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11 individually and on behalf of all other persons
12 similarly situated and the general public

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SELENA TOWELL, individually and on
behalf of all other persons similarly situated,
and on behalf of and the general public,,

Plaintiff,

v.

SILVER STAR A.G., LTD., a California
corporation; and DOES 1 through 30,
inclusive,,

Defendants.

Case No. 20STCV35957
Assigned for All Purposes to:
Hon. Yvette M. Palazuelos, Dept. 9

**NOTICE OF PLAINTIFF'S UNOPPOSED
MOTION AND MOTION FOR
APPROVAL OF SETTLEMENT FOR
PENALTIES UNDER LABOR CODE
SECTIONS 2698, ET. SEQ.;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
SHADIE L. BERENJI IN SUPPORT
THEREOF**

*[[Proposed] Order and Judgment filed
concurrently herewith]*

Hearing Date: March 28, 2023
Time: 10:00 a.m.
Dept.: 9

Plaintiff's Filing Deadline: February 27, 2023
Defendant's Opp. Deadline: March 8, 2023
Plaintiff's Reply Deadline: March 14, 2023

Action Filed: 9/18/2020

1 **TO ALL PARTIES, THEIR ATTORNEYS OF RECORD AND THE COURT:**

2 PLEASE TAKE NOTICE that on March 28, 2023 at 10:00 a.m., or as soon thereafter as the
3 matter can be heard in Department 9 of the Los Angeles County Superior Court, located at 312
4 N. Spring Street, Los Angeles, California 90012, Plaintiff SELENA TOWELL (“Plaintiff”) will
5 move for an order approving the amount of the California Labor Code Private Attorneys General
6 Act of 2004 (“PAGA”) civil penalties sought as part of a settlement with Defendant SILVER STAR
7 A.G., LTD. (“Defendant”) (Plaintiff and Defendant collectively, “the Parties”) pursuant to
8 California Labor Code section 2699, subdivision (l).

9 In October 2022, the Parties agreed to resolve this action and thereby entered into a
10 settlement agreement that included, in pertinent part, a release of Plaintiff’s PAGA claims in
11 consideration for Defendant’s payment of Two Hundred and Five Thousand Dollars and Zero Cents
12 (\$205,000.00) in civil penalties under PAGA (“Gross Settlement Sum”). One Hundred Eighteen
13 Thousand Six Hundred and Sixty Seven Dollars and Zero Cents (\$118,667.00) of the Gross
14 Settlement Sum will be distributed to the LWDA and Aggrieved Employees (“Net Settlement
15 Sum”), Sixty-Eight Thousand Three Hundred and Thirty Three Dollars and Zero Cents (\$68,333.00)
16 will cover Plaintiff’s counsel’s attorney fees, and up to Ten Thousand Dollars and Zero Cents
17 (\$10,000.00) will be paid for Plaintiff’s counsel’s litigation costs. The Parties believe the payment
18 of \$118,667.00 in PAGA penalties and up to \$78,333 for attorney fees and costs is reasonable and
19 Plaintiff respectfully requests approval of the settlement from the Court.

20 This motion is based on the attached memorandum of points and authorities, the Declaration
21 of Shadie L. Berenji, the [Proposed] Order, and the [Proposed] Judgment filed concurrently
22 herewith, the concurrently-filed Confidential Declaration of Shadie L. Berenji in Support of
23 Plaintiff’s Unopposed Motion for Approval of Settlement for Penalties under Labor Code Sections
24 2698, et. seq., the pleadings, records, and files in this action, and on such further oral and/or
25 documentary evidence as may be presented at the time of the hearing on this motion.

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DATED: January 3, 2023

BERENJI LAW FIRM, APC

By: 
SHADIE L. BERENJI
KRISTOPHER N. TAYYEB
Attorneys for Plaintiff

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TABLE OF CONTENTS

I. STATEMENT OF RELEVANT FACTS 1

 A. Plaintiff’s Lawsuit 1

 B. The Parties Reach a Settlement of all Claims 2

II. THE PRIVATE ATTORNEYS GENERAL ACT OF 2004..... 3

 A. Plaintiff Exhausted PAGA’s Administrative Procedures..... 4

 B. PAGA Settlement Notice and Payment to the LWDA & Aggrieved
 Employees..... 4

III. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED BY
THE COURT 5

 A. The Settlement Is the Product of Serious, Informed and Non-Collusive
 Negotiations 6

 B. The PAGA Settlement Falls Well Within the Range for Approval According to
 Class Action Standards..... 7

IV. PLAINTIFFS’ COUNSEL’S REQUESTED ATTORNEYS’ FEES & COSTS 12

V. CONCLUSION 15

TABLE OF AUTHORITIES

CASES

<i>Alvidrez v. Unifirst Corporation</i> , (San Bernardino Super Ct., November 25, 2013) Case No. CIVRS1308105.....	11
<i>Amaral v. Cintas Corp. No. 2</i> , (2008) 163 Cal.App.4th 1157.....	11
<i>Arias v. Superior Court</i> , (2009) 46 Cal.4th 969	5, 6, 12, 13
<i>Bart v. Parkview Community Hospital Medical Center</i> , (Riverside Super Ct., June 19, 2014) Case No. RIC1406044	11
<i>Brown v. Ralph's Grocery Co.</i> , (2011) 197 Cal.App.4th 489.....	5
<i>Caliber Bodyworks, Inc. v. Superior Court</i> , (2005) 134 Cal.App.4th 365.....	4
<i>Carrington v. Starbucks</i> , (2018) 30 Cal.App.5th 504.....	11
<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal.App.4th 43.....	13
<i>Chu v. Wells Fargo Investments, LLC</i> , (N.D. Cal. 2011) 2011 WL 672645	10
<i>Class Plaintiffs v. City of Seattle</i> , (9th Cir. 1992) 955 F.2d 1268	7
<i>Delao v. Oldcastle Building Products, Inc.</i> , (Riverside Super Ct., January 14, 2015) Case No. RIC1500457	11
<i>Doty v. Costco Wholesale Corp.</i> , (C.D. Cal. May 14, 2007) Case No. CV05-3241 FMC-JWJx.....	11
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal.App.4th 1794.....	8
<i>Dunlap v. Superior Court</i> , (2006) 142 Cal.App.4th 330.....	4
<i>Franco v. Athens Disposal Co., Inc.</i> , (2009) 171 Cal.App.4th 1277.....	5, 12, 14

1	<i>Franco v. Ruiz Food Prods., Inc.,</i>	
2	(E.D. Cal. 2012) 2012 WL 5941801	11
3	<i>Gomez v. Amadeus Salon, Inc.,</i>	
4	(L.A. County Super. Ct. July 23, 2010) Case No. BC392297	11
5	<i>Graham v. DaimlerChrysler Corp.,</i>	
6	(2005) 34 Cal. 4th 553	12
7	<i>Hanlon v. Chrysler Corp.,</i>	
8	(9th Cir. 1998) 150 F.3d 1011	10
9	<i>Hicks v. Toys “R” Us–Delaware, Inc.,</i>	
10	(C.D. Cal. 2014) 2014 WL 4703915	11
11	<i>Hopson v. 7 Hanesbrands Inc.,</i>	
12	(N.D. Cal. 2009) 2009 WL 928133	10
13	<i>In re M.L. Stern Overtime Litig.,</i>	
14	(S.D. Cal. 2009) 2009 WL 995864.....	10
15	<i>In re Walsh Public Power Supply Sys. Sec. Litig.,</i>	
16	(1989) 720 F. Supp. 1379.....	7
17	<i>Iskanian v. CLS Transportation Los Angeles, LLC,</i>	
18	(2014) 59 Cal.4th 348	5
19	<i>Ketchum v. Moses,</i>	
20	(2001) 24 Cal.4th 1122	12
21	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
22	(2008) 168 Cal.App.4th 116.....	8
23	<i>Laffitte v. Robert Half Int’l Inc.,</i>	
24	(2016) 1 Cal.5th 480	13
25	<i>Lealao v. Beneficial California, Inc.,</i>	
26	(2000) 82 Cal.App.4th 19.....	13
27	<i>Lim v. Victoria's Secret Stores, Inc.,</i>	
28	(Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213.....	11
	<i>Makabi v. Gedalia,</i>	
	(2016) 2016 WL 815937.....	11
	<i>McKenzie v. Fed. Express Corp.,</i>	
	(C.D. Cal. 2012) 2012 WL 12882124.....	10

1	<i>Mendizabal v. Crothall Healthcare Inc.,</i>	
2	(C.D. Cal. 2016) No. 2:14-CV-08901-DSF-AJW	11
3	<i>Munoz v. BCI Coca-Cola Bottling Co.,</i>	
4	(2010) 186 Cal.App.4th 399.....	8
5	<i>Munoz v. UPS Ground Freight, Inc.,</i>	
6	(N.D. Cal. 2009) 2009 WL 1626376	10
7	<i>Nesbit v. Procare One Nurses, LLC,</i>	
8	(C.D. Cal. 2011) 2011 WL 10451909.....	11
9	<i>Palencia v. 99 Cents Only Stores,</i>	
10	(Sacramento County Super. Ct.) Case No. 34-2010-00079619	11
11	<i>Ressler v. Federated Dep't Stores, Inc.,</i>	
12	(L.A. County Super. Ct. Jan. 27, 2009) Case No. BC335018.....	11
13	<i>Salazar v. PODS Enterprise, LLC,</i>	
14	(C.D. Cal. May 8, 2019) 2019 WL 2023726.....	9
15	<i>Schiller v. David's Bridal, Inc.,</i>	
16	(E.D. Cal., July 14, 2010, No. 1:10-CV-00616 AWI) 2010 WL 2793650	9
17	<i>Serrano v. Priest,</i>	
18	(1977) 20 Cal.3d 25	13
19	<i>Smith v. Brinker Intern., Inc.,</i>	
20	(N.D. Cal. May 5, 2010, No. C 10-0213 VRW) 2010 WL 1838726	9
21	<i>Smith v. Lux Retail North America,</i>	
22	(N.D. Cal. June 13, 2013) 2013 WL 2932243	9
23	<i>Snow v. United Parcel Service, Inc.,</i>	
24	(C.D. Cal., Apr. 1, 2020, No. EDCV20025PSGAFMX) 2020 WL 1638250	9
25	<i>Sorenson v. PetSmart, Inc.,</i>	
26	(E.D. Cal. Dec. 17, 2008) Case No. 2:06-CV-02674-JAM-DAD	11
27	<i>Viceral v. Mistras Group,</i>	
28	(N.D. Cal. 2016) 2016 WL 5907869	10
	<i>Wershba v. Apple Computer,</i>	
	(2001) 91 Cal.App.4th 224.....	8, 13
	STATUTES	
	California Labor Code § 2699	3, 4, 12, 13

1	California Labor Code § 2699.3.....	4
2	California Labor Code § 2699.5.....	4
3	TREATISES	
4	Newberg § 14.6	13
5		
6		
7		
8		
9		
10		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 **A. Plaintiff's Lawsuit**

4 On September 18, 2020, Plaintiff SELENA TOWELL ("Plaintiff") commenced a class
5 action lawsuit against Defendant SILVER STAR A.G., LTD. ("Defendant") (Plaintiff and
6 Defendant collectively, "the Parties") for violations of California wage and hour laws during her
7 employment with Defendant. See Declaration of Shadie L. Berenji, Esq. ("Berenji Decl.") attached
8 hereto, ¶ 3. Plaintiff's complaint alleged Defendant violated the California Labor Code and
9 Industrial Welfare Commission ("IWC") wage order by: (1) failing to pay minimum wages; (2)
10 failing to pay statutory/contractual wages; (3) failing to pay overtime wages; (4) failing to provide
11 rest periods; (5) failing to provide meal periods, (6) failing to pay vested vacation wages; (7) failing
12 to reimburse business expenses; (8) failing to maintain payroll records and provide itemized wages
13 statements; (9) failing to timely pay wages; (10) failing to provide payroll records; and (11) violating
14 the California Unfair Competition Laws. *Ibid.*; see also Plaintiff's Class Action Complaint for
15 Damages filed on September 18, 2020.

16 Plaintiff was employed as a "Vehicle Internet Salesperson" at one of Defendant's automobile
17 dealerships from approximately December 2018 to September 2019. Berenji Decl., ¶ 4. The crux
18 of her claims is that Defendant's commission-based compensation plans failed to compensate her
19 and other Aggrieved Employees for *non-productive* work in violation of California's wage-and-
20 hour laws. *Ibid.* She contends that Defendant's pay plan prior to August 1, 2019 was solely
21 commission-based and did not provide compensation for any work Plaintiff or other Aggrieved
22 Employees performed that did not directly result in the sale of a vehicle (e.g., waiting for prospective
23 customers to visit the dealership; working in the dealership before and after it was open to public;
24 attending necessary training for factory qualifications; complete quarterly online training to
25 maintain car sales certification; obtaining product knowledge for each new vehicle and model;
26 attending mandatory meetings; preparing paperwork; and, working on other similar administrative
27 tasks), as well as failing to pay for rest breaks. *Ibid.*

28 Defendant instituted a new pay plan on August 1, 2019 that contained a base hourly rate for

1 all hours worked by Plaintiff and the other Aggrieved Employees. However, Plaintiff contends that
2 the revised pay plan failed to correctly pay overtime premiums because it omitted commissions from
3 Defendant's calculation of the employees' regular rates of pay. Instead, Defendant paid overtime
4 wages at 1.5x the straight hourly rate. *Id.* at ¶ 5.

5 Plaintiff also contends that Defendant's policies and practices also failed to provide her and
6 other Aggrieved Employees with meal period premiums at the regular rate of pay, off-duty rest
7 periods, vested vacation wages at the final rate of pay, one day off from work in seven days, accurate
8 wage statements, and the timely payment of wages at the separation of employment. *Id.* at ¶ 6.

9 On September 18, 2020, pursuant to California Labor Code section 2698 *et seq.*, Plaintiff
10 sent a letter to the California Labor and Workforce Development Agency ("LWDA") advising of
11 her intent to seek Private Attorneys General Act of 2004 ("PAGA") penalties for Defendant's
12 violations of the California Labor Code. *Id.* at ¶ 7. To date, the LWDA has not expressed an intent
13 to investigate Plaintiff's alleged violations. *Ibid.*

14 Plaintiff subsequently amended the complaint to add: (1) a cause of action pursuant to
15 PAGA; and (2) a cause of action for failing to provide one day's rest. Berenji Decl., ¶ 8; see also
16 Plaintiff's First Amended Class Action Complaint for Damages filed on January 19, 2021.

17 In response to Plaintiff's class action lawsuit, Defendant moved on February 16, 2021 to
18 compel Plaintiff's individual claims to arbitration, dismiss her class claims, and stayed Plaintiff's
19 PAGA causes of action pending completion of arbitration. Berenji Decl., ¶ 10. On May 25, 2021,
20 the Court (Hon. Yvette M. Palazuelos presiding) granted Defendant's motion. *Ibid.* After her class
21 claims were dismissed and PAGA claims stayed, Plaintiff continued to litigate her individual claims
22 in arbitration against Defendant. *Id.* at ¶ 11.

23 **B. The Parties Reach a Settlement of all Claims**

24 At all times relevant herein, Defendant disputed and denied, and continue to dispute and
25 deny, that it was liable to Plaintiff for any of the claims asserted in Plaintiff's LWDA letter and/or
26 complaint. Berenji Decl., ¶ 12. Additionally, there has been no determination on the merits of
27 Plaintiff's legal claims and request for damages or civil penalties. *Ibid.*

28 Recently, in order to avoid the additional cost of litigation, the inconvenience and burden

1 of legal proceedings, as well as the uncertainties of trial and appeals, the Parties agreed to resolve
2 this matter and entered into a settlement agreement that included, in pertinent part, a release of
3 Plaintiff's PAGA claim ("PAGA Settlement Agreement").¹ Berenji Decl., ¶ 14. In exchange for a
4 release and judgment on Plaintiff's PAGA claim, Defendant agreed to pay Two Hundred and Five
5 Thousand Dollars and Zero Cents (\$205,000.00) in civil penalties under PAGA ("Gross Settlement
6 Sum"). One Hundred Eighteen Thousand Six Hundred and Sixty Seven Dollars and Zero Cents
7 (\$118,667.00) of the Gross Settlement Sum will be distributed to the LWDA and Aggrieved
8 Employees ("Net Settlement Sum"), up to Eight Thousand Dollars and Zero Cents (\$8,000.00) will
9 be paid to the settlement administrator, Sixty-Eight Thousand Three Hundred and Thirty Three
10 Dollars and Zero Cents (\$68,333.00) will cover Plaintiff's counsel's attorney fees, and up to Ten
11 Thousand Dollars and Zero Cents (\$10,000.00) will be paid for Plaintiff's counsel's litigation costs.
12 *Id.* at ¶13, Ex. A. Pursuant to California Labor Code section 2699, subdivision (i), seventy-five
13 percent (75%) of the net settlement sum will be paid to the LWDA and the remaining twenty-five
14 percent (25%) will be paid to the Aggrieved Employees. *Id.* at ¶ 29. For purposes of this settlement,
15 "Aggrieved Employees" are all current and former employees of Defendant in California who were
16 paid on an hourly and/or commission basis who worked for Defendant at any time between
17 September 18, 2019 and November 11, 2022 (the date both Parties executed the subject PAGA
18 Settlement Agreement). *Id.* at ¶ 30.

19 Additionally, the Parties entered into a separate confidential settlement agreement of
20 Plaintiff's individual wage-and-hour claims. *Id.* at ¶¶ 14-15; see also, Confidential Declaration of
21 Shadie L. Berenji in Support of Plaintiff's Application for Approval of Settlement for Penalties
22 Under Labor Code Sections 2698, et. seq., filed concurrently herewith conditionally under seal.

23 **II. THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

24 With a stated goal of improving enforcement of existing California Labor Code obligations,
25 the Legislature adopted the California Labor Code Private Attorneys General Act of 2004, codified
26 at Labor Code section 2698 *et seq.*, which allows an aggrieved employee to initiate a private civil
27

28 ¹ See Exhibit B to the Berenji Declaration for a redlined version of the PAGA Settlement Agreement that shows the changes made from the Los Angeles Superior Court's [Model] PAGA Settlement Agreement.

1 action for “civil penalties” that were previously enforceable only by the State of California’s labor
2 law enforcement agencies. Lab. Code, §2699; *Caliber Bodyworks, Inc. v. Super. Ct.* (2005) 134
3 Cal.App.4th 365, 377 (“*Caliber*”). If parties settle PAGA claims in a case that was filed after July
4 1, 2016, the superior court must review and approve any penalties sought as part of a proposed
5 settlement agreement. See Lab. Code, §2699, subd. (I)(2).

6 **A. Plaintiff Exhausted PAGA’s Administrative Procedures**

7 Before an employee may file an action seeking to recover such “civil penalties” for
8 violations of any of the California Labor Code provisions enumerated in section 2699.5, he or she
9 must comply with PAGA’s administrative procedures as set forth in Labor Code section 2699.3,
10 subdivision (a), which includes providing notice to the LWDA and the employer, and waiting a
11 prescribed period of time to permit the LWDA to investigate and decide whether to cite the employer
12 for the alleged violations. See *Caliber, supra*, 134 Cal.App.4th at p. 370; see also, *Dunlap v. Super.*
13 *Ct.* (2006) 142 Cal.App.4th 330. If the LWDA declines to pursue the penalties, the employee may
14 proceed in court.

15 Here, on September 18, 2020, Plaintiff exhausted her administrative claim for PAGA
16 penalties by sending a letter to the LWDA. See Berenji Decl., ¶ 7. The LWDA did not notify
17 Plaintiff that the agency intended to pursue any allegations per Labor Code section 2699.3,
18 subdivision (a)(2)(A). *Ibid.*

19 **B. PAGA Settlement Notice and Payment to the LWDA & Aggrieved Employees**

20 On the same date that this motion is submitted to the Court, January 3, 2023, Plaintiff’s
21 counsel submitted a copy of the proposed PAGA Settlement Agreement to the LWDA via its online
22 system that is used to transmit notices and requests. See Berenji Decl., ¶ 44, Ex. C. The Parties
23 have agreed to give notice of the PAGA settlement to the Aggrieved Employees with the use of a
24 settlement administrator. *Id.* at ¶ 31. The settlement administrator will be paid costs which are
25 currently estimated not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) for
26 administering the settlement. *Ibid.* Defendant has agreed to provide the settlement administrator
27 with a list of all Aggrieved Employees no later than twenty (20) calendar days after the Court issues
28 a final order and judgment approving the PAGA settlement and enters the judgment. *Ibid.*

1 Defendant will thereafter deposit the settlement sum with the settlement administrator within thirty
2 (30) calendar days of the Court issuing a final order and judgment approving the PAGA settlement
3 and entering judgment. *Ibid.* The settlement administrator shall make the settlement payments to
4 all the Aggrieved Employees on a pay period basis within fourteen (14) calendar days of the
5 settlement sum being funded. *Ibid.*

6 **III. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**
7 **BY THE COURT**

8 In PAGA actions, the California Court of Appeal has suggested that the overall intent of
9 PAGA is to provide a mechanism for private enforcement of labor laws that is not necessarily tied
10 to the recovery of a specific threshold amount of penalties. See *Brown v. Ralph's Grocery*
11 *Co.* (2011) 197 Cal.App.4th 489, 401 (“The purpose of the PAGA is not to recover damages or
12 restitution”). The primary objective of a PAGA action “is to supplement enforcement actions by
13 public agencies, which lack adequate resources to bring all such actions themselves.” *Arias v.*
14 *Superior Court* (2009) 46 Cal.4th 969, 980–981, 986. **“Restitution is not the primary object of**
15 **a PAGA action, as it is in most class actions.”** *Franco v. Athens Disposal Co., Inc.* (2009) 171
16 Cal.App.4th 1277, 1300 (emphasis added). Rather, a PAGA action is “fundamentally a law
17 enforcement action designed to protect the public and penalize the employer for past illegal
18 conduct.” *Ibid.* Prior to the enactment of PAGA, the California Legislature determined that it lacked
19 adequate financing to enforce California labor laws and in order **“to achieve maximum compliance**
20 **with state labor laws,”** it declared that it was in the public interest to allow employees, acting as
21 private attorneys general, to recover civil penalties that otherwise would have been assessed and
22 collected by the LWDA. *Arias, supra*, 46 Cal.4th at pp. 980-981. A plaintiff suing under PAGA
23 does so as “the proxy or agent” of the State of California to enforce labor laws on behalf of the
24 state’s law enforcement agencies. *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
25 Cal.4th 348, 380-381.

26 As a result of Plaintiff’s counsel’s efforts, Plaintiff’s PAGA action undoubtedly achieves the
27 “primary objective of a PAGA action” when Plaintiff’s counsel “supplemented the [LWDA’s]
28 enforcement action” by filing the PAGA complaint on the behalf of Plaintiff and the State of

1 California, and utilizing Plaintiff's counsel's law firm's resources to litigate the action against the
2 Defendant in an effort to compel "maximum compliance with labor laws." See Berenji Decl., ¶¶
3 35-42; *Arias, supra*, 46 Cal.4th at 980-981.

4 **A. The Settlement Is the Product of Serious, Informed and Non-Collusive**
5 **Negotiations**

6 The "PAGA Settlement Agreement" that was entered by and between the Plaintiff and
7 Defendant on November 11, 2022 is the result of arms-length and non-collusive negotiations after
8 substantial investigation. See Berenji Decl., ¶ 16. In reaching the settlement, counsel on both sides
9 relied on their respective substantial litigation experience in similar actions, and the analysis of the
10 legal and factual issues presented in this case. *Ibid.* During the matter, Plaintiff's counsel conducted
11 extensive informal discovery which resulted in the production of more than five hundred fifty (550)
12 pages of documents from Defendant. *Ibid.* These documents included Plaintiff's timekeeping and
13 pay records, and personnel file; Defendant's wage and hour, time keeping, and pay policies; and the
14 time punch records and pay summaries of a random sample of 20% of the Aggrieved Employees.
15 *Ibid.* A substantial amount of time was spent by Plaintiff's counsel analyzing the information and
16 data provided by Defendant. *Ibid.*

17 The information obtained through informal discovery informed Plaintiff's counsel's
18 assessment of the strengths and weaknesses of the case and the benefits of settlement. *Id.* at ¶ 17.
19 Plaintiff's liability and damages evaluation was premised on, among other things, a careful and
20 extensive analysis of the scope and applicability of the defenses claimed by Defendant, and a
21 thorough analysis of the number of Aggrieved Employees and their employment data. *Ibid.*
22 Importantly, this analysis confirmed that Defendant changed its compensation practices in August
23 2019 by instituting a revised pay plan that contained a base hourly rate for all hours worked by
24 Plaintiff and the other Aggrieved Employees. *Ibid.* This change, in turn, ensured that Plaintiff and
25 the other Aggrieved Employees were paid at least minimum wage for all hours worked and cut off
26 liability for PAGA penalties for failing to pay minimum wage. *Ibid.*

27 The Parties ultimately concluded it was desirable to settle this action in order to avoid the
28 further expense, inconvenience, and burden of additional legal proceedings, as well as the

1 uncertainties of trial, the amount of the *discretionary* PAGA award for either party, appeals and/or
2 changes in case law interpreting PAGA. *Id.* at ¶ 19. The settlement negotiations took place before
3 the Hon. Jeffrey K. Winikow (Ret.) a former Los Angeles County Superior Court judge and well-
4 established and highly-regarded neutral mediator of wage and hour class and PAGA actions in
5 California. *Id.* at ¶ 20. The mediation occurred only after Plaintiff’s counsel had the opportunity to
6 conduct a thorough independent investigation of the facts and review over 550 pages of documents
7 produced by Defendant. *Id.* at ¶ 21. Based on these documents and information Defendant
8 previously provided, Plaintiff’s counsel was able to conduct an in-depth damages analysis. *Ibid.*
9 Ultimately, Plaintiff’s counsel spent a substantial amount of time analyzing the Plaintiff’s and
10 Aggrieved Employees’ time records, payroll records, and Defendant’s pay plans and pertinent wage
11 and hour policies. *Id.* at ¶ 22.

12 The mediation was contentious. *Id.* at ¶ 23. The Parties were at an impasse at the end of the
13 mediation hearing, at which time Judge Winikow made a mediator’s proposal, which the Parties
14 rejected. *Ibid.* After later follow-up and negotiation from Judge Winikow, he made a second
15 mediator’s proposal – which the Parties again rejected. *Ibid.* Finally, after more negotiations, Judge
16 Winikow made a third mediator’s proposal, which the Parties this time accepted. *Ibid.* Importantly,
17 the settlement sums for Plaintiff’s PAGA claims and individual claims were negotiated separately.
18 *Id.* at ¶ 24. This matter has been hard-fought with aggressive and capable advocacy on both sides
19 for more than two years. Accordingly, “[t]here is likewise every reason to conclude that settlement
20 negotiations were vigorously conducted at arms’ length and without any suggestion of undue
21 influence.” *In re Walsh Public Power Supply Sys. Sec. Litig.* (1989) 720 F. Supp. 1379, 1392, *aff’d*
22 *sub nom Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268.

23 **B. The PAGA Settlement Falls Well Within the Range for Approval According to**
24 **Class Action Standards**

25 Even though PAGA actions are not subject to the heightened class certification or settlement
26 standards, the subject PAGA settlement falls within the range for approval according to class action
27 standards. In class action lawsuits, settlements are entitled to a presumption of fairness where: “(1)
28 the settlement is reached through arm's-length bargaining; (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
2 litigation; and (4) the percentage of objectors is small.” *Dunk v. Ford Motor Co.* (1996) 48
3 Cal.App.4th 1794, 1802.

4 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127-128 (“*Kullar*”), the
5 appellate court explained that, although “not exhaustive,” a determination of whether a settlement
6 is “fair, adequate and reasonable” should take into account the strength of a plaintiff’s case, as well
7 as the risk, expense, complexity, and likely duration of further litigation. See also, *Wershba v. Apple*
8 *Computer* (2001) 91 Cal.App.4th 224, 245. Following *Kullar*, in the more recent case, *Munoz v.*
9 *BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399 (“*Munoz*”), there was a sole objector to
10 the \$1.1 million settlement of a wage and hour class action who appealed the trial court’s approval
11 of the settlement. The objector/appellant contended that the trial court lacked evidence concerning
12 “the potential value of the claims,” and that such a defect violated the *Kullar* standards because an
13 “informed evaluation cannot be made without an understanding of the amount that is in controversy
14 and the realistic range of outcomes of the litigation.” *Id.* at p. 409. The *Munoz* court disagreed, and
15 held that “*Kullar* does not . . . require any such explicit statement of value; it requires a record,
16 which allows ‘an understanding of the amount that is in controversy and the realistic range of
17 outcomes of the litigation.’” *Ibid.* Accordingly, under the *Munoz* standard, a plaintiff need only
18 provide enough information to give an understanding of the amount in controversy and the realistic
19 range of outcomes, not an explicit quantification of the maximum amount of damages recoverable
20 for each claim on a class-wide basis.

21 Moreover, as discussed above, California appellate courts have suggested that the overall
22 intent of PAGA is to provide a mechanism for private enforcement of the labor laws that is not
23 necessarily tied to the recovery of a specific threshold amount of penalties. These principles,
24 coupled with the concepts borrowed from the class action context, militate strongly in favor of
25 approving the proposed PAGA Settlement Agreement.

26 Plaintiff’s operative complaint for damages seeks the recovery of all penalties available
27 under PAGA. For all the reasons cited herein, the Parties have agreed to settle Plaintiff’s PAGA
28 claims in exchange for Defendant’s payment of civil penalties under PAGA. Defendant will pay

1 75% of the net settlement amount to the LWDA and the remaining 25% to the Aggrieved
2 Employees. Berenji Decl., ¶ 29. The Parties and their respective counsel believe that the settlement
3 reached is fair, reasonable, and adequate, and falls well within the range of reasonable outcomes
4 based on *class action* standards for the following reasons:

5 At the time of mediation, there were a total of 52 Aggrieved Employees and 1939 pay periods
6 that fell within the applicable statutory time period. *Id.* at ¶ 26. There were 29 Aggrieved
7 Employees who are former employees of Defendant, resulting in a maximum of 29 pay periods for
8 the unpaid vacation wages and untimely pay PAGA claims. *Ibid.* Plaintiff accordingly valued the
9 PAGA claims at mediation between \$193,900 and \$975,300, based on whether or not the Court
10 would permit Plaintiff to “stack” the PAGA penalties.² *Ibid.*

11 The maximum value for this litigation was discounted, and the parties ultimately settled the
12 PAGA claim for \$205,000, due to an analysis of Defendant’s defenses for each claim, the probability
13 of prevailing at trial, the risk that the Court would decline to award and stack PAGA penalties to
14 Plaintiff or significantly reduce the requested penalties, as well as the risk of appeals. *Id.* at ¶ 27.
15 Although Plaintiff believes her claims are meritorious, Plaintiff faced substantial risks in trying to
16 obtain a judgment and a large PAGA penalty award against Defendant in light of its defenses.
17 Several factors were considered in arriving at the proposed settlement, including: (1) Defendant’s
18 denial of any liability in this matter; (2) Defendant’s denial of any violations of the California Labor
19 Code which would have entitled Plaintiff to recover penalties under PAGA; (3) the disputed
20 underlying facts of the case; (4) the significant investments of time and expense in the future by the
21 Parties to litigate the claims for penalties under PAGA; (5) the non-existent guarantee of an outcome

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23
24 ² Presently, there is no binding legal authority that establishes whether multiple PAGA penalties may be
25 assessed for multiple different types of Labor Code violations in a single pay period (i.e., “stacking” the
26 penalties), or if only one PAGA penalty may be assessed for each pay period in the PAGA action regardless
27 of the total number of different types of Labor Code violations. See, e.g., courts
28 that **permit** stacking: *Schiller v. David's Bridal, Inc.* (E.D. Cal., July 14, 2010, No. 1:10-CV-00616 AWI)
2010 WL 2793650, at *6; *Smith v. Brinker Intern., Inc.* (N.D. Cal. May 5, 2010, No. C 10–0213 VRW) 2010
WL 1838726, at * 2–6; *Snow v. United Parcel Service, Inc.* (C.D. Cal., Apr. 1, 2020, No.
EDCV20025PSGAFMX) 2020 WL 1638250, at *3; see also, e.g., courts that **do not**
permit stacking: *Salazar v. PODS Enterprise, LLC* (C.D. Cal. May 8, 2019) 2019 WL 2023726, at *6; *Smith*
v. Lux Retail North America (N.D. Cal. June 13, 2013) 2013 WL 2932243, at *4.

1 on the PAGA claims for either party at trial; (6) the delayed resolution of this dispute until trial, and
2 regardless of the outcome, the significant risk of further delay due to appeals; (7) the case law
3 interpreting the PAGA which is sparse and subject to change; and, (8) the fact that any award of
4 penalties under PAGA is within the discretion of the trial court. *Id.* at ¶ 25. Additionally, the fact
5 that Defendant changed its compensation practices and instituted a new pay plan on August 1, 2019
6 also decreased the maximum reasonable value of Plaintiff’s PAGA claims because the new pay plan
7 ensured that Plaintiff and the other Aggrieved Employees were paid minimum wage for all hours
8 worked. *Ibid.* Where both sides face significant uncertainty, the attendant risks favor settlement.
9 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.

10 After mediation, Defendant updated its information about the total number of Aggrieved
11 Employees and PAGA pay periods. As of October 31, 2022, Defendant estimates that there are a
12 total of 56 Aggrieved Employees who worked a total of 2,083 PAGA pay periods. *Id.* at ¶ 28.

13 As a result of the PAGA Settlement Agreement: (1) Defendant will pay \$118,667 in civil
14 penalties and \$78,333 for attorney fees and litigation costs; (2) the LWDA – the primary beneficiary
15 in a PAGA action – will receive approximately \$89,000; and, (3) the 56 Aggrieved Employees will
16 receive a PAGA penalty check; the average of which will be approximately \$529.77. *Id.* at ¶ 32.
17 Even though restitution is not the primary objective of a PAGA action, the net settlement amount
18 that Plaintiff’s counsel has proposed awarding to the LWDA is fair and well within the range of
19 PAGA awards approved by other courts. ³

20
21 ³ See, e.g., *Hopson v. 7 Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, at *1 [approving a PAGA
22 settlement of \$1,500 or 0.3% of total settlement amount]; *Viceral v. Mistras Group* (N.D. Cal. 2016) 2016
23 WL 5907869 [approving \$20,000 PAGA payment or 0.15% of its total value of \$12,952,000]; *McKenzie v.*
24 *Fed. Express Corp.* (C.D. Cal. 2012) 2012 WL 12882124 at *5 [approving \$82,500 PAGA payment that
25 represents one percent (1%) of the \$8.25 million maximum settlement amount]; *Munoz v. UPS Ground*
26 *Freight, Inc.*, (N.D. Cal. 2009), 2009 WL 1626376, at *1 [approving PAGA settlement of \$60,000 or 2
27 percent (2%) of total settlement amount]; *In re M.L. Stern Overtime Litig.*, (S.D. Cal. 2009) 2009 WL 995864,
28 at *1 [approving PAGA settlement of \$20,000 or 2 percent (2%) of total settlement amount]; *Chu v. Wells*
Fargo Investments, LLC, (N.D. Cal. 2011) 2011 WL 672645, at *1 [approving PAGA settlement payment
of \$7,500 to the LWDA out of \$6.9 million common-fund settlement]; *Hicks v. Toys “R” Us–Delaware,*
Inc., (C.D. Cal. 2014), 2014 WL 4703915, at *1 [approving \$5,000 PAGA payment in a case involving a \$4
million settlement]; *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. 2012) 2012 WL 5941801, at *14
[approving PAGA penalties of just \$10,000 in \$2.5 million common fund settlement and noting that amount
was in line with settlement approval of PAGA awards in other cases]; *Mendizabal v. Crothall Healthcare*

1 The \$529.77 average net recovery for each Aggrieved Employee is also well within the range
2 of recoveries of approved class actions. See e.g., *Ressler v. Federated Dep't Stores, Inc.* (L.A.
3 County Super. Ct. Jan. 27, 2009) Case No. BC335018 (average net recovery of approximately \$90);
4 *Palencia v. 99 Cents Only Stores* (Sacramento County Super. Ct.) Case No. 34-2010-00079619
5 (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.* (C.D. Cal. May 14,
6 2007) Case No. CV05-3241 FMC-JWJx (average net recovery of approximately \$65); *Sorenson v.*
7 *PetSmart, Inc.* (E.D. Cal. Dec. 17, 2008) Case No. 2:06-CV-02674-JAM-DAD (average net
8 recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.* (Orange County Super. Ct. Jan.
9 20, 2006) Case No. 04CC00213 (average net recovery of approximately \$35); and, *Gomez v.*
10 *Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 (average net
11 recovery of approximately \$20).

12 Plaintiff's counsel has achieved a fair and reasonable results by any measure, but
13 particularly in comparison to some other PAGA lawsuits that have been adjudicated by trial. See,
14 e.g., *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504, 529 ("*Carrington*") (after trial, the court
15 imposed a **maximum penalty of \$5 per violation, totaling \$150,000** in PAGA penalties); *Makabi*
16 *v. Gedalia* (2016) 2016 WL 815937, at *2 (after trial, the court found in favor of plaintiffs on Labor
17 Code claims, but *declined* to award *any* PAGA penalties); *Amaral v. Cintas Corp. No. 2* (2008) 163
18 Cal.App.4th 1157 ("*Amaral*") (after trial, awarded \$258,900 in PAGA penalties, thereby declining
19 to impose the higher penalty rates plaintiffs sought).

20 Based on the foregoing, the Court should find that Plaintiff's counsel negotiated a fair,
21 reasonable and adequate PAGA settlement despite significant legal, factual, and procedural
22 obstacles. As a result of Plaintiff's counsel's efforts, Plaintiff's PAGA action undoubtedly achieved
23 the "primary objective of a PAGA action," as Plaintiff's counsel "supplemented the [State of

24 _____
25 *Inc.* (C.D. Cal. 2016) No. 2:14-CV-08901-DSF-AJW [approving a \$7,500 PAGA payment]; *Delao v.*
26 *Oldcastle Building Products, Inc.* (Riverside Super Ct., January 14, 2015) Case No. RIC1500457 [approving
27 a \$5,000 PAGA payment]; *Alvidrez v. Unifirst Corporation* (San Bernardino Super Ct., November 25, 2013)
28 Case No. CIVRS1308105 [approving a \$3,750 PAGA payment]; *Bart v. Parkview Community Hospital*
Medical Center (Riverside Super Ct., June 19, 2014) Case No. RIC1406044 [approving a \$10,000 PAGA
payment]; *Nesbit v. Procare One Nurses, LLC* (C.D. Cal. 2011) 2011 WL 10451909 [approving a \$18,750
PAGA payment]; *Makabi v. Gedalia* (2016) 2016 WL 815937, at *2 [after trial, the court found in favor of
plaintiffs on Labor Code claims, but *declined* to award PAGA penalties].

1 California's] enforcement action" by filing the PAGA complaint on the behalf of Plaintiff and the
2 State of California and utilized its law firm's resources to litigate the action against the Defendant
3 in an effort to compel "maximum compliance with [California] labor laws." See Berenji Decl. at
4 ¶¶ 35-42; *Arias, supra*, 46 Cal.4th at pp. 980-981.

5 As set forth above, restitution (i.e., the recovery of money for the LWDA) is not the primary
6 objective of a PAGA action. *Franco, supra*, 171 Cal.App.4th at p. 1300. Rather, by and through
7 PAGA, the State of California is attempting to achieve maximum compliance with state labor laws
8 and thus wants to incentivize employees to act as private attorneys general and bring these actions
9 to deter and penalize employers for illegal conduct. *Arias* at pp. 980-981. Plaintiff's PAGA action
10 done exactly that here. The PAGA Settlement Agreement also achieves the objective of penalizing
11 Defendant by requiring them to pay \$118,667 in civil penalties and \$78,333 in attorney fees and
12 costs in an effort to compel "compliance with California labor laws," and the settlement provides
13 the LWDA with money that will assist with the financing of its labor law enforcement actions to
14 further protect the public interest. Berenji Decl. at ¶ 32, 34. This penalty is in addition to the
15 individual settlement to Plaintiff for her non-PAGA claims, as well as the fact that Defendant
16 changed its compensation practices by instituting a new pay plan on August 1, 2019 pay plan that
17 ensured its hourly employees received at least minimum wage for all hours worked. *Id.* at ¶¶ 5,14-
18 15.

19 **IV. PLAINTIFFS' COUNSEL'S REQUESTED ATTORNEYS' FEES & COSTS**

20 The California legislature unequivocally provides in California Labor Code section 2699,
21 subdivision (g)(1), that a plaintiff that recovers a civil penalty is entitled to an award of reasonable
22 attorneys' fees and costs. Otherwise, competent counsel would not accept these cases and the State
23 of California would not be able to successfully supplement enforcement actions with employees
24 acting as private attorneys general. Cf. *Graham v. DaimlerChrysler Corp.* (2005) 34 Cal. 4th 553,
25 579-580, citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133 (in permitting the use of a
26 contingency fee multiplier in calculating private attorney general fees, the Supreme Court stated,
27 "[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving the
28 fair market value of his work if he is paid only for the second of these functions. If he is paid no

1 more, competent counsel will be reluctant to accept fee award cases.”). Thereby, considering this
2 is a representative action, and consistent with the terms of the PAGA Settlement Agreement and
3 California Labor Code section 2699, subdivision (g)(1), Plaintiff respectfully moves the Court to
4 award Plaintiff’s counsel’s request for attorney fees and litigation costs in the amount of Seventy-
5 Eight Thousand Three-Hundred Thirty-Three Dollars and Zero Cents (\$78,333.00). See Berenji
6 Decl., ¶ 13, Ex. A.

7 Such an award is both reasonable and consistent with the prevailing California practice of
8 awarding attorney fees in the amount of one-third (1/3) of a common fund. See *Laffitte v. Robert*
9 *Half Int’l Inc.* (2016) 1 Cal.5th 480, 502, 506 (holding that the percentage method to calculate
10 attorneys’ fees in a common fund case is acceptable and approving an attorneys’ fee award that was
11 one-third (33.33%) of the common fund); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66
12 n.11; Newberg, § 14.6 (same); *Wershba, supra*, 91 Cal.App.4th at p. 254 (recognizing both the
13 “percentage of recovery” and “lodestar/ multiplier” methods); *Lealao v. Beneficial California, Inc.*
14 (2000) 82 Cal.App.4th 19, 26-50 (discussing fees under common fund and fee-shifting statutes and
15 use of common fund as a “cross check” of fee-shifting award). Here, as a result of Plaintiff’s
16 counsel’s work, Defendant has agreed to pay \$118,667 in civil penalties to the LWDA and
17 Aggrieved Employees, up to 8,000 to the settlement administrator, and \$78,333 in attorney fees and
18 costs. Berenji Decl., ¶ 13, Ex. A. Thus, considering Plaintiff’s counsel has incurred at least \$10,000
19 in litigation costs, the subject attorney fees request is 1/3 (\$68,333) of the total amount Defendant
20 has agreed to pay for the release of Plaintiff’s PAGA claims. *Id.* at ¶ 34.

21 Courts may also assess the reasonableness of a request for attorneys’ fees by examining the
22 results of the settlement. See *Serrano v. Priest* (1977) 20 Cal.3d 25, 49. In assessing the
23 reasonableness of a PAGA settlement, the Court should consider that the primary objective of a
24 PAGA action “is to supplement enforcement actions by public agencies, which lack adequate
25 resources to bring all such actions themselves.” See *Arias, supra*, 46 Cal.4th at pp. 980–981, 986;
26 see generally *Franco, supra*, 171 Cal.App.4th at pp. 1300–1303. As set forth more fully in Section
27 III above, Plaintiff’s counsel negotiated a fair and reasonable PAGA settlement despite significant
28 legal, factual and procedural obstacles. The PAGA Settlement Agreement undoubtedly achieves

1 the objectives of a PAGA action by penalizing Defendant in an effort to compel compliance with
2 California labor laws and by providing the LWDA with funds that will help finance its labor law
3 enforcement actions to further protect the public interest.

4 The PAGA Settlement Agreement is the product of Plaintiff's counsel's skill and experience
5 in the narrow field of wage and hour litigation and its diligent efforts to obtain the best consensual
6 resolution for the LWDA and Aggrieved Employees. Berenji Decl., ¶ 35. Plaintiff's counsel
7 undertook a substantial amount of work and bore great risks to obtain a settlement that achieves the
8 objectives of PAGA and confers a substantial benefit to the LWDA and Aggrieved Employees. *Id.*
9 at ¶¶ 36-42. Beginning shortly after this action was filed and continuing over the next two years,
10 Plaintiff's counsel has spent approximately 170.4 hours thoroughly investigating and researching
11 the claims in controversy, Defendant's defenses, and the developing body of law, and litigating this
12 action on behalf of Plaintiff and the Aggrieved Employees. *Id.* at ¶¶ 16-18, 36-39.

13 Furthermore, Plaintiff's counsel's time investment and advancement of litigation costs on a
14 contingency basis carry the risk that its time and out-of-pocket costs would be lost if the case was
15 not resolved successfully. Berenji Decl., ¶ 34, 36-39. This risk created by the contingent nature of
16 the fee is substantial and such a risk should bear a commensurate reward. To date, Plaintiff's counsel
17 has incurred at least \$105,113.00 in uncompensated attorney fees and \$10,165.67 in litigation costs.
18 *Ibid.* Pursuant to the PAGA Settlement Agreement, Plaintiff's counsel will not receive more than
19 \$78,333 in attorney fees and litigation costs for all of its work regarding Plaintiff's PAGA claims.
20 *Id.* at ¶ 43. Accordingly, the Court should further find that a lodestar "cross-check" confirms that
21 the amount of the requested attorney fees is reasonable, as Plaintiff's counsel's lodestar is
22 significantly more than the requested attorney fees and costs. *Id.* at ¶¶ 37-42. For the foregoing
23 reasons, the Court should find that the requested attorney fees and litigation costs are appropriate
24 and reasonable.

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1 **V. CONCLUSION**

2 Based on the foregoing, the Parties are confident that an appropriate sum has been allocated
3 to the disputed value of the PAGA penalties Plaintiff sought. Thus, the Parties respectfully request
4 the Court enter an order approving the Parties' PAGA Settlement Agreement.

5 DATE: January 3, 2023

BERENJI LAW FIRM, APC

6
7 By: 
8 SHADIE L. BERENJI
9 KRISTOPHER N. TAYYEB
10 Attorneys for Plaintiff SELENA TOWELL,
11 individually and on behalf of all other persons
12 similarly situated, and on behalf of the general
13 public.
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1 maintain car sales certification; obtaining product knowledge for each new vehicle and model;
2 attending mandatory meetings; preparing paperwork; and, working on other similar administrative
3 tasks), as well as failing to pay for rest breaks.

4 5. Defendant instituted a new pay plan on August 1, 2019 that contained a base hourly
5 rate for Plaintiff and the other Aggrieved Employees, but Plaintiff contends that it still failed to
6 correctly pay overtime premiums because it omitted commissions from Defendant's calculation of
7 the employees' regular rates of pay. Instead, Defendant paid overtime wages at 1.5x the straight
8 hourly rate.

9 6. As a result, Defendant failed to pay Plaintiff and other Aggrieved Employees
10 minimum wages, statutory/contractual wages, and overtimes wages. Plaintiff also alleges that
11 Defendant's policies and practices also failed to provide her and other Aggrieved Employees with:
12 reimbursement of necessarily-incurred business expenses for having to provide personal cell phones
13 for use at work; legally mandated meal and rest periods, and meal period premiums at the regular
14 rate of pay; overtime wages at the correct rate of pay; vested vacation wages at their final rate of
15 pay; accurate itemized wage statements; one day off in seven work days; and timely payment of
16 final wages at the separation of employment.

17 7. On September 18, 2020, pursuant to California Labor Code sections 2698 *et seq.*,
18 Plaintiff sent a letter to the California Labor and Workforce Development Agency ("LWDA")
19 advising of her intent to seek Private Attorneys General Act of 2004 ("PAGA") penalties for
20 Defendant's violations of the California Labor Code. To date, the LWDA has not expressed an
21 intent to investigate Plaintiff's alleged violations.

22 8. On January 15, 2021, Plaintiff subsequently amended her class action complaint to
23 add a cause of action for failure to provide one day's rest, and a cause of action pursuant to PAGA.

24 9. Plaintiff alleged a violation of the following California Labor Code sections in her
25 PAGA claims: 201, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 510, 512, 551, 552, 1194, 1197,
26 1198, and 2802.

27 10. In response to Plaintiff's lawsuit, Defendant moved to compel Plaintiff's individual
28 claims to arbitration, dismiss her class claims, and stay the litigation pending the completion of

1 arbitration. On May 25, 2021, the Court (Hon. Yvette M. Palazuelos presiding) granted Defendant's
2 motion, dismissed Plaintiff's class claims, compelled Plaintiff's individual claims to arbitration, and
3 stayed the Superior Court action (including litigation of Plaintiff's PAGA claims) pending
4 arbitration of her individual claims.

5 11. After her class claims were dismissed and PAGA claims stayed, Plaintiff continued
6 to litigate her individual claims in arbitration against Defendant.

7 12. At all times relevant herein, disputed and denied, and continue to dispute and deny,
8 that it was liable to Plaintiff for any of the claims asserted in Plaintiff's LWDA letter and/or
9 operative complaint. Additionally, there has been no determination on the merits of Plaintiff's legal
10 claims and request for damages or civil penalties.

11 13. In order to avoid the additional cost of litigation, the inconvenience and burden of
12 legal proceedings, as well as the uncertainties of trial and appeals, the Parties agreed to resolve this
13 matter and entered into a settlement agreement that included, in pertinent part, a release of Plaintiff's
14 PAGA claim ("PAGA Settlement Agreement"). In exchange for a release and judgment on
15 Plaintiff's PAGA claims, Defendant agreed to pay a total of Two Hundred and Five Thousand
16 Dollars and Zero Cents (\$205,000.00), including One Hundred Eighteen Thousand Six Hundred and
17 Sixty Seven Dollars and Zero Cents (\$118,667.00) in PAGA penalties and Seventy-Eight Thousand
18 Three Hundred and Thirty Three Dollars and Zero Cents (\$78,333.00) for Plaintiff's counsel's
19 attorney fees and litigation costs. A true and correct copy of the PAGA Settlement Agreement is
20 attached hereto as "**Exhibit A.**" A true and correct redlined version of the PAGA Settlement
21 Agreement showing the changes made from the Los Angeles Superior Court's [Model] PAGA
22 Settlement Agreement is attached hereto as "**Exhibit B.**"

23 14. Defendant has additionally agreed to pay a confidential amount to Plaintiff for the
24 settlement of her individual wage-and-hour claims pursuant to the execution of a separate individual
25 settlement agreement (the "Individual Settlement Agreement").

26 15. The concurrently-filed Confidential Declaration of Shadie L. Berenji in Support of
27 Plaintiff's Unopposed Motion for Approval of Settlement for Penalties Under Labor Code Sections
28

1 2698, et. seq. attaches a copy of the Individual Settlement Agreement and explains the factual basis
2 of Plaintiff's individual claims and how they were valued.

3 16. The PAGA Settlement Agreement and the Individual Settlement Agreement
4 (collectively, the "Settlement Agreements") are the result of arms-length and non-collusive
5 negotiations. In reaching the Settlement Agreements, counsel on both sides relied on their
6 respective substantial litigation experience in similar actions, and the analysis of the legal and factual
7 issues presented in the two cases. During this lawsuit, my firm conducted extensive informal
8 discovery prior to mediation that resulted in the production of more than five hundred fifty (550)
9 pages of documents from Defendant. These documents included Plaintiff's timekeeping and pay
10 records, and personnel file; Defendant's wage and hour, time keeping, and pay policies; and the
11 time punch records and pay summaries of a random sample of 20% of the Aggrieved Employees.

12 17. A substantial amount of time was spent by my firm analyzing the information and
13 data Defendant provided. The information obtained through discovery informed our assessment of
14 the strengths and weaknesses of the case and the benefits of settlement. Plaintiff's liability and
15 damages evaluation was premised on, among other things, a careful and extensive analysis of the
16 scope and applicability of the defenses claimed by Defendant, and a thorough analysis of the number
17 of Aggrieved Employees and their employment data. Importantly, this analysis confirmed that
18 Defendant changed its compensation practices in August 2019 by instituting a revised pay plan that
19 contained a base hourly rate for all hours worked by Plaintiff and the other Aggrieved Employees.
20 This change, in turn, ensured that Plaintiff and the other Aggrieved Employees were paid at least
21 minimum wage for all hours worked and cut off liability for PAGA penalties for failing to pay
22 minimum wage.

23 18. Beginning shortly after this action was filed, my firm thoroughly investigated and
24 researched the claims in controversy, Defendant's defenses, and the developing body of law, and
25 litigated this action on behalf of Plaintiff and the Aggrieved Employees. Amongst various other
26 things, my firm: (1) thoroughly investigated and researched the facts and circumstances underlying
27 the pertinent issues and the law applicable thereto, prior to filing the lawsuit; (2) conducted extensive
28 informal discovery which resulted in the production of more than 550 pages from Defendant, which

1 we thoroughly analyzed; (3) prepared for and attended mediation; and, (4) zealously negotiated the
2 PAGA Settlement Agreement.

3 19. The Parties ultimately concluded it was desirable to settle this action in order to avoid
4 the further expense, inconvenience, and burden of additional legal proceedings, as well as the
5 uncertainties of trial, the amount of the *discretionary* PAGA award for either party, appeals and/or
6 changes in case law interpreting PAGA.

7 20. The settlement negotiations took place before the Hon. Jeffrey K. Winikow (Ret.), a
8 former Los Angeles County Superior Court judge and well-established and highly-regarded neutral
9 mediator of wage and hour class and PAGA actions in California.

10 21. The mediation occurred only after my firm had the opportunity to conduct a thorough
11 independent investigation of the facts and review more than 550 pages produced by Defendant
12 informally before mediation. Based on these documents and information previously provided by
13 Defendant, I was able to conduct an in-depth damages analysis.

14 22. My firm spent a substantial amount of time analyzing the aggrieved employees' time
15 records and related payroll records, and Defendant's pay plans and pertinent wage and hour policies.

16 23. The mediation was contentious, and involved arm's length negotiations through the
17 aid of Judge Winikow. The Parties were still at an impasse at the end of the mediation hearing, at
18 which time Judge Winikow made a mediator's proposal, which the Parties rejected. After Judge
19 Winikow continued efforts to effectuate a settlement, he made another mediator's proposal, which
20 the Parties again rejected. Finally, after further negotiation, Judge Winikow made a third mediator's
21 proposal in September 2022. This time, the Parties accepted Judge Winikow's proposal.

22 24. Importantly, Plaintiff negotiated the settlement amounts of her PAGA claims and
23 individual claims separately from one another.

24 25. Several factors were considered in arriving at the proposed PAGA settlement,
25 including: (1) Defendant's denial of any liability in this matter; (2) Defendant's denial of any
26 violations of the California Labor Code which would have entitled Plaintiff to recover penalties
27 under PAGA; (3) the disputed underlying facts of the case; (4) the significant investments of time
28 and expense in the future by the Parties to litigate the claims for penalties under PAGA; (5) the non-

1 existent guarantee of an outcome on the PAGA claims for either party at trial; (6) the delayed
2 resolution of this dispute until trial, and regardless of the outcome, the significant risk of further
3 delay due to appeals; (7) the case law interpreting the PAGA which is sparse and subject to change;
4 and, (8) the fact that any award of penalties under PAGA is within the discretion of the trial court.
5 Additionally, the fact that Defendant changed its compensation practices and instituted a new pay
6 plan on August 1, 2019 also decreased the maximum reasonable value of Plaintiff's PAGA claims
7 because the new pay plan ensured that Plaintiff and the other Aggrieved Employees were paid
8 minimum wage for all hours worked.

9 26. At the time of mediation, there were a total of 52 Aggrieved Employees and 1,939
10 pay periods that fell within the applicable statutory time period. There were only 29 Aggrieved
11 Employees who are former employees of Defendant, which means there are a maximum of 29 pay
12 periods for the unpaid vacation wages and untimely pay PAGA claims. Based on that information,
13 my firm valued the maximum value of Plaintiff's PAGA claims at mediation as follows:

CLAIM	LABOR CODE VIOLATION (and calculations)	LIABILITY
Unpaid Overtime Wages	Labor Code §§ 510, 1194, 1197, 1197.1 (<i>\$100 x 1939 pay periods</i>)	\$193,900
Unpaid Rest Periods	Labor Code §§ 226.7, 1194 (<i>\$100 x 1939 pay periods</i>)	\$193,900
Meal Period Violations	Labor Code §§ 226.7, 512 (<i>\$100 x 1939 pay periods</i>)	\$193,900
Wage Statements	Labor Code §226(a)/226.3 (<i>\$100 x 1939 pay periods</i>)	\$193,900
Unpaid Business Expenses	Labor Code §§ 2800-2802, 1198 (<i>\$100 x 1939 pay periods</i>)	\$193,900
Unpaid Vacation Wages	Labor Code § 227.3 (<i>\$100 x 29 pay periods</i>)	\$2,900
Untimely Pay	Labor Code §§ 201-203 (<i>\$100 x 29 pay periods</i>)	\$2,900
PAGA TOTAL WITHOUT STACKING		\$193,900
PAGA TOTAL WITH STACKING		\$975,300

27 27. This maximum value outcome for the litigation was discounted, and the Parties
28 ultimately settled the PAGA claims for \$205,00.00, due to an analysis of Defendant's defenses for

1 each claim, the probability of prevailing at trial, the risk that the court would decline to award and
2 stack PAGA penalties to Plaintiff or significantly reduce the requested penalties, as well as the risk
3 of appeals.

4 28. As of October 31, 2022, Defendant estimates that there are 56 Aggrieved Employees
5 who worked a total of 2,083 PAGA pay periods.

6 29. Pursuant to the settlement agreement and California Labor Code section 2699,
7 subdivision (i), seventy-five percent (75%) of the net settlement amount will be paid to the LWDA
8 and the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees.

9 30. For purposes of this settlement, “Aggrieved Employees” are all current and former
10 employees of Defendant in California who were paid on an hourly and/or commission basis who
11 worked for Defendant at any time between September 18, 2019 and November 11, 2022 (the date
12 both Parties executed the subject PAGA Settlement Agreement).

13 31. The Parties have agreed to give notice of the PAGA settlement to the Aggrieved
14 Employees with the use of a settlement administrator. The settlement administrator will be paid
15 costs which are not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) for administering
16 the settlement. Defendant has agreed to provide the settlement administrator with a list of all
17 Aggrieved Employees no later than twenty (20) calendar days after the Court issues a final order
18 and judgment approving the PAGA settlement and enters the judgment. Defendant will thereafter
19 deposit the settlement sum with the settlement administrator within thirty (30) calendar days of the
20 Court issuing a final order and judgment approving the PAGA settlement and entering judgment.
21 The settlement administrator shall make the settlement payments to all the Aggrieved Employees
22 on a pay period basis within fourteen (14) calendar days of the settlement sum being funded.
23 Aggrieved Employees assume full responsibility and liability for any taxes owed on their individual
24 PAGA payment.

25 32. As a result of the PAGA Settlement Agreement: (1) Defendant will pay \$ 118,667 in
26 civil penalties; (2) the LWDA – the primary beneficiary in a PAGA action – will receive 89,000;
27 and, (3) the 56 Aggrieved Employees will receive a PAGA penalty check, with the average PAGA
28 penalty payment being approximately \$529.77.

1 33. The proposed gross PAGA settlement amount here (i.e., \$205,000) represents 105%
2 of Defendant's maximum liability amount without stacking PAGA penalties, and the net settlement
3 amount represents approximately 58% of the gross settlement amount. Plaintiff's counsel has
4 received other recent court orders, wherein the Court approved PAGA civil penalty awards that were
5 significantly less than 58% of the gross settlement amount:

6 (1). *Arminda Sevilla v. Aaron's, Inc.* (C.D. Cal. 2017) Case No. 2:17-cv-04053-
7 DMG: Court approved \$510,000 in PAGA penalties - 10% of \$5,100,000 gross settlement
8 amount;

9 (2). *Larry Hudson v. Sterling Jewelers Inc., et al.* (C.D. Cal. 2017) Case No. 2:17-
10 cv-09301-DSF: Court approved \$75,000 in PAGA penalties - 5% of \$1,500,000 gross
11 settlement amount;

12 (3). *Amir Benjamini v. Robbins Bros. Jewelry, Inc.* (2017) Case No. BC665164
13 (Hon. Ann I. Jones): Court approved \$47,500 in PAGA penalties - 5% of 950,000 gross
14 settlement amount;

15 (4). *Michael Sanchez v. Envent Corp.* (2017) Case No. BC683827 (Hon. Kenneth
16 R. Freeman); Court approved \$15,000 in PAGA penalties – 2% of 800,000 gross settlement
17 amount;

18 (5). *Alex Lorre v. Virgin America, Inc.* (2017) Case No. BC554740 (Hon. Elihu
19 M. Berle); Court approved \$10,000 in PAGA penalties - 1% of 1,000,000 gross settlement
20 amount;

21 (6). *Thomas Sale vs. Frisco Baking Company, Inc.* (2016), Case No. BC529131
22 (Hon. Ann I. Jones); Court approved \$13,333.33 in PAGA penalties - 1.7% of \$750,000
23 gross settlement amount;

24 (7). *Matthews v. Petco Animal Supplies Stores, Inc.* (2015), Case No. BC539637
25 (Hon. William F. Highberger); Court approved \$35,000 in PAGA penalties - less than 1%
26 of \$8,000,000 gross settlement amount and company changed its employment policies and
27 compensation practices; and,

28 (8). *Meeks v. California Cinema Investments, Inc.* (2015), Case No. BC534863

(Hon. Amy D. Hogue); Court approved \$35,000 in PAGA penalties - 1.3% of 2,612,000 gross settlement amount.

34. Consistent with the terms of the PAGA Settlement Agreement and California Labor Code section 2699, subdivision (g)(1), I am requesting attorneys' fees and litigation costs in the amount of Seventy-Eight Thousand Three Hundred and Thirty Three Dollars and Zero Cents (\$78,333.00). To date, the Berenji Law Firm, APC has incurred more than One Hundred Five Thousand and One Hundred Thirteen Dollars and Zero Cents (\$105,113.00) in uncompensated attorneys' fees and Ten Thousand One Hundred and Sixty Five Dollars and Sixty-Seven Cents (\$10,165.67) in litigation costs in this action.

35. The PAGA Settlement Agreement is the product of my firm's skill and experience in the narrow field of wage and hour litigation, as set forth below, and our diligent effort to obtain the best consensual resolution for the LWDA and aggrieved employees:

a. I graduated from the University of California, Los Angeles ("UCLA") in 2000 with a degree in Political Science and Sociology. In 2004, I graduated from the University of Southern California ("USC") Gould School of Law and was admitted to practice before the California Supreme Court, the United States Court of Appeals for the Ninth Circuit, the United States District Court for the Central and Northern District of California, and all California State Courts.

b. I have extensive experience in employment law actions, especially wage and hour class actions and PAGA complaints. Since 2007, I have exclusively practiced employment law and represented employees and employers in numerous class action lawsuits involving wage and hour violations. For approximately two and one-half years, I worked as a defense attorney at Fisher & Phillips LLP, and a majority of my cases involved defending employers in wage and hour class actions and PAGA lawsuits.

c. Since 2010, one hundred percent (100%) of my legal practice has been devoted to litigating employment law violations on the behalf of employees on a contingency fee basis and the majority of my cases are wage and hour class actions and PAGA lawsuits.

1 d. My firms has litigated and successfully settled a number of wage and hour
2 class action and PAGA lawsuits involving claims for unpaid minimum,
3 statutory/contractual, and overtime wages; missed meal and rest breaks; unpaid vacation
4 wages; failure to reimburse business expenses; failure to timely pay wages; failure to provide
5 one day's rest in seven days; and failure to provide accurate wage statements – the matters
6 at issue in this case.

7 e. Mr. Kristopher N. Tayyeb works as an associate at the Berenji Law Firm,
8 APC and assisted me in prosecuting this action by performing various legal work. Mr.
9 Tayyeb holds a Bachelor of Arts degree in Political Science-Public Service and Philosophy
10 from the University of California, Davis that he obtained in 2012, and a Juris Doctorate that
11 he obtained from the University of California, Los Angeles in 2015. Prior to joining my
12 firm, Mr. Tayyeb has second-chaired two jury trials, including a complex, five-week, seven-
13 figure whistleblower trial involving a fired medical resident.

14 f. My firm has achieved numerous six and seven figure settlements for
15 employees in wage and hour class actions and PAGA lawsuits. Several of the wage and
16 hour settlements we have obtained were featured in news articles published by Bloomberg
17 BNA, the Los Angeles Daily Journal, and Law360.

18 g. My firm's extensive experience in litigating employment wage and hour
19 matters was integral in identifying all the legal issues, evaluating the strengths and
20 weaknesses of the case against Defendant, and negotiating a fair and reasonable settlement.
21 Practice in the narrow field of wage and hour litigation requires skill and knowledge
22 concerning the *constantly evolving* substantive law (state and federal), as well as the
23 procedural law of class action litigation and PAGA lawsuits. In this action, my firm used
24 the skills and knowledge that we have developed through years of prosecuting and defending
25 wage and hour class actions to successfully negotiate a fair and reasonable settlement.

26 36. My firm has diverted many of its resources to this case and spent a significant amount
27 of time investigating this case in order to effectively prosecute and settle this action. We undertook
28

1 a substantial amount of work and bore great risks to obtain a settlement that achieves the objectives
2 of PAGA and confers a substantial benefit to the LWDA and Aggrieved Employees.

3 37. My firm took this case on a contingency-fee basis and has invested over 170.4
4 billable hours investigating, researching, and litigating this matter.

5 38. The following chart sets forth the billable hourly rates and record of the hours worked
6 by Mr. Tayyeb and me on tasks that benefited the PAGA claims:

Attorney	Title	Billable Rate	Hours
Shadie L. Berenji	Partner	\$705.00	105.1
Kristopher N. Tayyeb	Associate	\$475.00	65.3

11 39. The following chart sets forth a general description of the categories of tasks that I
12 (“SLB”) and Mr. Tayyeb (“KNT”) performed and the amount of time, in hours, that each of us spent
13 on each task:

Task	SLB	KNT
Meetings with Plaintiff and analyzing the circumstances underlying the pertinent issues.	5.3	0.0
Reviewing and analyzing Plaintiff’s records, including, personnel file, wage statements and time records.	4.2	1.1
Researching and analyzing various legal issues prior to drafting and filing representative complaint for damages.	3.1	0.0
Drafting, reviewing, and revising pleadings and statutory notices (e.g., notice to Labor Workforce Development Agency, Class Action Complaint for Damages, First Amended Class Action Complaint for Damages).	14.4	0.0
Analyzing Labor Code violations and drafting discovery requests regarding the same.	1.7	5.2
Reviewing and analyzing Defendant’s wage and hour policies.	2.6	1.2
Reviewing and analyzing aggrieved employee’s time and payroll records, and calculating damages in preparation for mediation.	15.9	5.1

1	Researching, and keeping abreast of, recent developments in		
2	employment law regarding PAGA issues, including: arbitration	4.4	2.1
3	issues; stacking of civil penalties; civil penalties calculations;		
4	minimum, overtime, and statutory wage violations; business		
5	expense reimbursements; and meal and rest period claims.		
6	Drafting correspondence to defense counsel.	2.7	0.7
7	Reviewing correspondence from defense counsel.	2.1	0.0
8	Drafting joint status conference statements and Court-ordered	1.4	0.3
9	notices.		
10	Preparing maximum liability damages analysis, including civil	5.1	0.0
11	and statutory penalties, in preparation for mediation.		
12	Researching, drafting, and revising mediation brief and exhibits	4.9	20.1
13	thereto.		
14	Preparing for and attending mediation.	11.4	0.0
15	Drafting, revising, negotiating, and finalizing the PAGA	14.7	0.8
16	Settlement Agreement.		
17	Communicating with CPT Group, Inc. regarding settlement	0.8	0.0
18	administration.		
19	Reviewing correspondence from CPT Group, Inc. regarding	0.4	0.0
20	settlement administration.		
21	Communicating with Plaintiff regarding settlement and the	1.3	0.0
22	settlement agreement.		
23	Drafting the Unopposed Motion for Approval of PAGA	7.9	28.7
24	Settlement, the two Declarations in support thereof, and related		
25	documents.		
26	Preparing for and attending Court hearings and status	0.8	0.0
27	conferences.		
28	Total	105.1	65.3

40. My current billable hourly rate is \$705. From 2015 - 2021, the Los Angeles Superior Court approved my rate of \$670 an hour in the following wage-and-hour class action and/or PAGA

1 settlements: *Matthews v. Petco Animal Supplies Stores, Inc.* (2015), Case No. BC539637 (Hon.
2 William F. Highberger); *Meeks v. California Cinema Investments, Inc.* (2015), Case No. BC534863
3 (Hon. Amy D. Hogue); *Sepehrom v. GHP Management Corporation*, (2016), Case No. BC555819
4 (Hon. William F. Highberger); *Thomas Sale vs. Frisco Baking Company, Inc.* (2016), Case No.
5 BC529131 (Hon. Ann I. Jones); *Keith Huckaby v. Traffic Management* (2016) Case No. BC612803
6 (Hon. Michael J. Raphael); *Jesse Livitski v. Frontier Auto Sales, Inc.* (2017) Case No. BC578382
7 (Hon. William F. Highberger); *Alex Lorre v. Virgin America, Inc.* (2017) Case No. BC554740 (Hon.
8 Elihu M. Berle); *Michael Sanchez v. Envent Corp.* (2017) Case No. BC683827 (Hon. Kenneth R.
9 Freeman); *Stephen Spolsky v. Earthbar, LLC* (2018) Case No. BC581587 (Hon. William F.
10 Highberger); and, *David Antonov v. Santa Monica Brentwood Automotive, LLC* (2018) Case No.
11 BC708577 (Hon. Maureen Duffy-Lewis).

12 41. Mr. Tayyeb's billable hourly rate is \$475 an hour.

13 42. Our lodestar is \$105,113.00 ((105.1 hours * \$705) + (65.3 hours * \$475)) and thus
14 does not necessitate a multiplier for the requested attorney fees.

15 43. Pursuant to the PAGA Settlement Agreement, the Berenji Law Firm will not receive
16 more than \$78,333.00 in attorney fees and litigation costs for all of its work with respect to Plaintiff's
17 PAGA claims.

18 44. On January 3, 2023, the Berenji Law Firm submitted a copy of the proposed PAGA
19 Settlement Agreement to the LWDA via its online system that is used to transmit notices and
20 requests. A true and correct copy of the LWDA's email confirming submission of the proposed
21 settlement is attached hereto as "**Exhibit C.**"

22 45. I am not aware of any other pending matter or action asserting claims that will be
23 extinguished or adversely affected by the PAGA Settlement Agreement.

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

26 Executed this 3rd day of January 2023 at Beverly Hills, California.

27
28 _____
SHADIE L. BERENJI

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Selena Towell (“Plaintiff”) and defendant Silver Star A.G., LTD (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Towell v. Silver Star A.G., LTD* initiated on September 19, 2020 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means CPT Group, Inc. or any other experienced neutral entity the Parties have agreed to appoint to administer the Settlement and approved by the Court.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means current and former employees of Defendant in California who were paid on an hourly and/or commission basis who worked for Defendant during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Louise Ann Fernandez and Ronnie Shou of Bartko Zankel Bunzel Miller.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.
- 1.10. “Gross Settlement Amount” means \$205,000.00 which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment,

PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

- 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA Counsel" means Shadie Berenji and Kristopher Tayyeb of Berenji Law Firm, APC, the attorneys representing the Plaintiff in the Action.
- 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.19. "PAGA Period" means the period from September 18, 2019 to the date this Agreement is signed by both Parties.
- 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. "PAGA Notice" means Plaintiff's September 18, 2020 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$29,667) and the 75% to LWDA (\$89,000) in settlement of PAGA claims.

- 1.23. “Plaintiff” means Selena Towell, the named plaintiff in the Action.
- 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. “Released Parties” means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, and, affiliates.
- 1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. “Defendant” means named Defendant Silver Star A.G., LTD.

2. RECITALS.

- 2.1. On September 19, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for 1) Failure to Pay Minimum Wages; 2) Failure to Pay Statutory/Contractual Wages; 3) Failure to Pay Overtime Wages; 4) Failure to Provide Rest Periods; 5) Failure to Provide Meal Periods; 6) Failure to Pay Vested Vacation Wages; 7) Failure to Reimburse Business Expenses; 8) Failure to Maintain Payroll Records and Provide Itemized Wage Statements; 9) Failure to Timely Pay Wages; 10) Failure to Provide Payroll Records; and 11) Violation of California Unfair Competition Laws. On January 19, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for 1) Failure to Pay Minimum Wages; 2) Failure to Pay Statutory/Contractual Wages; 3) Failure to Pay Overtime Wages; 4) Failure to Provide Rest Periods; 5) Failure to Provide Meal Periods; 6) Failure to Pay Vested Vacation Wages; 7) Failure to Reimburse Business Expenses; 8) Failure to Maintain Payroll Records and Provide Itemized Wage Statements; 9) Failure to Timely Pay Wages; 10) Failure to Provide Payroll Records; 11) Failure to Provide One Day’s Rest; 12) Violation of California Unfair Competition Laws; and 13) California Labor Code Private Attorneys General Act. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On February 16, 2021, Defendant moved to compel the case to arbitration. On May 25, 2021, the Court granted Defendant’s Motion to Compel Plaintiff’s non-PAGA causes of action on an individual basis to arbitration and stayed the action, including Plaintiff’s PAGA cause of action, until arbitration is complete.

2.4. On August 4, 2022, the Parties participated in an all-day mediation presided over by the Hon. Jeffrey K. Winikow (Ret.) which led to this Agreement to settle the Action. The Parties also agreed to a settlement of Plaintiff's non-PAGA claims that were alleged on an individual basis and compelled to arbitration.

2.5. Prior to mediation, Plaintiff obtained, through formal and informal discovery, the production of Plaintiff's timekeeping and pay records, Defendant's wage and hour, timekeeping and pay practices, and the time punch records and pay summaries of a randomly selected group making up 20% of the Aggrieved Employees.

2.6. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Defendant promises to pay \$205,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third or 33.333% which is currently estimated to be \$68,333.00 and PAGA Counsel Litigation Expenses Payment of not more than \$10,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$8,000.00 except for a showing of good cause and as approved by the Court. To the

extent the Administration Expenses are less or the Court approves payment less than \$8,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$118,667.00 to be paid from the Gross Settlement Amount, with 75% (\$89,000) allocated to the LWDA PAGA Payment and 25% (\$29,667) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$29,667) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.2.4. Defendant's share of taxes, including statutory FICA, FUTA and California payroll withholding taxes arising from any payments to the Aggrieved Employees, shall be paid by Defendant separately. The Administrator shall be responsible for making all necessary payments and filings in connection with such payments.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records through October 31, 2022, Defendant estimates there are 56 Aggrieved Employees who worked a total 2,083 of PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 20 days of the Effective Date, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement

Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail(i) the Notice of PAGA Settlement (attached hereto as “Exhibit A”) and checks for all Individual PAGA Payments; (ii) the LWDA PAGA Payment, (iii) the Administration Expenses Payment, and, (iv) the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients’ mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks [to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

- 5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

- 5.1 Plaintiff’s Release. With the exception of Plaintiff’s non-PAGA claims alleged that were alleged on an individual basis and compelled to arbitration, Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred

during the PAGA Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint [,] [and] the PAGA Notice.

5.3 Release by PAGA Counsel:

Except as expressly provided herein (e.g., paragraphs 1.10, 3.2.1), PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their

Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES [and ESCALATOR CLAUSE]

Based on its records, Defendant estimates that, as of October 31, 2022, of this Settlement Agreement, (1) there are 56 Aggrieved Employees who worked 2,083 Pay Periods during the PAGA Period.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. In agreeing to this settlement, Plaintiff has taken into account the uncertainty and risk of further litigation, the difficulties and delays inherent in such litigation, the relatively small size of the PAGA Class, the Company's efforts to improve its wage and hour policies and procedures following notification of Plaintiff's claims, and the Company's defenses to Plaintiff's claims for recovery of civil penalties under PAGA. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 **Attorney Fees and Costs.** Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney fees and costs that relate to the PAGA claims alleged in the operative Complaint.

10.3 **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.4 **Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant and

represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 10.5 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.6 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.7 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.8 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.9 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.11 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.12 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.13 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other

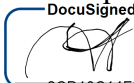
settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

- 10.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.15 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.16 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:
- To Plaintiff:
 Shadie L. Berenji (berenji@employeejustice.law)
 Berenji Law Firm, APC
 8383 Wilshire Boulevard, Suite 708
 Beverly Hills, CA 90211
- To Defendant:
 Luzann Fernandez (lfernandez@bzbm.com)
 Bartko Zankel Bunzel Miller
 1 Embarcadero Ctr, Suite 800
 San Francisco, CA 94111
- 10.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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10.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DocuSigned by:



11/11/2022

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For Plaintiff

Date

For Defendant

Date

Counsel For Plaintiff

Date

Counsel For Defendant

Date

10.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

_____ For Plaintiff	_____ Date	_____ For Defendant	_____ Date
 _____ Counsel For Plaintiff	11/11/2022 _____ Date	_____ Counsel For Defendant	_____ Date

10.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

_____ For Plaintiff	_____ Date	_____ For Defendant	_____ Date
			11.11.2022
_____ Counsel For Plaintiff	_____ Date	_____ Counsel For Defendant	_____ Date
			12/29/2022

EXHIBIT B

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Selena Towell (“Plaintiff”) and defendant Silver Star A.G., LTD (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

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1. DEFINITIONS

1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned Towell v. Silver Star A.G., LTD initiated on September 19, 2020 and pending in Superior Court of the State of California, County of Los Angeles.

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1.2. “Administrator” means CPT Group, Inc. or any other experienced neutral entity the Parties have agreed to appoint to administer the Settlement and approved by the Court.

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1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employee” means current and former employees of Defendant in California who were paid on an hourly and/or commission basis who worked for Defendant during the PAGA Period.

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1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

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1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. “Court” means the Superior Court of California, County of Los Angeles.

1.8. “Defense Counsel” means Louise Ann Fernandez and Ronnie Shou of Bartko Zankel Bunzel Miller.

1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

1.10. “Gross Settlement Amount” means \$205,000.00 which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment,

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PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Shadie Berenji and Kristopher Tayyeb of Berenji Law Firm, APC, the attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

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1.19. "PAGA Period" means the period from September 18, 2019 to the date this Agreement is signed by both Parties.

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1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notice" means Plaintiff's September 18, 2020 letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd. (a).

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1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$29,667) and the 75% to LWDA (\$89,000) in settlement of PAGA claims.

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- 1.23. "Plaintiff" means Selena Towell, the named plaintiff in the Action.
- 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, and, affiliates.
- 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. "Defendant" means named Defendant Silver Star A.G., LTD.

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2. RECITALS.

- 2.1. On September 19, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for 1) Failure to Pay Minimum Wages; 2) Failure to Pay Statutory/Contractual Wages; 3) Failure to Pay Overtime Wages; 4) Failure to Provide Rest Periods; 5) Failure to Provide Meal Periods; 6) Failure to Pay Vested Vacation Wages; 7) Failure to Reimburse Business Expenses; 8) Failure to Maintain Payroll Records and Provide Itemized Wage Statements; 9) Failure to Timely Pay Wages; 10) Failure to Provide Payroll Records; and 11) Violation of California Unfair Competition Laws. On January 19, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for 1) Failure to Pay Minimum Wages; 2) Failure to Pay Statutory/Contractual Wages; 3) Failure to Pay Overtime Wages; 4) Failure to Provide Rest Periods; 5) Failure to Provide Meal Periods; 6) Failure to Pay Vested Vacation Wages; 7) Failure to Reimburse Business Expenses; 8) Failure to Maintain Payroll Records and Provide Itemized Wage Statements; 9) Failure to Timely Pay Wages; 10) Failure to Provide Payroll Records; 11) Failure to Provide One Day's Rest; 12) Violation of California Unfair Competition Laws; and 13) California Labor Code Private Attorneys General Act. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On February 16, 2021, Defendant moved to compel the case to arbitration. On May 25, 2021, the Court granted Defendant's Motion to Compel Plaintiff's non-PAGA causes of action on an individual basis to arbitration and stayed the action, including Plaintiff's PAGA cause of action, until arbitration is complete.

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2.4. On August 4, 2022, the Parties participated in an all-day mediation presided over by the Hon. Jeffrey K. Winikow (Ret.) which led to this Agreement to settle the Action. The Parties also agreed to a settlement of Plaintiff's non-PAGA claims that were alleged on an individual basis and compelled to arbitration.

2.5. Prior to mediation, Plaintiff obtained, through formal and informal discovery, the production of Plaintiff's timekeeping and pay records, Defendant's wage and hour, timekeeping and pay practices, and the time punch records and pay summaries of a randomly selected group making up 20% of the Aggrieved Employees.

2.6. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Defendant promises to pay \$205,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third or 33.333% which is currently estimated to be \$68,333.00 and PAGA Counsel Litigation Expenses Payment of not more than \$10,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$8,000.00 except for a showing of good cause and as approved by the Court. To the

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extent the Administration Expenses are less or the Court approves payment less than \$8,000, the Administrator will retain the remainder in the Net Settlement Amount.

- 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$118,667.00 to be paid from the Gross Settlement Amount, with 75% (\$89,000) allocated to the LWDA PAGA Payment and 25% (\$29,667) allocated to the Individual PAGA Payments.

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- 3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$29,667) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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- 3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.2.4. Defendant's share of taxes, including statutory FICA, FUTA and California payroll withholding taxes arising from any payments to the Aggrieved Employees, shall be paid by Defendant separately. The Administrator shall be responsible for making all necessary payments and filings in connection with such payments.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee Pay Periods. Based on a review of its records through October 31, 2022, Defendant estimates there are 56 Aggrieved Employees who worked a total 2,083 of PAGA Pay Periods.

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- 4.2. Aggrieved Employee Data. Within 20 days of the Effective Date, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

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- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement

Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail (i) the Notice of PAGA Settlement (attached hereto as "Exhibit A") and checks for all Individual PAGA Payments; (ii) the LWDA PAGA Payment, (iii) the Administration Expenses Payment, and, (iv) the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

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4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

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4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks [to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

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5.1 **Plaintiff's Release.** With the exception of Plaintiff's non-PAGA claims alleged that were alleged on an individual basis and compelled to arbitration, Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred

during the PAGA Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint [,] [and] the PAGA Notice.

5.3 Release by PAGA Counsel:

Except as expressly provided herein (e.g., paragraphs 1.10, 3.2.1), PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

Deleted: ~~<#>~~ Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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~~<#>~~A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

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6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their

Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES [and ESCALATOR CLAUSE], Based on its records, Defendant estimates that, as of October 31, 2022, of this Settlement Agreement, (1) there are 56 Aggrieved Employees who worked 2,083 Pay Periods during the PAGA Period.

Deleted: Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1) there are 2 Aggrieved Employees who worked 2 Pay Periods during the PAGA Period.^{iv}

9. **CONTINUING JURISDICTION OF THE COURT**. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 **Waiver of Right to Appeal**. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 **No Admission of Liability or Representative Manageability for Other Purposes**. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. In agreeing to this settlement, Plaintiff has taken into account the uncertainty and risk of further litigation, the difficulties and delays inherent in such litigation, the relatively small size of the PAGA Class, the Company's efforts to improve its wage and hour policies and procedures following notification of Plaintiff's claims, and the Company's defenses to Plaintiff's claims for recovery of civil penalties under PAGA. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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10.2 **Attorney Fees and Costs**. Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney fees and costs that relate to the PAGA claims alleged in the operative Complaint.

10.3 **Integrated Agreement**. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.4 **Attorney Authorization**. PAGA Counsel and Defense Counsel separately warrant and

represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

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10.5 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.6 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.7 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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10.8 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

10.9 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.11 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.12 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.13 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other

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settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

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10.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.15 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.16 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Shadie L. Berenji (berenji@employeejustice.law)
Berenji Law Firm, APC
8383 Wilshire Boulevard, Suite 708
Beverly Hills, CA 90211

To Defendant:

Luzann Fernandez (lfernandez@bzbm.com)
Bartko Zankel Bunzel Miller
1 Embarcadero Ctr, Suite 800
San Francisco, CA 94111

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10.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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10.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

For Plaintiff	Date	For Defendant	Date
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Counsel For Plaintiff	Date	Counsel For Defendant	Date
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ⁱ This Form PAGA Settlement Agreement has been approved by the Court, the complex litigation judges and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour cases. It was drafted for settlements of single plaintiff PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple Plaintiffs or multiple Defendants. For settlements of wage and hour class actions that include PAGA claims, please use the Form Class Action and PAGA Settlement Agreement and Class Notice.

ⁱⁱ See endnote ii above. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS OR APPLICATIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

ⁱⁱⁱ The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{iv} Insert negotiated terms, if any, addressing the possibility that XYZ's estimates of the number of Aggrieved Employees or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an "escalator" clause memorializing XYZ's promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated number of Aggrieved Employees or Pay Periods exceeds XYZ's estimates.

EXHIBIT C

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On the date set forth below, I served the foregoing documents, entitled: **NOTICE OF PLAINTIFFS' UNOPPOSED MOTION AND MOTION FOR APPROVAL OF SETTLEMENT FOR PENALTIES UNDER LABOR CODE SECTIONS 2698, ET. SEQ.; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SHADIE L. BERENJI IN SUPPORT THEREOF** on the following interested parties:

Attorneys for Defendant SILVER STAR

A.G., LTD.

BARTKO, ZANKEL, BUNZEL &
MILLER, APLC

San Francisco, CA 94111

E-mail: rshou@bzbm.com

E-mail: cchou@bzbm.com

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

Molly Stapelfeldt

Print Name _____

By:

Signature _____