25 Defendant for alleged violations of California Labor Code § 1197.5 (Cal EPA); retaliation in violation of
26 California Labor Code §§ 98.6 and 1102.5 and the California Fair Employment Housing Act ("FEHA");
27 gender discrimination and failure to prevent discrimination in violation of FEHA; wrongful termination
28 in violation of public policy premised upon Plaintiff's underlying theories of retaliation and gender

1 discrimination; and violation of California’s Unfair Competition Law (“UCL,” Bus. & Prof. Code §§
2 17200, *et seq.*) based upon the same theories (“Individual Claims”).

3 4. Pursuant to Plaintiff’s Complaint filed October 26, 2020 (“Complaint”), First Amended
4 Complaint (“FAC”) filed on March 15, 2021, the LWDA notice letter filed August 19, 2020, and the
5 Amended LWDA notice letter filed April 12, 2022, Plaintiff seeks civil penalties pursuant to California
6 Labor Code section 2698, *et seq.*, as well as any other statutes providing for civil penalties for the
7 alleged violations that were asserted or that could have been asserted based on the facts alleged,
8 including but not limited to California Labor Code sections 98.6, 432.3, 1102.5, and 1197.5.

9 5. On August 8, 2022, the parties entered into the PAGA Settlement Agreement, resolving
10 the PAGA Claims alleged in the Action on behalf of all current or former California based, female
11 employees at the Vice President level and below who were employees in the Marketing Department of
12 AAI (the “PAGA Settlement Members”) between August 19, 2019 and either (1) the date that the Court
13 enters an Order approving the PAGA Settlement Agreement, or (2) September 6, 2022, whichever is
14 earlier (the “PAGA Period”).

15 6. The Court has jurisdiction over the subject matter of the Action, the Plaintiff, the PAGA
16 Settlement Members, and Defendant. This judgment shall be binding not only on the named parties to
17 the Action but also on all PAGA Settlement Members and the State of California, who are hereby barred
18 by the doctrine of *res judicata* from re-litigating the Released Claims. *See Arias v. Superior Court*, 46
19 Cal.4th 969, 986 (2009) (a judgment in a representative action brought by an aggrieved employee under
20 PAGA is binding not only on the named employee plaintiff but also on state labor law enforcement
21 agencies and any aggrieved employee not a party to the proceedings).

22 7. The Court hereby approves the terms set forth in the PAGA Settlement Agreement and
23 finds that the PAGA Settlement Agreement is, in all respects, fair, reasonable, and adequate. Based on
24 the potential amount of penalties at issue, the risk of loss on the merits, the risk of being able to prove
25 violations in each pay period as to each individual as required by statute for damages purposes, and the
26 Court’s statutorily authorized power to reduce penalties, the PAGA Settlement Agreement provides a
27 recovery that creates an effective, substantial deterrent to any potential future non-compliance,
28 furthering the purpose of the Labor Code and LWDA. The Court also finds that the PAGA Settlement

1 Agreement has been reached as a result of informed and non-collusive arm's length negotiations, that
2 the Parties have conducted extensive investigation, research, and discovery, and that their attorneys were
3 able to reasonably evaluate their respective positions. The PAGA Settlement Agreement will avoid
4 additional, and potentially substantial, litigation costs, delay and risks of continued litigation. The Court
5 has reviewed the monetary recovery being provided as part of the PAGA Settlement Agreement and
6 recognizes the significant value afforded to LWDA and the PAGA Settlement Members given the facts
7 of this case. Furthermore, Plaintiff's Counsel has disclosed the terms of Plaintiff's separate Individual
8 Settlement Agreement, releasing all of her Individual Claims, and how those claims were valued in
9 comparison to the PAGA Claims. The Court is satisfied that no improper preference was given to the
10 Individual Claims over the PAGA Claims and that any difference in monetary consideration between the
11 two is based on objective criteria and/or risks solely affecting the PAGA Claims, including, but not
12 limited to, the Court's ability to exercise its discretion in reducing any penalties that might be assessed
13 pursuant to California Labor Code section 2699(e). The Parties are directed to effectuate the PAGA
14 Settlement Agreement according to its terms.

15 8. The PAGA Settlement Agreement is not an admission by Defendant, nor is this Order a
16 finding of the validity of any allegation or of any wrongdoing by Defendant. Neither this Order, the
17 PAGA Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the
18 PAGA Settlement Agreement, may be used as an admission of any fault, wrongdoing, omission,
19 concession, or liability whatsoever by or against Defendant.

20 9. In accordance with the PAGA Settlement Agreement, which the Court hereby approves
21 based on good cause showing for the reasons set forth in Plaintiff's Motion: (a) The total payment under
22 this PAGA Settlement Agreement is Thirty-Five Thousand Dollars (\$35,000.00) (Gross PAGA
23 Settlement Amount or "GPSA"), which includes any and all payments to the PAGA Settlement
24 Members, payment to the LWDA, Plaintiff's Counsels' fees and costs under the PAGA Settlement
25 Agreement, and all third-party costs of settlement administration; (b) ILYM Group, Inc., is hereby
26 approved to administer this PAGA Settlement Agreement for the approved cost not to exceed Three
27 Thousand Dollars (\$3,000.00); and (c) the LWDA and all PAGA Settlement Members are hereby
28 permanently enjoined from pursuing, or seeking to reopen, any Released Claims against any Released

Parties. The Settlement Administrator shall make the payments to the LWDA, the PAGA Settlement Members, Plaintiff's Counsel, and to the Settlement Administrator as provided for in the PAGA Settlement Agreement.

10. Ten Thousand Dollars (\$10,000.00) of the GPSA will be used to pay Plaintiff's Counsels' attorney's fees under the PAGA Settlement Agreement. Seven thousand dollars (\$7,000) of the GPSA will be used to pay Plaintiff's Counsels' costs under the PAGA Settlement Agreement. Three Thousand Dollars (\$3,000.00) will be used to pay the Settlement Administrator's costs. The Court finds that these amounts are reasonable within the meaning of California Labor Code section 2699(g)(1). If the costs of administration are greater than three thousand dollars (\$3,000), the amount that exceeds will be deducted from the GPSA, subject to the Parties' and this Court's approval.

11. After deducting from the Thirty-Five Thousand Dollars (\$35,000.00) the amounts allocated above to Plaintiff's Counsels' fees and costs under the PAGA Settlement Agreement and the Settlement Administrator's costs, the remaining Fifteen Thousand Dollars (\$15,000.00) ("Net PAGA Settlement Amount" or "NPSA") represents the amount payable to the LWDA and the PAGA Settlement Members. Seventy-five percent (75%) (*i.e.*, \$11,250) will be distributed to the LWDA as required by PAGA ("LWDA Payment") and the remaining (25%) (*i.e.*, \$3,750) will be distributed to the PAGA Settlement Members.

12. The Individual PAGA Payments shall be issued from the portion of the Net PAGA Settlement Amount available for distribution to PAGA Settlement Members. Individual PAGA Payments shall be calculated by dividing a PAGA Settlement Member's Individual PAGA Pay Periods by the Total PAGA Pay Periods and multiplying this result by the 25% portion of the NPSA. "Total PAGA Pay Periods" for this PAGA Settlement Agreement is the total number of pay periods worked by all PAGA Settlement Members during the PAGA Pay Period according to AAI business records. "Individual PAGA Pay Periods" will be the total number of pay periods worked by an individual PAGA Settlement Member during the PAGA Period according to AAI's business records.

13. The Individual PAGA Payments to PAGA Settlement Members are allocated 100% to penalties and will thus not be reduced by payroll tax withholding and deductions; instead, the Settlement

1 Administrator will issue to the PAGA Settlement Members an IRS Form 1099 and its state and local
2 equivalents.

3 14. Within thirty (30) calendar days of this Court's Order Granting Plaintiff's Motion,
4 Defendant will provide the last known contact information for the PAGA Settlement Members to the
5 Settlement Administrator. Using the provided information and after making any updates as necessary,
6 the Settlement Administrator will perform an address check via the UPS National Change of Address
7 database and update any necessary addresses for the PAGA Settlement Members.

8 15. Within forty-five (45) calendar days after the Effective Date as set forth in the PAGA
9 Settlement Agreement, the Settlement Administrator will: (1) mail the Notice of PAGA Settlement and
10 Individual PAGA Payment to each PAGA Settlement Member; (3) send the LWDA Payment to the
11 LWDA; (4) issue any appropriate tax forms; and (5) send Plaintiff's Counsel payment for attorney's fees
12 and costs awarded under the PAGA Settlement Agreement.

13 16. PAGA Settlement Members must cash their Individual PAGA Payment check within
14 ninety (90) calendar days after the date listed on the check ("90-Day Period"). If a check is returned to
15 the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it
16 to the PAGA Settlement Member at his or her correct address in accordance with the procedures set
17 forth in the PAGA Settlement Agreement. If a PAGA Settlement Member cannot be located, or if a
18 PAGA Settlement Member fails to cash the check for his or her Individual PAGA Payment within the
19 90-Day Period, the Settlement Administrator will distribute the funds represented by the uncashed check
20 to the California State Controllers' Office Unclaimed Property Fund to be held as unclaimed funds in the
21 PAGA Settlement Members' names.

22 17. The Court finds that Plaintiff has exhausted all administrative remedies required to bring
23 the PAGA Claims asserted in the Action and is authorized to act as a private attorney general on behalf
24 of the LWDA with respect to the PAGA Claims being released under the PAGA Settlement Agreement.

25 18. The Court finds that, under California law (which is applicable here), class action
26 procedural rules do not apply to representative PAGA actions that do not involve putative class claims,
27 such as the PAGA Claims at issue in this case. *See Arias v. Superior Court* (2009) 46 Cal.4th 969.
28 Therefore, the Court finds that the notice requirements and other notice and/or certification procedures

1 applicable to class action settlements do not apply to the settlement approval process for this PAGA
2 Action.

3 19. The Court further finds that notice of the PAGA Settlement Agreement has been
4 provided to the LWDA, as required by PAGA and Labor Code section 2699, subdivision (1)(2), in
5 particular.

6 20. Any request to intervene in the Action and/or PAGA Settlement Agreement that is filed
7 after the date this Order is entered shall be and hereby is deemed untimely.

8 21. Neither the PAGA Settlement Agreement nor any act performed or document executed
9 pursuant to or in furtherance of the PAGA Settlement Agreement (a) is or may be or may be used as an
10 admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of
11 the Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or
12 evidence of, any fault or omission of the Releasees, or any of them, in any civil, criminal or
13 administrative proceeding in any court, administrative agency or other tribunal. Defendant may file the
14 PAGA Settlement Agreement and/or this Order in any other action that may be brought against it in
15 order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,
16 release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or similar
17 defense or counterclaim.

18 22. This Action is dismissed in its entirety as follows:

- 19 a. With prejudice as to all of Plaintiff's Individual Claims and the PAGA Claims to
20 the extent they are asserted on behalf of the PAGA Settlement Members.
- 21 b. Without prejudice as to the PAGA Claims to the extent they are asserted on behalf
22 of other putative aggrieved employees as defined by the FAC who are not PAGA
23 Settlement Members.

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1 23. This Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6,
2 over this action and the Parties and PAGA Settlement Members, to the fullest extent necessary to
3 interpret, enforce, and effectuate the terms and intent of the PAGA Settlement Agreement and this
4 Order.

5
6 **IT IS SO ORDERED AND ADJUDGED.**

7
8 Dated: _____

By: _____

Honorable Sunil R. Kulkarni
JUDGE OF THE SUPERIOR COURT