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Attorneys for Plaintiff
FRANK SICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK SICA, on behalf of himself, and all
others similarly situated, and all aggrieved
employees,

Plaintiff,

v.

MADISON INDUSTRIAL SERVICES TEAM,
LIMITED PARTNERSHIP; and DOES 1
through 50, inclusive

Defendants.

Case No. 4:20-cv-08347-KAW

CLASS ACTION

**DECLARATION OF SCOT D.
BERNSTEIN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: February 3, 2022

Time: 1:30 p.m.

Ctrm: TBD

Judge: Kandis A. Westmore

Complaint Filed: September 30, 2020

FAC filed: November 19, 2020

Removal Date: November 25, 2020

1 I, SCOT BERNSTEIN, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and before this
3 Court. My firm, Law Offices of Scot D. Bernstein, A Professional Corporation, is co-counsel
4 for the proposed class in this action. I have personal knowledge of the facts stated herein and if
5 called to testify I could and would testify competently to those facts.

6 2. I studied engineering and economics at UCLA, earning a bachelor's degree in
7 1977. I attended Boalt Hall School of Law (now known as Berkeley Law) and received my JD
8 degree in 1980. I have practiced law in California since being admitted to the State Bar in 1980.
9 I have extensive experience representing employees, investors and consumers in litigation and in
10 private contractual arbitration proceedings. I have substantial experience in wage-and-hour and
11 privacy claims, including representing employees and consumers in class action litigation. A
12 copy of my curriculum vitae is attached to this declaration as Exhibit "1."

13 3. Through December 13, 2021, I have expended approximately 64.2 hours and have
14 spent at least \$3,329.10 in the prosecution of this case.

15 4. I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct and that this declaration was executed on December 13, 2021, in El
17 Dorado Hills, California.

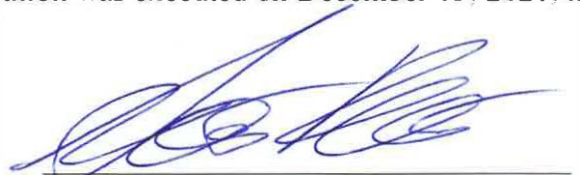
18
19 
Scot Bernstein

EXHIBIT 1

SCOT D. BERNSTEIN
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Mr. Bernstein has practiced law in California since 1980. His practice emphasizes class actions on behalf of employees who have been denied overtime pay, expense reimbursements or other compensation that is owed to them as well as the representation of investors and consumers who are victims of fraud, misrepresentation and fiduciary abuse. He also has served as counsel in class actions and other litigation involving privacy violations, unfair competition, unlawful business practices and false advertising.

Education. Mr. Bernstein studied engineering and economics at UCLA, where he received his bachelor's degree *Magna Cum Laude* in 1977 and was an officer of the UCLA chapter of Tau Beta Pi, the engineering honors society. He was a member of Omicron Delta Epsilon (economics honors society) and Phi Beta Kappa as well. He received his Juris Doctor degree at Boalt Hall School of Law (now known as Berkeley Law), University of California at Berkeley, in 1980.

Class Actions. Mr. Bernstein's primary practice focus is class action cases. He has been co-lead counsel in many, which are listed beginning on page 6 under "**Class Actions.**"

Employment Arbitration. Mr. Bernstein was co-counsel for the plaintiff in *Chester v. iFreedom Communications, Inc., et al*, Los Angeles County Superior Court Case Number BC353567, in which judgment was entered for more than \$4.1 billion dollars, together with interest of \$1,125,159.97 per day, confirming a JAMS arbitration award in favor of the plaintiff.

He recently represented an employee in FINRA arbitration as well, serving as co-counsel in a USERRA case and obtaining a favorable award on behalf of a U.S. Army captain against Morgan Stanley Smith Barney and Citigroup Global Markets.

Reported Cases. Mr. Bernstein has served as co-counsel in successful federal and state appeals and published decisions:

Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244 (co-counsel for successful appellants)

Stop Youth Addiction v. Lucky Stores, 17 Cal.4th 553, 950 P.2d 1086, 71 Cal.Rptr.2d 731 (1998) (attorney for amicus curiae in support of successful appellant)

Lippitt v. Raymond James Financial Services, et al., 340 F.3d 1033 (9th Cir. 09/22/2003) (co-counsel for successful appellant)

Gutierrez v. Brand Energy Services of California, Inc. (2020) 50 Cal. App. 5th 786, *modified by and rehearing denied by Gutierrez v. Brand Energy Serv. of Cal., Inc.* 2020 Cal. App. LEXIS 619 (Cal. App. 1st Dist., July 2, 2020) (co-counsel for successful appellant)

Lazarin et al. v. Total Western, Inc. (2010) 188 Cal.App.4th 1560, 116 Cal.Rptr.3d 596, review denied, Jan. 19, 2011, S188164 (co-counsel for successful appellant)
Meyer v. Irwin Industries, Inc., 723 F. Supp. 2d 1237 (C.D. Cal. 2010) (co-counsel for successful plaintiff)

Securities Arbitration. Mr. Bernstein has represented investors in securities arbitration proceedings for more than eighteen years. During that time, he has handled investor claims before FINRA (formerly known as “NASD”), the New York Stock Exchange, the Pacific Exchange and the American Arbitration Association. He has obtained compensation for his clients from firms large and small, including huge Wall Street firms such as Morgan Stanley, Merrill Lynch, PaineWebber and Salomon Smith Barney; “high-payout” firms with large numbers of small offices, including Financial Network Investment Corporation, Sunamerica Securities, Securities America and IFG Network Securities; and “boiler room” firms and their personnel, including the infamous Stratton Oakmont, the firm depicted in “The Wolf of Wall Street.”

Expert Testimony. Mr. Bernstein has testified as an expert witness and/or provided consultation in matters involving securities law and franchise law violations, breach of fiduciary duty and elder abuse.

Bar Association Activities. Mr. Bernstein serves on the board of directors of the California Employment Lawyers Association (“CELA”), an association of more than a thousand attorneys dedicated to representing employees in employment disputes. He currently co-chairs and participates actively on CELA’s Legislative Committee and serves on its Wage and Hour Committee as well. In 2009, Mr. Bernstein completed eleven years as a director of the Public Investors Arbitration Bar Association (“PIABA”), a national association of attorneys dedicated to the representation of investors in disputes with the securities industry. He served three years as PIABA’s treasurer, has served on and chaired and has continued to serve on a number of PIABA committees, and is a director emeritus of PIABA. He has given continuing legal education lectures to the State Bar of California, CELA, the North American Securities Administrators Association (“NASAA”), PIABA and other professional groups on employees’ rights under the wage and hour laws, investors’ rights and remedies, and privacy law. He is a member of the National Employment Lawyers Association (“NELA”), Consumer Attorneys of California (“CAOC”), the American Association for Justice (“AAJ”) and the Taxpayers Against Fraud Education Fund (“TAFEF”) as well.

Honors and Awards. Mr. Bernstein was selected as a Northern California Super Lawyer in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021.

Continuing Legal Education Speaking Engagements and Published Chapters of Course Materials. Mr. Bernstein's speaking engagements and published chapters and sections of continuing legal education materials include the following:

Privacy and Cybersecurity Law 101, presented by Mr. Bernstein as part of a panel at the State Bar of California’s 89th Annual Meeting

Annual Employment Law Update (Part 2), presented by Mr. Bernstein as part of a panel at the California Employment Lawyers Association's 29th Annual Meeting

Senate Bill 462 or How I Learned to Stop Worrying and Love 218.5, presented by Mr. Bernstein as part of a panel he moderated at the California Employment Lawyers Association Advanced Wage and Hour Seminar (April 2014) and previously the subject of his presentation in a California Employment Lawyers Association Webinar (December 2013)

Broker Promissory Notes: Economics, Policy, and Offsets under the Wage-and-Hour Laws, PIABA Nineteenth Annual Meeting (October 2010)

Avoiding the Uncollectible Judgment: Clues at the Case Intake Stage, California Employment Lawyers Association Advanced Wage and Hour Seminar (May 2009)

Stacking the Deck in Arbitrator List Selection: A Study in Regulatory Failure and A Practical Look at the Consequences, PLI Securities Arbitration 2007 (August 2007)

Broker Liability Insurance from the Claimant's Perspective, PLI Securities Arbitration 2003 (August 2003)

Unpaid Awards and Investor Protection: Identifying the Continuing Problem and Collecting What Is Due, PIABA Fifteenth Annual Meeting (October 2006) (co-authored with C. Thomas Mason III)

Arbitrating at the AAA: Differences from SRO Arbitration and Other Points of Interest, PIABA Fourth Annual California Mid-Year Meeting (March 2006)

Maximizing Investor Recoveries: Errors & Omissions Insurance and Net Capital, PIABA California Third Annual Mid-Year Meeting: Securities Arbitration Update (March 2005) (co-authored with C. Thomas Mason III)

Broker Liability Insurance in Securities Arbitration, PIABA California Second Annual Mid-Year Meeting: Securities Arbitration Update (February 2004)

Your Clients' Right to a Hearing, PIABA Twelfth Annual Meeting (October 2003)

Your Clients' Right to a Hearing, PIABA California Mid-Year Meeting: Securities Arbitration Update (February 2003)

Understanding NLSS or How I Learned To Stop Worrying and Love List Selection, PIABA Ninth Annual Meeting (October 2000)

Making, Combating and Replying to Dispositive Motions, PIABA Seventh Annual Meeting (October 1998)

Published Articles. Mr. Bernstein's published articles and other writings include the following:

Time To Prepare For California's New Consumer Finance Law, Law 360 (December 17, 2020) (co-authored with Eric A. Grover)

In California, Off The Clock Is No Longer On The Table, Employment Law 360 (January 28, 2020) (co-authored with Eric A. Grover)

ABA Federal Labor Standards Legislation Committee, *2015 FLSA Mid-Winter Report*, Contributor

Tampering with List Selection by Enhancing the Appointment Frequency of "Chair-Qualified" Arbitrators, 13 PIABA Bar Journal, no. 2, pp. 13-28 (Summer 2006)

View from the West: Unpaid Securities Arbitration Awards: Proposed Solutions to the Problem, 11 PIABA Bar Journal, no. 1, pp. 35-50 (Spring 2004)

View from the West: Things Every Arbitrator Should Know, 10 PIABA Bar Journal, no. 2, pp. 21-35 (Summer 2003)

View from the West: Should You Challenge an Arbitrator for Cause or Make a Motion or Request for Recusal?, 10 PIABA Bar Journal, no. 1, pp. 71-78 (Spring 2003) (co-authored with Tracy Pride Stoneman)

View from the West: The California Situation: More Questions than Answers (concerning the battle over California's arbitrator ethics standards), 9 PIABA Bar Journal, no. 4, pp. 47-56 (Winter 2002)

View from the West: Causal Challenges and the Chinese Wall, 9 PIABA Bar Journal, no. 3, pp. 11-13 (Fall 2002)

Brief Spotlight: The Inapplicability of Statutes of Limitation on Actions to Private Contractual Arbitration Proceedings, 9 PIABA Bar Journal, no. 2, pp. 79-85 (Summer 2002)

View from the West: Getting Paid – Parts 1 & 2 (concerning securities brokers' liability insurance), 9 PIABA Bar Journal, no. 1, pp. 37-39 (Spring 2002) and no. 2, pp. 55-60 (Summer 2002)

Brief Spotlight: Your Clients' Right to a Hearing, 9 PIABA Bar Journal, no. 1, pp. 42-47 (Spring 2002)

NASD Intake Staff Harassment of Public Customers, 6 The PIABA Quarterly, no. 1, pp. 8-10 (March 1999)

NASD Lists of Arbitrators' Closed Cases Exclude Cases Resolved by Granting 'Dismissal Motions', 5 The PIABA Quarterly, no. 4, p. 8 (December 1998)

NASD Policy of Granting Certain Causal Challenges by Securities Industry Respondents, 5 The PIABA Quarterly, no. 4, p. 11 (December 1998)

NASD 'Streamlining' of the Arbitrator Pool, 5 The PIABA Quarterly, no. 4, p. 17 (December 1998)

Bad Investments and the Medical Profession – Parts 1 and 2, 43 Sacramento Medicine 24-26 (March 1992) and 23-24 (April 1992)

Choosing a Form of Business Entity, 4 Weekly Bulletin, no. 14, pp. 6-7 (1990)

Selected Comment Letters to Government Agencies. Mr. Bernstein's comment letters to government agencies on behalf of bar associations or on his own behalf include the following:

[Comment Letter regarding California Labor Commissioner's Proposed Employee Travel Reimbursement Regulations, Written by Mr. Bernstein on behalf of the California Employment Lawyers Association., February 6, 2007](#)

[Public Comment Letter to U.S. Securities and Exchange Commission Regarding Dispositive Motions \(Motions to Dismiss\) in NASD Securities Arbitration, September 24, 2006](#)

Public Comment Letter to U.S. Securities and Exchange Commission Regarding Tampering with NASD Arbitrator List Selection by Enhancing the Appointment Frequency of "Chair Qualified" Arbitrators, May 26, 2006

Public Comment Letter to U.S. Securities and Exchange Commission in Response to and Commenting on NASD's Partial Amendment No. 7, Amendments to the NASD Code of Arbitration Procedure for Customer Disputes, File No. SR-NASD-2003-158, October 20, 2006

Public Comment Letter to U.S. Securities and Exchange Commission Regarding Reform of Public Reporting of Misconduct of Associated Persons, April 17, 2009

Public Comment Letter to U.S. Securities and Exchange Commission Regarding BrokerCheck and the CRD: The Broader Picture, September 24, 2009

Pro Bono Activities. Mr. Bernstein's other *pro bono* activities have included authoring or co-authoring amicus letters in support of California Supreme Court review in cases including *Iskanian v. CLS Transp. Los Angeles, LLC*, and *Flores v. West Covina Auto Group*; authoring an amicus letter on behalf of the California Employment Lawyers Association ("CELA") in support of publication of the California Court of Appeal's decision in *Oregel v. PacPizza, LLC*, No. A141947 (Cal. Ct. App. May 1, 2015), which was certified for publication on June 1, 2015; commenting extensively on proposed rule changes published for public comment by the U.S. Securities and Exchange Commission; working directly with the Financial Industry Regulatory Authority ("FINRA," formerly known as the "NASD") to change practices that have not been the subject of formal rulemaking; authoring a comment letter for CELA regarding travel expense reimbursement regulations proposed by the California Division of Labor Standards Enforcement; participating extensively in CELA's Legislative Committee efforts, including testifying in

numerous Senate and Assembly committee hearings regarding bills that CELA supported or opposed; drafting language for California SB 462, which changed Labor Code section 218.5 from a two-way fee-shifting statute into a de facto one-way-only statute; working extensively on California SB 707, which protects employees and consumers forced into arbitration proceedings in which the party that drafted the arbitration clause is derailing the arbitration by failing to pay arbitration fees; persuading a California state senator to withdraw a 2010 bill that would have created a broad new exemption from qualification of securities under the California Corporate Securities Law, and helping to defeat 2012, 2013, 2014 and 2015 attempts to enact similar exemptions or their functional equivalent; commenting on federal agencies' proposed regulations under the Federal Cave Resources Protection Act; and appearing for more than six years as a regular guest on "Ask a Lawyer," a live call-in television program in the Sacramento area.

Class Actions.

- a. *Tommie Pennywell-Foster v. Imko Workforce Solutions, et al.*, Sacramento County Superior Court Case No. 34-2019-00252683;
- b. *Kindt v. Concesionaria Vuela Compañía de Aviación S.A.P.I. de C.V., et al.*, Napa County Superior Court Case No. 19CV000373;
- c. *Butler, et al. v. Apple Inc.*, Santa Clara Superior Court Case No. 14-cv-262989;
- d. *Binda v. International Wood Industries, Inc., et al.*, Stanislaus County Superior Court Case No. 9000204;
- e. *Kindt and Pappas v. Aerovias de Mexico, S.A. de C.V., et al.*, San Bernardino County Superior Court Case No. CIVDS1809416;
- f. *Rabanal v. P.F. Chang's China Bistro, et al.*, Alameda County Case No. RG17851208;
- g. *Spitzer, et al v. FRHI Hotels & Resorts (Canada) Inc.*, San Bernardino County Superior Court Case No. CIVDS1712220
- h. *Halkola v. Fisher Sand & Gravel Co.*, Alameda County Superior Court Case No. RG17844100
- i. *Reed v. Tanco Engineering, Inc.*, Alameda County Superior Court Case No. RG14-743559
- j. *Nguyen v. Vantiv, Inc., et al.*, United States District Court, Northern District of California Case No. 3:15-cv-02436-LB
- k. *Roberts v. Wyndham Hotels and Resorts LLC, et al.*, United States District Court, Northern District of California Case No. 5:12-cv-05083-PSG

- l. *McCabe, et al. v. Six Continents Hotels, Inc.*, United States District Court, Northern District of California Case No. 12-cv-04818-NC
- m. *Ginn, et al. v. Certified Safety Specialists, LLC, et al.*, Contra Costa County Superior Court Case No. C11-0969
- n. *DeLeon, et al. v. NCR Corp.*, San Bernardino County Superior Court Case No. CIVDS1403274
- o. *Nguyen v. Equilon Enterprises LLC*, United States District Court, Northern District of California Case No. 4:12-cv-04650-YGR
- p. *Martin v. AltairStrickland, LLC*, Alameda County Superior Court Case No. RG11-575618
- q. *Vasquez, et al. v. Turnaround Welding Services, Inc.*, Contra Costa Superior Court Case No. MSC12-00340
- r. *Tate v. Wyatt Field Services Co.*, Alameda County Superior Court Case No. RG 10-522846
- s. *Hernandez v. Bodell Construction Company*, Alameda County Superior Court Case No. RG12-624600
- t. *Canales, et al. v. Electrical & Instrumentation Unlimited of California, Inc.*, Kern County Superior Court Case. No. S-1500-CV-271947 WDP
- u. *Lazarin, et al. v. Total Western, Inc.*, JAMS Case No. 1100067385
- v. *Meyer v. Irwin Industries, Inc.*, ADRS Case No. 11-3844-RAH
- w. *Martin, et al. v. Starcon International, Inc.*, Contra Costa County Superior Court Case No. MSC10-01071
- x. *Placer Title Company Wage and Hour Cases* (Coordinated Proceedings of *Shults v. Placer Title Co.* and *Nazeri v. Placer Title Co.*), Sacramento County Case No. JCCP 4567
- y. *Martin v. Total Safety U.S., Inc.*, Alameda County Case No. RG 10-533750
- z. *Jordan v. Directory Distributing Associates, Inc.*, San Francisco County Case No. CGC 10-500633
- aa. *Davis and Duke v. Plant Performance Services LLC, et al.*, Alameda County Case No. RG 10-501301
- bb. *Strickland, et al. v. Timec Company, Inc., et al.*, San Francisco County Case No. CGC 10-501832
- cc. *Matrix Wage and Hour Cases*, California Judicial Council Coordination Proceeding Number 4610

- dd. *Lee v. Marshalls of California LLC*, Alameda County Case No. RG 07-337021
- ee. *Drew v. HCR Manor Care Medical Services of Florida, LLC, et al.*, San Francisco County Case No. CGC 09-490181
- ff. *Ronald Hart and Judy Vezeau v. K Mart Corporation, et al*, Los Angeles County Superior Court Case Number BC 347079
- gg. *Ahmed Ali, et al, v. Morton's of Chicago/Sacramento, Inc.*, Sacramento County Superior Court Case Number 04AS04417
- hh. *Lori Davis, et al v. Apollo Group, Inc., University of Phoenix, Inc., et al*, Solano County Superior Court Case Number FCS018663
- ii. *Jaime Salgado, et al v. Driveline Retail Merchandising, Inc., et al / Shane Brady, et al v. Storecast Merchandising Corporation, et al*, Sacramento County Superior Court Consolidated Case Numbers 34-2008-00006420 and 06AS02125
- jj. *Cliver, et al v. Rainbow Apparel Company*, U.S. District Court, Northern District of California, Civil Action Number C 99-4425 PJH.