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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

MICHAEL GREBE, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

MARY ANN'S BAKING CO., INC., a
California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No. 34-2020-00285254-CU-OE-GDS

CLASS ACTION

*Assigned to the Honorable Jill H. Talley for all
purposes*

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS,
COLLECTIVE, AND REPRESENTATIVE
ACTION SETTLEMENT**

Reservation No. 2662349

Date: October 28, 2022

Time: 9:00 a.m.

Dept.: 25

Filed: September 14, 2020

FAC Filed: May 12, 2022

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Silvia Madrigal Vargas (“Plaintiff Madrigal Vargas”)
4 herein. Plaintiff Michael Grebe (“Plaintiff Grebe”) is represented by Justice Law Corporation.
5 Collectively, Plaintiff Madrigal Vargas and Plaintiff Grebe are known as “Plaintiffs.” I am making this
6 declaration on behalf of the Plaintiffs, the putative class members, and in support of Plaintiffs’ Motion
7 for Preliminary Approval of Class, Collective, and Representative Action Settlement (“Motion”). A true
8 and correct copy of the Stipulation and Settlement of Class, Collective, and Representative Action
9 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

10 2. This case was brought as a wage-and-hour class action based on Plaintiffs’ contention that
11 Defendant Mary Ann's Baking Co., Inc., (“Defendant”) failed to pay overtime, failed to provide meal
12 and rest periods or make premium payments in lieu thereof, failed to pay minimum wages, failed to
13 timely pay final wages, failed to provide accurate wage statements, failed to reimburse employees for
14 reasonably incurred business expenses, and failed to pay all sick leave wages owed. Plaintiffs also alleged
15 liability for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”). These claims
16 were based allegations that Defendant violated California law by: (a) failing to authorize and permit meal
17 and rest periods due to inadequate staffing, excessive production quotas, and being required to don and
18 doff personal protective equipment (“PPE”) while off-the-clock during meal periods; (b) failing to pay
19 for all hours worked, including minimum wages and overtime, for time spent donning and doffing PPE
20 off-the-clock; (c) failing to factor in bonuses and other non-discretionary incentive payments into
21 employees’ regular rate of pay for overtime, sick leave, and other premium wage payment purposes; (d)
22 failing to pay daily overtime; (e) failing to provide required sick leave and pay sick leave wages; and (f)
23 failing to reimburse for the use of employee’s personal cell phones and requiring employees to purchase
24 non-slip shoes without reimbursement. The PAGA, waiting time penalty, wage statement violation, and
25 unfair competition claims also derive from these violations.

26 3. Plaintiffs are the only named representatives in this matter. From our initial investigations
27 of the claims and documents, we believed these claims had merit and could be maintained as a class
28 action. On September 14, 2020, Plaintiff Grebe filed a Complaint against Defendant in the Superior Court

1 of the State of California, County of Sacramento, Case No. 34-2020-00285254-CU-OE-GDS. On January
2 11, 2021, Plaintiff Madrigal Vargas filed a Complaint against Defendant in the Superior Court of the
3 State of California, County of Sacramento, Case No. 34-2021-00292191, which was removed to the
4 United States District Court for the Eastern District of California on February 19, 2021, Case No. 2:21-
5 CV-00320-JAM-JDP. On May 12, 2022, Plaintiffs filed an amended complaint in this action combining
6 the claims and parties of both actions as the result of mediation to facilitate a more streamlined, efficient
7 review of the settlement in one action. A true and correct copy of Plaintiffs' operative Complaint is filed
8 with this Motion as Exhibit B.

9 4. Plaintiffs exhausted administrative remedies through the California Labor and Workforce
10 Development Agency ("LWDA") for all asserted PAGA claims. Plaintiffs filed notices with the LWDA
11 on August 3, 2020, January 15, 2021, and July 19, 2021 setting forth the facts and theories of liability.
12 True and correct copies of the notices filed with the LWDA is filed with this Motion as Exhibit C. A
13 copy of the notices were also sent to Defendant via certified mail and the \$75.00 filing fee was remitted
14 to the LWDA at that time. There was no response by the LWDA regarding its intent to investigate the
15 claims alleged in Plaintiffs' notices for more than sixty-five (65) days. As such, Plaintiffs became
16 authorized to commence a civil action under the PAGA.

17 5. Currently, there is no date set for a motion to certify the class and there is no trial date.

18 6. Defendant is represented in this matter by Seyfarth Shaw LLP. From the beginning,
19 Defendant has contested the merits of this case, the suitability of the case for class action or representative
20 treatment, the manageability of the case at trial, and Plaintiffs' ability to prove a violation in each pay
21 period for each employee among other defenses and contentions they made challenging the propriety of
22 this action. Defendant further contended, even assuming there was a finding supporting the imposition
23 of PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such
24 penalties owed based on evidence of good faith attempts to comply with Labor Code obligations by
25 Defendant. Notwithstanding its agreement to settle this matter, Defendant believes the practices Plaintiff
26 is contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state
27 and federal employment laws with respect to Plaintiffs and Class Members. Defendant has contended
28 that this matter is not appropriate for class certification outside of this proposed class settlement.

1 7. Based on the expected testimony from Plaintiffs and Class Members, a review of
2 Defendant's policies and procedures and other documents relating to the alleged claims, information on
3 the number of Class Members, Class Members' dates of employment, and a representative sample of Class
4 Members' payroll data, the scope of the potential damages to Plaintiffs and Class Members in light of the
5 claims alleged, the uncertainty in the law with regard to certification, and the negotiations that have taken
6 place, I am convinced that the proposed settlement is in the best interest of the Class. The length and risks
7 of trial and other normal perils of litigation that impact the value of the claims were also considered and
8 weighed in reaching the Agreement. In addition, I carefully considered the prospect of potential class
9 certification issues as well as the uncertainty of class certification, the difficulties of complex litigation,
10 Defendant's financial condition and its ability to satisfy any settlement or judgment beyond what has been
11 agreed to in this settlement, and the lengthy process of establishing specific damages and various possible
12 delays and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under
13 the PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on
14 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
15 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I believe
16 it is more beneficial to secure a guaranteed benefit to the Class now rather than to proceed with litigation
17 and potentially obtain zero funds to the Class due to legal or factual issues in the case.

18 8. A significant consideration in agreeing to the settlement, including the use of a claim form
19 and a reversion of unclaimed funds beyond a minimum threshold, was Defendant's financial condition.
20 During negotiations, Defendant contended significant financial constraints impaired its ability to pay any
21 settlement or judgment in this case. In order to assess these claims of financial hardship and evaluate the
22 potential for any bankruptcy filing, our office and our co-counsel's office reviewed Defendant's tax
23 returns, year-to-date financial statements, and financial forecasts for the company. The documents
24 reviewed allowed us to see the current debts, assets, and liabilities for the company and other potential
25 sources of recovery if Plaintiff was successful in obtaining a judgment in favor of the class. It also allowed
26 us to review the company's historical performance to determine if the condition was likely to improve,
27 get worse, or stay the same.

1 9. After review of these documents, I believe the claim form and reversion process laid out
2 in the Agreement strike an appropriate balance of maximizing payouts to Class Members while avoiding
3 insolvency by Defendant. The agreed upon process puts the decision in the hands of the Class Members.
4 Class Members who truly feel wronged are able to submit a Claim Form and receive payment. Those
5 Class Members who do not feel wronged, do not care, or otherwise do not want to receive payment will
6 either a) have their share redistributed to Class Members who did file a Claim Form, increasing the
7 settlement's effective value as to them, or b) have their share revert to Defendant, decreasing the risk of
8 bankruptcy or other actions that might cause Defendant to layoff currently employed Class Members. The
9 requirement that at least forty percent (40%) of the Net Settlement Amount be paid out ensures Defendant
10 will be required to make a substantial payment regardless of the claims rate.

11 10. We considered alternatives to using the claims made/reversion process while negotiating
12 the Agreement. While a payment plan may be a helpful tool in some settlements, we did not feel it would
13 be beneficial in this case. Payment plans depend on the continued viability of a company in order for
14 those payments to be made, which is a risky proposition in financial distress settlements. Additionally,
15 receipt of settlement funds sooner rather than later is generally more beneficial to Class Members. *See*
16 *Holt v. Regents of the University of California*, 73 Cal.App.4th 871, 878 (1999) ("The concept of present
17 value recognizes that money received after a given period is worth less than the same amount received
18 today. This is the case in part because money received today can be used to generate additional value in
19 the interim"). We also considered whether a direct payment settlement (*i.e.* non-claims made and no
20 reversion) was feasible. Although we believe the Gross Fund Value will not inevitably lead to Defendant
21 falling into bankruptcy should there be a 100% claims rate, this is not guaranteed. That is an assumed risk
22 that is offset by any amounts not claimed by Class Members who do not feel wronged, do not care, or
23 otherwise do not want to receive payment. Thus, it is not the case that the Parties could have just agreed
24 to the same settlement terms, but exclude the claims made/reversion procedures. Any such settlement
25 would have at a substantially lower amount to avoid any risk of bankruptcy, which would negatively affect
26 those Class Members who do feel wronged and want to submit a Claim Form. Balancing all the competing
27 interests and potential alternatives, I believe the claims made and reversion procedures are appropriate
28 under the facts of this case and do not render the settlement unfair, unreasonable, or inadequate.

11. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along with Co-Counsel, Justice Law Corporation, and Plaintiffs' assistance, thoroughly investigated the merits of the claims and potential damages for such claims. The Parties engaged in formal and informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage-and-hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. We reviewed documents relating to Defendant's financial condition, such as tax filings, to determine its financial viability, both in terms of continued litigation and its ability to satisfy any judgment or settlement higher than what has been agreed to in this case. We engaged an expert to assist in the review and analysis of the data to calculate potential exposure ranges. From this production and the utilization of an expert, we were able to determine information critical to a reliable damages analysis such as the average hourly rate, average daily hours worked, average number of workweeks and pay periods that had potential violations based on the asserted claims, the frequency with which violations occurred in a given week and/or pay period, and the number of former employees. This information allowed us to assess both liability and damages and create an accurate damages model. Plaintiffs assisted in all aspects of this litigation including providing factual information relating to Plaintiffs' and Class Members' employment conditions, providing a substantial number of documents, and answering questions regarding Defendant's factual contentions in this matter. This was important because it directly related to our ability to maintain this case as a class action and our ability to obtain a favorable settlement for the Class.

12. Throughout this litigation our office had numerous communications with Defendant's Counsel discussing our respective positions. The Parties engaged in mediation on July 14, 2021 using an experienced mediator, Jeffrey Krivis. It was only after nearly two (2) years of litigation and extensive, arm's-length negotiations that the parties were able to reach a settlement, which only occurred after a full-day mediation and continued post-mediation negotiations between counsel. The negotiations were at all times contentious and adversarial, though still professional in nature.

1 13. The Parties reviewed and analyzed substantial amounts of data regarding the class claims.
2 Based on our analysis and review of all relevant documents and Class Member information, I have
3 determined that the maximum damages for the asserted class claims is approximately \$13,460,638, which
4 includes civil penalties under the PAGA. The likely exposure for PAGA penalties is approximately
5 \$7,061,500 based on the counts alleged to the LWDA and the class data. Based on our research, we did
6 not find any prior labor commissioner or court decisions that stated Defendant's practices and/or policies
7 were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes and
8 the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if
9 this matter went to trial.

10 14. I believe the PAGA penalties in this case may be reduced due to the fact that the penalties
11 would be in addition to amounts owed for substantive violations and much of the penalties are based on
12 violations due to technical non-compliance with the Labor Code. Defendant produced a substantial
13 number of documents that a Court may find demonstrates a good faith attempt at compliance that merits
14 the reduction of civil penalties. Courts regularly cut civil penalties on PAGA claims where statutory
15 penalties for the same violations are assessed as well. Courts are statutorily authorized to use discretion
16 to reduce penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore Transit*
17 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S.
18 DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Thus, civil penalties may be cut to
19 approximately \$1,271,070 (82% reduction) or lower given the derivative recovery. The likely recovery
20 if Plaintiffs were successful at trial on proving all the substantive class damages plus civil penalties after
21 a reduction of the PAGA penalties would be approximately \$7,670,208. Plaintiffs' \$600,000 gross
22 recovery under the Agreement represents approximately 7.8% of the maximum likely value in this matter.
23 After deducting from the Gross Fund Value the proposed allocations for Attorneys' Fees and Costs, any
24 Class Representative Enhancement Payment to the Class Representatives, Settlement Administrations
25 Costs, and the seventy-five percent (75%) portion of the PAGA Payment to the LWDA, the net recovery
26 under the Agreement represents approximately 4.3% of the maximum likely value in this matter. The
27 average net award is approximately \$592.73. I believe the Agreement represents a reasonable
28 compromise of claims based on the legal and factual disputes in this case and Defendant's financial

condition. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement.

15. Based on the terms of the Agreement, the range of the Net Settlement Amount that will be claimed will necessarily be between 40% to 100%. In a recent claims made settlement our office was involved in, 78% of the net settlement amount was claimed. The the notice method was similar to what we have proposed in this case. The exact percentage of individuals who will or will not submit a claim will vary from case to case because it is a function of the number of individuals who truly feel wronged and want to submit a claim for versus those who do not feel wronged, do not care, or otherwise do not want to receive payment. Additionally, even where the percentage of individuals who file a claim form is small, a substantial majority of the Net Settlement Amount may still be paid out because those participating class members comprise a substantial majority of the workweeks, which is how payments are allocated (*e.g.* 25% of class members account for 75% of the total workweeks or Net Settlement Amount allocation). Regardless of what Class Members may ultimately choose to do in submitting or not submitting a Claim Form, I believe the proposed notification procedures are designed to reach as many Class Members as possible and provide them with the opportunity to receive payment.

16. In agreeing to represent Plaintiffs and take on the case for all similarly situated employees, our office agreed to take this case on a contingency basis, meaning that we would take a percentage of any settlement or judgment should we recover a monetary amount. We took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary judgment ruling. However, we believe it is important to make sure employees are able to find affordable representation in order to ensure that employers are complying with all their legal obligations towards employees and paying employees all their hard-earned wages.

17. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law practice that focuses primarily in employment litigation, emphasizing wage-and-hour litigation. I attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the

University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

18. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In September 2018, I was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section's presentation of "*Epic Systems, PAGA, and the Future of Employment Arbitration in California*." In July 2020, I was a panel speaker for the Association of Defense Counsel of Northern California & Nevada presentation of "Class Actions and PAGA Claims." My practice focuses on complex civil litigation, including wage-and-hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *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.);
- *Barkhausen 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.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara 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.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (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);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *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.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *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.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *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. 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.).

19. 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.

20. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage-and-hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored several employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: (a) Lorman Military Leave Law Speaker; (b) Restaurant Association Speaker at Annual Seminar (Los Angeles); (c) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); (d) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); (e) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); (f) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); (g) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); (h) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); (i) Sacramento Employer Advisory Council – Wage-and-hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); (j) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance Training (Apr. 25, 2017); (k) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); (l) Sacramento Business Journal Panel – Overtime Rules (Jun. 23,

2016); (m) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in Wage-and-hour Cases (Aug. 12, 2016); (n) California Employment Lawyers Association - PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); (o) California Employment Lawyers Association Advanced Wage-and-hour Seminar – Better Know a Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

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

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. 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.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (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.);
 - *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.);
 - *Duque 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 of cases does not include those where the case was initially filed as a class and/or PAGA action but did not maintain that status through the end of the case.

23. In connection with any final approval hearing, Plaintiffs will be seeking attorneys' fees and costs, an Enhancement Payment to the Class Representative, and Settlement Administration Costs

as set forth in the Agreement. I will be requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). I believe the amounts allocated in the Agreement for attorneys fees and costs, the Enhancement Payments, and Settlement Administration Costs are with typical ranges approved in wage and hour class action settlement such as this one. The typical range of fees awarded is 30% to 40% of the gross settlement amount, and enhancement payments are typically in the range of \$10,000 to \$15,000. The facts and case law supporting the requested amounts will be set forth in the final approval motion, including information for the Court to perform a lodestar cross check of the requested attorney's fees, quantify the amount of time spent by Plaintiff on this case and any further risks and/or burdens incurred as a result of acting as Class Representative, and an updated declaration in support of actual litigation costs. The expected costs through final approval are not expected to exceed \$18,500. Attached as Exhibit E is a true and correct copy of the costs our firm incurred prior to the filing of this Motion and the expected costs incurred through the final approval and fairness hearing. Any difference in the awarded fees and costs, Class Representative Enhancement Payment, and Settlement Administration Costs and the amounts allocated therefor under the Agreement will be added back to the Net Settlement Amount and distributed pro rata to Settlement Class Members.

24. I have used several class action administrator companies in the wage-and-hour class actions I have resolved in the past and believe Simpluris, Inc. ("Simpluris") will provide the best service to administer the proposed class settlement. Simpluris has provided a quote for the estimated maximum cost of administering the class settlement of approximately \$10,500. A true and correct copy of a cost estimate provided by Simpluris is filed with this Motion as Exhibit D. This is only an estimate, and final pricing may vary depending on the issues, if any, that arise during the administration of the settlement. However, the difference between the actual, lesser costs and \$10,500, if any, will be paid to the participating Class Members on a pro rata basis.

25. A copy of the proposed Agreement and the entire Motion was submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to Labor Code section 2699(1)(2).

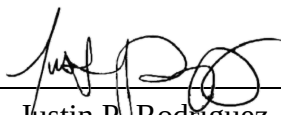
1 A true and correct copy of documents demonstrating the settlement documents were provided to the
2 LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit H.

3 26. A true and correct copy of the proposed Notice of Class Action Settlement is being filed
4 with this Motion as Exhibit F.

5 27. A true and correct copy of the proposed Claim Form is being filed with this Motion as
6 Exhibit G.

7 28. No attorney in my firm has any interest or involvement in the State's Unclaimed Property
8 Fund where the value of any uncashed checks will be sent pursuant to the Agreement.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct. Executed this 29 day of September 2022 in Elk Grove, California.

11
12
13 
14 Justin P. Rodriguez