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and BELINDA LECHUGA individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SHIELA KEE and SILBIA GUTIERREZ and
BELINDA LECHUGA, individually and on
behalf of all other similarly situated
employees,

Plaintiffs,

vs.

DR. JEFFREY A. SALADIN, DENTAL
CORPORATION (D/B/A CHILDREN'S
CHOICE PEDIATRIC DENTAL CARE), a
California Corporation; CC AMULET
MANAGEMENT, LLC, a Delaware Limited
Liability Company; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2020-00290072

CLASS ACTION

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 28*

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Reservation No. 2678139

Date: January 13, 2023

Time: 9:00 a.m.

Dept: 28

Judge: Hon. Lauri A. Damrell

Filed: December 8, 2020

FAC Filed: March 2, 2021

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 Plaintiffs Shiela Kee, Silbia Gutierrez, and Belinda Lechuga
4 (“Plaintiffs”) herein. I am making this declaration on behalf of the named Plaintiffs, the putative class
5 members, and in support of Plaintiffs’ Motion for Final Approval of Class Action and PAGA
6 Settlement (“Motion”). A true and correct copy of the Joint Stipulation Regarding Class Action and
7 PAGA Settlement and Release (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. This case is being brought as a wage and hour class action based on Plaintiffs’
9 contention that Defendants Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children’s Choice
10 Pediatric Dental Care) and CC Amulet Management, LLC (“Defendants”) 1) Failure to Pay Overtime
11 Wages 2) Failure to Pay Minimum Wages 3) Meal Period Violations 4) Rest Period Violations 5) Wage
12 Statement Violations 6) Waiting Time Penalties 7) Failure to Reimburse Expenses 8) Unfair
13 Competition 9) Private Attorneys General Act. Plaintiffs also alleged liability for civil penalties under
14 the Private Attorneys General Act (“PAGA”). These claims were based on allegations that Defendants
15 violated California law by 1) failing to properly pay overtime and premium pay due to Defendants’
16 failure to incorporate non-discretionary remuneration (bonuses) into the Regular Rate of Pay
17 (“RROP”); 2) failing to provide rest periods and pay adequate premiums in lieu thereof; 3) failing to
18 provide all meal periods and pay adequate premiums in lieu thereof; 4) failing to pay employees for all
19 hours worked due their failure to pay for time employees spent waiting to clock into work; 5) failing to
20 pay reimbursements for business-related cell phone use and/or mileage; and 6) failing to accurately
21 itemize the hours and wages earned on paystubs issued to class members. The PAGA, waiting time
22 penalty, wage statement violation, and unfair competition claims also derive from these violations.

23 3. Plaintiffs are the only named representatives in this matter. From our initial
24 investigations of Plaintiffs’ claims and documents, we believed these claims had merit and could be
25 maintained as a class action. We filed the action on or about December 8, 2020. Plaintiffs exhausted
26 administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to
27 filing the Complaint. Plaintiffs filed a notice with the LWDA on September 30, 2020, and an amended
28 notice on February 18, 2021, setting forth the facts and theories of liability. A true and correct copy of

1 the operative notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the
2 notices were also sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the
3 LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims
4 alleged in Plaintiffs' notices for more than 65 days. As such, Plaintiffs became authorized to
5 commence a civil action under the PAGA and filed a First Amended Complaint on March 2, 2021, that
6 included class action and PAGA claims. A true and correct copy of Plaintiffs' operative Complaint is
7 filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on April 26,
8 2021, after we received an endorsed copy back from Court.

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

10 5. Defendants are represented in this matter by Boutin Jones, Inc. From the beginning,
11 Defendants have contested the merits of this case, the suitability of the case for class action or
12 representative treatment, the manageability of the case at trial, and Plaintiffs' ability to prove a
13 violation in each pay period for each employee among other defenses and contentions they made
14 challenging the propriety of this action. Defendants further contended, even assuming there was a
15 finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion
16 to substantially reduce any such penalties owed based on evidence of good faith attempts to comply
17 with California Labor Code obligations by Defendants. Notwithstanding its agreement to settle this
18 matter, Defendants believe the practices Plaintiffs are contending are unlawful either do not exist or, to
19 the extent they do exist, fully comply with all state and federal employment laws with respect to
20 Plaintiffs and Class Members. Also, Defendants have contended that this matter is not appropriate for
21 class certification outside of this proposed class settlement.

22 6. Based on the expected testimony from Plaintiffs and Class Members, a review of
23 Defendants' policies and procedures and other documents relating to the alleged claims, information on
24 the number of Class Members, Class Members' dates of employment, and a representative sample of
25 Class Members' payroll data, the scope of the potential damages to Plaintiffs and Class Members in
26 light of the claims alleged, expert damages analysis, the uncertainty in the law with regard to
27 certification, and the negotiations that have taken place, I am convinced that the proposed settlement is
28 in the best interest of the class. The length and risks of trial and other normal perils of litigation that

1 impact the value of the claims were also considered and weighed in reaching the Agreement. In
2 addition, I carefully considered the prospect of potential class certification issues as well as the
3 uncertainty of class certification, the difficulties of complex litigation, and the lengthy process of
4 establishing specific damages and various possible delays and appeals in agreeing to the proposed
5 settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the
6 discretion of the Court even if Plaintiffs were successful on proving those claims and there was risk that
7 a Court could find no willfulness in the failure to pay wages at separation, which would eliminate the
8 value of the waiting time penalty claim entirely. Overall, I believe it is more beneficial to secure a
9 guaranteed benefit to the class now rather than to proceed with litigation and potentially obtain zero
10 funds to the class due to legal or factual issues in the case.

11 7. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along
12 with Plaintiffs' assistance, thoroughly investigated the merits of the claims and potential damages for
13 such claims. The parties engaged in informal discovery and exchange of documents, including a
14 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
15 for the entirety of the statute of limitations applicable to the alleged claims. The representative sample
16 included more than 70,000 rows of data, each row with multiple additional data points for each class
17 member that had to be cross referenced with Defendant's written policies to determine whether the
18 information was consistent with Plaintiffs' allegations. There were a substantial amount of disputes
19 regarding the data, including what payments were properly part of any bonuses for regular rate of pay
20 purposes as well as the number of actively worked pay periods (as opposed to time employed but not
21 working due to things such as vacation or other leaves of absence and COVID-19), etc. These disputes
22 required extensive amounts of time conferring with opposing counsel, our expert consultant, researching
23 the potential impact of how those disputes were resolved, and reviewing the data to ensure it was
24 consistent with the other information and documents produced. The discovery covered all aspects of the
25 asserted claims, including certification issues, merits issues, damages, the scope and configuration of
26 Class Members, the content and implementation of the wage and hour policies at issue, issues relating to
27 manageability concerns at trial, among other relevant areas. From this production we were able to
28 determine information critical to a reliable damages analysis such as the average hourly rate, average

1 daily hours worked, average number of workweeks and pay periods that had potential violations based
2 on the asserted claims, the frequency with which violations occurred in a given week and/or pay period,
3 and the number of former employees. This information allowed my office to assess both liability and
4 damages and create an accurate damages model. Plaintiffs assisted in all aspects of this litigation
5 including providing factual information relating to Plaintiffs' and Class Members' employment
6 conditions, providing a substantial number of documents, and answering questions regarding
7 Defendants' factual contentions in this matter. This was important because it directly related to our
8 ability to maintain this case as a class action and our ability to obtain a favorable settlement for the class.

9 8. Throughout this litigation our office had numerous communications with Defendants'
10 Counsel discussing our respective positions. The parties engaged in mediation on August 10, 2021,
11 using an experienced mediator, Kelly A. Knight, Esq. We did not resolve the case at mediation and
12 continued negotiations thereafter engaging in further document/data exchanges, expert consultations,
13 and discussions with the mediator. This continued until approximately May 2022, where an agreement
14 as to the total amount to resolve this matter was reached, but additional non-monetary terms continued
15 to be negotiated between counsel. This further negotiation as to non-monetary terms also included
16 further data exchanges and expert consultations. It was only after approximately nineteen (19) months,
17 extensive, arm's length negotiations that the parties were able to reach a settlement. The negotiations
18 were at all times contentious and adversarial, though still professional in nature.

19 9. In analyzing the sample data and relevant policies and comparing them against
20 Plaintiffs' allegations and theories of liability, the following represents the potential maximum recovery
21 for each asserted claim and the risks associated with each such claim:

- 22 • Overtime Wages: This claim is based on Defendants' failure to incorporate earned
23 bonuses into the RROP when calculating overtime and double time paid in the same pay
24 periods where bonuses were also earned. Based on the Class members' time and payroll
25 data, only approximately 31.5% of all pay periods included both overtime and bonuses.
26 The total exposure for this claim is \$109,051. This amount does not take into account
27 the potential risks associated with this claim on the merits and in proving damages.
28 Both the percentage of pay periods affected and the types of payments that could be

1 considered non-discretionary bonuses was heavily disputed. It did appear that some,
2 though not all, of the compensation that was itemized as “Bonus” on paystubs may not
3 be considered non-discretionary. Thus, they would be excluded from any regular rate of
4 pay analysis. This could have reduced the damages for this claim, and the other asserted
5 claims that either directly depend on the regular rate of calculation (*i.e.* meal period
6 premium regular rate of pay) or indirectly depend on it as a derivative violation (*i.e.*
7 wage statement penalties, waiting time penalties, and PAGA penalties), by a factor of
8 10x. Specifically, the value of this claim would have gone from \$109,051 to
9 approximately \$10,900.

- 10 • Unpaid Minimum Wages Based on Off the Clock Work: This claim is based on claims
11 that employees were not paid for all hours worked due to time spent waiting for
12 Defendants’ time keeping system to load and work correctly. Based on the data sample
13 and expected testimony, this off-the-clock time averaged just under 2.5 minutes per
14 shift. The total exposure for this claim is \$217,957. Half of this figure is based on
15 liquidated damages under California Labor Code section 1194.2. This amount does not
16 take into account any potential risks associated with this claim. For instance,
17 Defendants had a policy of prohibiting Class Members from working off the clock and
18 requiring that the accurately record all hours worked. In addition, Defendants contended
19 that Class Members were not required to stay in line to clock in and out. Defendants
20 contend that each location had one or more kiosks to clock in and, if a kiosk did not
21 work, Class Members were required to contact their manager so that the manager could
22 correct their time entries. There is substantial risk that good faith would be found under
23 Labor Code section 1194.2, based on these policies and the procedures in place to allow
24 a Class Member to correct inaccuracies with their time records. This would reduce the
25 maximum potential damages to \$108,978.50. In addition, the amount of time it took to
26 clock in using the Kiosks and the frequency with which any login issues occurred was
27 heavily disputed. Because the average unpaid time was already low at approximately
28

2.5 minutes per shift, even slight differences in the amount of time it took to log in made this an extremely risky claim.

- Meal Periods: Based on the sample data, the total exposure for this claim is \$258,425.00. This amount does not take into account any potential risks associated with this claim, which was heavily disputed. While Plaintiffs contended that Defendants maintained a regular and consistent practice of failing to provide meal periods due to lack of adequate scheduling and high workflow, Defendants had a facially valid written meal period policy that was given to Class Members at the time of hire. Additionally, time records showed a potential violation in only 5.7% of all shifts. This low rate along with Defendants' policy presented substantial risks for certification and proving this claim on the merits.
- Underpaid Meal Period Premiums: This claim was based on the contention that Defendants failed to properly calculate the regular rate of pay for meal period premiums that is actually paid to Class Members. Based on the sample data, the exposure for this claim is \$9,596. This claim was based on the same types of payments that were the basis for Plaintiffs overtime regular rate of pay claims. As a result, the same risks associated with the overtime claims are present here and could substantially reduce the value of this claim.
- Rest Breaks: Based on the sample data, the total exposure for this claim is \$2,524,201. This claim was based on the contention that Defendants rest period policy was facially invalid, requiring Class Members to clock out during rest periods, and, as a result the lack of adequate scheduling and high workflow, Class Member failed to receive rest periods. This claim was heavily disputed. Notwithstanding the written policy, the sample time records did not show clock in/outs for rest period consistent with the policy. Additionally, there was evidence to suggest that Class Members were able to take rest periods approximately 50% of the time notwithstanding the scheduling and workflow issues. This presented substantial risk for Plaintiffs ultimately being able to certify this

claim, which is also very difficult to establish on the merits due to their being no requirements to document when, and for how long, rest periods were taken.

- Reimbursement: This claim was based on Plaintiffs contention that Class Members were required to communicate using their personal cell phone and travel using their personal vehicle between multiple of Defendants offices as part of their regular and necessary work duties. The total exposure for this claim is \$412,581. This amount does not take into account any potential risks associated with this claim. Defendants disputed whether the use of an individual's cell phone was necessary as the offices had phones available for use. Furthermore, Defendants contended that not all employees traveled to multiple locations on a daily or even monthly basis and any distances traveled would have been insubstantial. The cost of cell phone reimbursement makes up approximately two-thirds of this claim. To the extent the Court found that the availability of office phones made use of personal cell phones unnecessary, this could completely eliminate that theory of liability and substantially lower the value of the claim.
- Wage Statement Violations: This claim is derivative of Plaintiffs' overtime, minimum wage, and meal and rest period claims. The total exposure for this claim is \$631,000, which is calculated based on an initial violation \$50 per pay period per employee. Based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendants' practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes and the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. This amount does not take into account the potential risks associated with this claim and assumes a violation in every pay period. Because this claim is derivative of Plaintiffs' other claims, the same risks identified above for Plaintiffs' overtime, meal period, and cellphone reimbursement equally apply here, substantially affecting the potential value of this claim.
- Waiting Time Penalties: Based on the sample data, the total exposure for this claim is \$2,741,295. This amount does not take into account the potential risks associated with

1 this claim. Because this claim is derivative, the same risks mentioned above also apply
2 to this claim. In addition, there is substantial risk that a Court would find good faith for
3 the same reasons as discussed above regarding minimum wages, which could
4 completely eliminate the value of this claim.

- 5 • PAGA: This claim is derivative of the Labor Code violations identified above. Again,
6 we did not find any prior Labor Commissioner or court decisions that stated Defendants'
7 practices and/or policies were improper. As such, a "subsequent violation" may not be
8 found for penalty calculation purposes and the exposure analysis here is based on an
9 "initial violation" valuation being adopted by any fact finder if this matter went to trial.
10 Based on the sample data, the total exposure for this claim to be \$6,986,471.17.
11 However, this amount does not take into account any of the potential risks associated
12 with this claim. Because this claim is derivative it carries all the same risks identified in
13 the claims above. Additionally, the numbers assume the occurrence of at least one
14 violation for each individual within the statute of limitations for each claim for each pay
15 period. For the reasons identified above, it is highly unlikely that Plaintiffs would be
16 able to prove a violation for each claim, in each pay period, for each aggrieved
17 employee. Further, I believe the PAGA penalties in this case may be reduced due to the
18 fact that the penalties would be in addition to amounts owed for substantive violations
19 and much of the penalties are based on violations due to technical non-compliance with
20 the Labor Code. Furthermore, Defendants produced a substantial number of documents
21 and written policies and handbooks, that a Court may find demonstrates a good faith
22 attempt at compliance that merits the reduction of civil penalties. Courts regularly cut
23 civil penalties on PAGA claims where statutory penalties for the same violations are
24 assessed as well. Courts are statutorily authorized to use discretion to reduce penalties
25 and the range of discretion used varies substantially. *See Thurman v. Bayshore Transit*
26 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien,*
27 *Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Thus, civil
28 penalties may be cut substantially to \$1,257,564.81 (82% reduction) or lower given the

1 derivative recovery. It is important to note that this discretionary reduction is
2 completely separate and in addition to any risks on the merits. Given the facts and
3 highly disputed nature of the claims, we felt the amount that might ultimately be
4 awarded under this claim would be low, especially in light of amounts that Courts have
5 approved as reasonable valuations in similar cases. *See Nordstrom Com. Cases*, 186
6 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
7 based on their being disputed and being part of a class settlement which was evaluated
8 based on the terms of the agreement overall); *Davis v. Cox Commc 'ns California, LLC*,
9 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000
10 PAGA allocation in \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S.
11 Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in
12 \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS
13 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000
14 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
15 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon*
16 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving
17 \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
18 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from
19 \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645,
20 at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA
21 out of \$6.9 million common-fund settlement).

22 10. Based on our analysis and review of all relevant documents and Class Member
23 information, I have determined that the maximum potential damages for the asserted class claims is
24 approximately \$13,916,529.17, which includes the civil penalties under the PAGA. As noted above, I
25 believe the civil penalties will be reduced under the Court's discretionary ability pursuant to PAGA.
26 Based on the facts of this case, I believe it more likely that the reduction would be in the range of 82%,
27 similar to what was done in *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590 (C.D. Cal.
28 2011). This would make the maximum potential damages \$8,187,622.81, which does not take into

1 account the risks identified above. Even without considering those risks, Plaintiffs' \$675,000.00 gross
2 recovery under the Agreement represents approximately 8% of the maximum potential damages in this
3 matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees
4 (\$236,250) and costs (\$10,628.17), any Enhancement Payment to the Class Representatives (\$45,000),
5 Claims Administrator Costs (\$13,690.28), and the PAGA Payment to the LWDA (\$10,000), the net
6 class recovery under the Agreement, \$359,431.55 represents approximately 4.4% of the maximum
7 potential damages in this matter. Based on the final numbers from the administrator, the average net
8 recovery is \$266.50 and the maximum net recovery is \$1,713.33. I believe the Agreement represents a
9 reasonable compromise of claims based on the legal and factual disputes in this case. The ability to
10 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than
11 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this
12 Agreement.

13 11. Although the \$10,000 allocated to the PAGA claims where the maximum potential value
14 is \$6,986,471.17, before considering any discretionary Court reduction and \$1,257,564.81 after
15 considering the potential discretionary reduction represents less than 1% of the maximum recovery, I
16 do not believe the allocation is inappropriate or inconsistent with case law. The claims are heavily
17 disputed and the maximum values give no discount whatsoever for risks on the merits. For example, if
18 Plaintiffs were unsuccessful on the waiting time penalty claim alone or if Defendants just present a
19 good faith dispute, this would eliminate the claim entirely and the maximum PAGA value would be
20 reduced to \$5,544,550 with the discretionary reduction PAGA value reduced to \$998,019. These
21 amounts would be further reduced if the full weight of risks faced by the claims were applied. Because
22 there is clear case law demonstrating the range of judicial discretionary reductions that can be applied
23 in a PAGA case, we have utilized that reduction (82% reduction) in our fairness analysis. The 82%
24 reduction equates to roughly \$9-\$50 worth of civil penalties per pay period per employee depending on
25 the total potential value of the civil penalty (*i.e.* \$50-\$250), which is more in line with actual awards
26 based on my experience and review of awards in other cases. However, there are innumerable
27 hypothetical possibilities with regards to how merits issues, so we have not applied a further reduction.
28 Instead, the PAGA allocation is considered in light of past Court decisions on similar claims with

1 similar settlements that have been found to be reasonable and adequate on their own and in relation to
2 the gross settlement value.

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

11 13. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
12 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
13 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
14 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
15 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
16 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
17 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
18 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
19 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
20 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
21 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
22 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
23 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
24 and an officer for the Latino Law Students Association from 2009 to 2010.

25 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
26 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
27 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
28 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have

1 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
2 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
3 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
4 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
5 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
6 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
7 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County
8 Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a
9 Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the
10 Sacramento County Bar Association Labor and Employment Law Section's executive committee in
11 2019 and was the Chair of the executive committee for 2022. I have also been a member of the
12 Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August
13 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA
14 claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the
15 complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently
16 litigating, including the instant case, includes, but is not limited to, the following:

- 17 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 18 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 19 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 20 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 21 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
22 (San Joaquin Sup. Ct.);
- 23 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 24 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 25 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
26 Sup. Ct.);
- 27 • *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
28 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. Ovation 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.).

15. 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.

16. 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 a number of 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: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) 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); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and

1 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
2 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
3 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
4 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
5 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
6 as a Super Lawyer from 2014 to present.

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

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

- 1 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 2 Ct.);
- 3 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 4 Sup. Ct.);
- 5 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 6 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 7 Ct.);
- 8 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 9 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 10 00209613 (Sac. Sup. Ct.);
- 11 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 12 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 13 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 14 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 15 (San Joaquin Sup. Ct.);
- 16 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 17 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 18 Sup. Ct.);
- 19 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 20 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 21 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac.
- 22 Sup. Ct.);
- 23 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 24 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 25 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 26 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 27 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 28 • *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.).

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

4 19. My former associate, Jessica L. Hart, Esq., also worked with me on this matter and was
5 critical in assisting with all aspects of the litigation of this case. Ms. Hart graduated from the
6 University of California Davis School of Law. Prior to joining Shimoda & Rodriguez Law, PC, Ms.
7 Hart worked alongside a number of attorneys in the Sacramento area focusing almost exclusively on
8 plaintiff's side litigation and employment law for several years prior to becoming licensed in 2020.
9 While with my firm, Ms. Hart worked on a variety of individual, class action, and Private Attorneys
10 General Act cases involving wage and hour claims. As an associate, some of the class action and/or
11 PAGA cases Ms. Hart litigated include the following:

- 12 • *Afoa v. Milestone Retirement Communities, LLC., et al.*, Case No. 34-2020-00282555 (Sac.
13 Sup. Ct.);
- 14 • *Cota v. Milestone Management (CA) – Meadows, LLC.*, Case No. 34-2020-00280648 (Sac.
15 Sup. Ct.);
- 16 • *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD
17 (E.D. Cal.);
- 18 • *Dreyer v. Automation Anywhere, Inc.* Case. No 20CV372730 (Santa Clara Sup. Ct.);
- 19 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
20 (San Joaquin Sup. Ct.);
- 21 • *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- 22 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 23 • *Garcia v. Aquality Water Management, Inc.* Case No. 34-2021-00292794 (Sac. Sup. Ct.);
- 24 • *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- 25 • *Hussaini v. Integrated Resources, Inc, et al.*, Case. No. 34-2021-00297152 (Sac. Sup. Ct.);
- 26 • *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-
27 0000543 (San Joaquin Sup. Ct.);
- 28 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);

- 1 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
2 Sup. Ct.);
- 3 • *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP
4 (E.D. Cal.);
- 5 • *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin
6 Sup. Ct.);
- 7 • *Perez v. Too Infinity Management, LLC, et al.*, Case No. 34-2020-00285276 (Sac. Sup. Ct.);
- 8 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 9 • *Valentin v Sacramento Laundry Company, Inc.* Case.No. 34-2019-00270987 (Sac. Sup. Ct.);
10 and
- 11 • *Whiteside v. SPSG Partners, et al.*, Case. No. 2:20-cv-01643-TLN-DMC (Sac. Sup. Ct.).

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

15 21. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
16 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
17 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
18 individual and class action cases, including those involving wage and hour claims, Private Attorney
19 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and
20 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
21 as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in
22 September 2022. Mr. Konini has worked on the written and oral discovery, including defending a
23 PAGA representative's deposition, drafting special interrogatories and request for production of
24 documents, calculating class-wide damages, communicating with class representatives, drafting
25 mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages
26 calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other
27 class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and*
28 *Chemicals, Inc.*, Case No. 34-2018-00236898, *Carr v. Howroyd-Wright Employment Agency, Inc.*,

Case No. 34-2018-00228290, *Gomez v. Vander Schaaf Dairy*, et al., Case No. STK-CV-UOE-2020-0003954, *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473, *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152. Mr. Konini's practice largely revolves around wage and hour matters, including PAGA claims.

22. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiffs have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. There was substantial risk in agreeing to take this case on a contingency basis and as a class action with the possibility that our firm would not receive any compensation their time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. In my experience, the attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically approved in wage and hour class action litigation. This includes awards in Sacramento County Superior Court. For example, On May 5, 2016, the Honorable Alan G. Perkins, who presided over the Court's Complex Department at the time, awarded 35% of the \$4,000,000.00 common fund settlement for attorney's fees, which included a 1.23x multiplier of counsel's lodestar in that case. A true and correct copy of the May 5, 2016, Minute Order is filed with this Motion as Exhibit G.

23. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this case. The total lodestar is approximately \$2,52,165 based on approximately 432.2 hours, which include approximately 10 hours of time for myself and 15 hours for Mr. Konini preparing for and attending the final approval hearing, ensuring compliance and the disbursement of funds consistent with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Konini and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. Ms. Hart was no longer with our firm at the time this Motion was filed, so I was not able to review with her. I independently reviewed her billing entries. A true and correct copy of the summary

chart is being filed with this Motion as Exhibit F. In reviewing the entries, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	113.4	\$725	\$82,215.00
Justin P. Rodriguez	172.3	\$625	\$107,687.50
Jessica L. Hart	101.5	\$425	\$43,137.50
Renald Konini	45	\$425	\$19,125.00
Total:	432.2		\$252,165.00

24. I believe the requested rates of \$425 per hour for Ms. Hart, \$425 per hour for Mr. Konini, \$625 per hour for myself, and \$725 per hour for Mr. Shimoda are within the prevailing market rates for Sacramento County and elsewhere. We have approximately 2.5 years,¹ 8 years, 11 years, and 19 years of experience, respectively, litigating complex wage and hour class and PAGA actions. In May 2016, the Sacramento County Superior Court approved hourly rates of \$695 for a partner with approximately 18 years of experience, \$575 for partners with approximately 12 years of experience, and rates for associates with approximately 4 years of experience in the range of \$375-\$425 in a wage and hour class action settlement. See Exhibit G. According to the U.S. Bureau of Labor Statistics, the value of goods and services costing \$575 in May 2016 have an equivalent value of \$710.42 in today's dollars as of September 2022. See https://www.bls.gov/data/inflation_calculator.htm. In addition, in November 2022, the Sacramento County Superior Court approved Mr. Shimoda and Mr. Rodriguez at these rates in connection with a motion for final approval of a wage and hour class action settlement in

¹ Although licensed in July 2020, Ms. Hart had been working as a Senior Paralegal and Law Clerk for approximately 12 years since she graduated law school in 2004.

1 *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). A true
2 and correct copy of the final approval order in the *Strawn* matter is being filed with this Motion as
3 Exhibit H. Another Associate in my firm, Ms. Brittany Berzin was awarded an hourly rate of \$425 per
4 hour. I believe Mr. Konini and Ms. Hart have a similar level of experience and skill as Ms. Berzin, so I
5 believe the awarded rate is comparable for them as well. Awarding fees at the hourly rate in effect at
6 the time of the fee request is an appropriate and judicially approved method. *See Missouri v. Jenkins by*
7 *Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the request of \$236,250
8 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of the class.

9 25. The expected costs through final approval are \$10,628.17. Attached as Exhibit D is a
10 true and correct copy of the costs incurred prior to the filing of this Motion and the expected costs
11 incurred through the final approval and fairness hearing. The difference in the actual costs and the
12 originally allocated \$15,000.00 under the Agreement will be added to the Net Settlement Amount.

13 26. I have used several class action administrator companies in the wage and hour class
14 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
15 administer the class settlement. Under the settlement the difference between the originally allocated
16 \$30,000, and the actual administration costs of \$13,690.28 will be paid to the Class Members on a pro
17 rata basis.

18 27. The intended *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and
19 The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement
20 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

21 28. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
22 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
23 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
24 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
25 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
26 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
27 Program of Northern California ("VLSP") to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
28

1 *pres* funds from several jurisdictions in the State of California pursuant to California Code of Civil
2 Procedure section 384, including from Sacramento County Superior Court.

3 29. CPB was preliminarily approved as a *cy pres* beneficiary, any funds received will be
4 dedicated to the Employment Law Clinic and Advice Line project, which assists the indigent with legal
5 matters related to their current or former employment. This assistance regularly includes, but is not
6 limited to, free legal advice regarding claims for unpaid wages, failure to provide meal and rest periods,
7 failure to pay reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance
8 with legal forms, and direct representation in administrative hearings, including administrative hearings
9 in front of the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic
10 coordinator who provide assistance, along with experienced employment law attorney volunteers. These
11 services have been a focus of the Employment Law Clinic and Advice Line project since its inception
12 with VLSP and continuing through today under CPB.

13 30. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
14 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
15 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
16 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
17 workers and advises them as to the available legal remedies. In addition to individual counseling on
18 employment issues, the CFWR educates workers, unions, and community members about workplace
19 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

20 31. The CFWR provides limited representation for low-wage workers in wage claims before
21 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
22 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
23 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
24 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
25 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
26 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
27 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
28

1 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
2 respect to those wage claims.

3 32. I believe the services provided by CPB and the CFWR promote the law consistent with
4 the objective of wage and hour class actions in general and in this case specifically.

5 33. I have spoken with every other attorney at my firm to determine whether they have any
6 relationship with either of the proposed *cy pres* beneficiaries. Galen T. Shimoda, my partner, has
7 volunteered for both organizations on and off over the past several years through either presenting wage
8 and hour seminars to law students who staff the free advice clinics or helping at the advice clinics
9 themselves. However, Mr. Shimoda has not performed any volunteer work with either organization
10 since approximately March 2020. Mr. Shimoda has never received payment or compensation of any
11 kind in connection with any work he's done with either of the proposed *cy pres* beneficiaries.

12 34. Brittany V. Berzin, an associate attorney at my firm, has never done any work, volunteer
13 or otherwise with Capital Pro Bono, Inc. During law school, Ms. Berzin was a student volunteer for the
14 CFWR for two summers. Since graduating law school, she has volunteered for the CFWR
15 approximately one to two times per year, assisting in the advice clinic. She is currently the Chair of the
16 Board of Directors for CFWR. Ms. Berzin has never received payment or compensation of any kind in
17 connection with any work she's done with the CFWR. Renald Konini who is also an associate attorney
18 at my firm, has never done any work, volunteer or otherwise, with Capital Pro Bono, Inc., or the Center
19 for Workers Rights.

20 35. I have volunteered for both CPB and the CFWR numerous times over the past several
21 years, either directly in the advice clinics or by presenting seminars on wage and hour laws for law
22 students seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's
23 advisory committee. I have witnessed firsthand the quality service and attention these entities provide to
24 individuals in need of employment law advice and representation at the California Labor Commissioner.
25 I believe the services they provide directly support and promoted the purposes underlying this lawsuit. I
26 do not receive any compensation, whether direct or indirect, for my time spent volunteering for these
27 entities or for designating them as *cy pres* beneficiaries.
28

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

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct. Executed this 15th day of December 2022 in Elk Grove, California.

7
8 
9 _____
Justin P. Rodriguez