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Attorneys for Plaintiffs Daniel Colmenares and Cathy Hernandez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DANIEL COLMENARES, an individual,
CATHY HERNANDEZ, and individual, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

FREE ENERGY SAVINGS COMPANY,
LLC, a California Limited Liability
Corporation; ALLAN RAGO, an individual;
KRISTINE VANNEMAN, an individual;
LEFLORIDA LESLIE, an individual and
DOES I through 100, inclusive;

Defendants.

Case No. CIVSB2028719

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Jessica Morgan
Department S26

REPRESENTATIVE ACTION

**DECLARATION OF MICHAEL D. SINGER
IN SUPPORT OF MOTION FOR APPROVAL
OF PRIVATE ATTORNEYS' GENERAL ACT
("PAGA") SETTLEMENT**

Date: December 13, 2023

Time: 8:30 a.m.

Dept: S26

Judge: Hon. Jessica Morgan

Complaint filed: December 9, 2020

Trial date: Not Set

1 I, Michael D. Singer, declare as follows:

2 1. I am the Managing Partner with the law firm of Cohelan Khoury & Singer,
3 counsel of record for Plaintiffs DANIEL COLMENARES and CATHY HERNANDEZ
4 (“Plaintiffs”). I am a member in good standing of the State Bar of California. I submit this
5 Declaration in support of the Motion for Approval of Private Attorneys General Act (“PAGA”)
6 Settlement brought by Plaintiffs. This Declaration is based on my personal knowledge and if
7 called to testify I could and would competently testify to the matters contained in this
8 Declaration.

9 2. I am a 1984 Hastings graduate, admitted to the California State Bar in 1984 and
10 the Colorado State Bar in 2001. I have been admitted to practice before the following courts:
11 U.S. Supreme Court; Second, Third, and Ninth Circuit Court of Appeals; Southern, Central,
12 Northern, and Eastern Districts of California; and all California State Courts.

13 3. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a
14 Partnership of Professional Law Corporations, and within a few years began to focus on class
15 actions. I joined Cohelan & Khoury in 2000 and was named partner in 2003. In 2009, Cohelan
16 & Khoury became Cohelan Khoury & Singer. Our firm represents plaintiffs in complex, class
17 and representative action litigation, including wage and hour, labor and employment, antitrust,
18 consumer protection, construction defect and other public interest type class and representative
19 actions.

20 4. I was admitted as a fellow to the College of Labor and Employment Attorneys in
21 2020, and was named to the Daily Journal 2012, 2013, and 2018 list of Top California Labor
22 and Employment Attorneys. I, along with Isam Khoury, a founding Partner of the firm, and
23 Partner Diana M. Khoury, have also been selected by our peers based on ethics, experience and
24 reputation as Super Lawyers in Civil Litigation by the Southern California Super Lawyers
25 Magazine for the years 2012 through the present.

26 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
27 provide the Mandatory Continuing Legal Education activity entitled “Litigating California
28 Class Actions” and has conducted MCLE certified seminars on this topic. Senior Partner,

1 Timothy D. Cohelan, is the author of Cohelan on California Class Actions (1997-2023, updated
2 annually), part of Thomson Reuters Expert Series updated annually. I am a contributing author
3 on the CEB publication California Wage and Hour Law: Compliance and Litigation (2010-
4 2023, updated annually), in which I wrote the opening chapter overview on California Wage
5 and Hour laws and the Private Attorneys General Act (PAGA) Claim chapter. I am also a
6 contributing author to the CEB Practitioner (2020), including guidelines for oral argument and
7 forms for PAGA litigation. I have served as a columnist for the California State Bar, Litigation
8 Section on wage and hour litigation and have contributed articles on wage and hour and class
9 action issues through the years to numerous California publications.

10 6. Prior to COVID, I typically lectured several times per year for continuing
11 education courses on wage and hour and class action issues at events in San Diego, Orange
12 County, Los Angeles, and San Francisco. For over twelve years, I served as wage and hour
13 amicus co-chair and liaison for the California Employment Lawyers Association, drafting,
14 reviewing, and coordinating amicus filings on wage and hour issues in the California Supreme
15 Court and Courts of Appeal.

16 7. I have been engaged in the practice of labor and employment law since 2000,
17 handling well over 300 wage and hour class and PAGA actions and several individual labor
18 cases. I have litigated several types of employment actions, including complex ERISA
19 employee welfare benefit plan cases, as well as wage and hour class actions before Federal and
20 State Courts in California. In 2014, I tried a wage and hour class action involving claims for
21 illegally deducted wages and unreimbursed expenses in the matter of *Dilts v Penske Logistics*
22 *LLC, Inc.* and successfully appealed the trial court ruling in *Dilts* finding state laws preempted
23 by the FAAAA for truck drivers.

24 8. I have participated in over 50 appellate cases and argued writs and appeals
25 before several California District Courts of Appeal, successfully arguing the landmark *Vaquero*
26 appeal for plaintiffs in the Second District Court of Appeal, *Vaquero v. Stoneledge Furniture,*
27 *LLC* (2017) 9 Cal.App.5th 98 (requiring employers separately pay commission sales employees
28 for rest periods). As co-lead counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly

1 reported at (2008) 165 Cal.App.4th 25], I argued before the Fourth District Court of Appeal in
2 May 2008 on transfer from the California Supreme Court, and co-authored the briefing in the
3 successful Supreme Court appeal. I've also argued federal appeals in the Second, Third, and
4 Ninth Circuit Courts of Appeals. In addition, I have drafted numerous appellate briefs as the
5 appellant, respondent, or amicus curiae in various employment class and individual actions. My
6 firm has successfully tried multiple class cases, obtained appellate reversals of class
7 certification denials (*Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), and certified
8 multiple consumer and wage and hour class actions.

9 9. As a part of our overall firm philosophy lawyers perform community service and
10 pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San
11 Diego Volunteer Lawyer Program, the San Diego County Bar Foundation, and Consumer
12 Attorneys of San Diego. I have served on the Legal Aid at Work Board of Directors since 2010.
13 Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-
14 2018, and currently sits on the Board as past Chair. He completed 24 years of volunteer judicial
15 service as a Judge Pro Tem of the San Diego Superior Court. Partner Diana M. Khoury has
16 been a member of the San Diego County Bar Association, Consumer Attorneys of San Diego,
17 and Consumer Attorneys of California, serving and chairing various committees through the
18 years for these organizations. From 2010 through 2015, Ms. Khoury served on the Board of
19 Directors for Consumer Attorneys of San Diego. Since 2014, Ms. Khoury has actively served
20 on the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable
21 arm of the San Diego County Bar Association providing access to justice to the underserved
22 and impoverished in the San Diego County region. Partner Jeff Geraci is a past recipient of the
23 Wiley W. Manuel Award for Pro Bon Service. Our firm's pro bono victories include a
24 settlement which prohibits the City of San Diego from targeting homeless people for illegal
25 lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case
26 No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number
27 of available shelter beds in San Diego.

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10. Cohelan Khoury & Singer has been certified Class Counsel in the following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo Superior Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District Court, Southern District of California Case No. 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior

1 Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San
2 Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic*
3 *Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v.*
4 *Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith*
5 *v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992;
6 STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No.
7 JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior
8 Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No.
9 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court
10 Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States
11 District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge*
12 *Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft*
13 *Heinz Foods Company*, United States District Court, Southern District of California Case No.
14 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of
15 California Case No. 10CV0634; and *Weigle v. FedEx Ground Package System, Inc.*, United
16 States District Court, Southern District of California Case No. 06CV1330, among others, as
17 well as being appointed Class Counsel in connection with well over 250 class action
18 settlements.

19 11. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
20 actively commenced, prosecuted and concluded numerous state and federal class and
21 representative actions. Since 2016, our firm has played a central role in the resolution of over
22 250 such cases, including the following, which have received court approval: (a) *Arellano, et*
23 *al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court,
24 Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles
25 County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair*
26 *Corporation*, United States District Court, Southern District of California, Case No. 13-CV-
27 1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court, Central
28 District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO*

1 *Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M.
2 Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No.
3 CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los
4 Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway*
5 *Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517,
6 Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court,
7 Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County
8 Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of*
9 *Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l)
10 *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court,
11 Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m)
12 *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958,
13 Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et*
14 *al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM,
15 Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior
16 Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles*
17 *Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F.
18 Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County
19 Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark*
20 *Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C.
21 Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case
22 No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of
23 California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA*
24 *Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S.
25 Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County
26 Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*,
27 Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x)
28 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No.

37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978, Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, Et Al. V. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez V. Kraft Heinz Foods Company*, USDC, Southern District Of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh V. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

12. On behalf of the State of California, Plaintiffs Daniel Colmenares and Cathy Hernandez ("Plaintiffs") brought a Private Attorneys' General Act ("PAGA") action for aggrieved employees ("PAGA Members") of Defendants Free Energy Savings Company, LLC, Allan Rago, Kristine Vanneman, and Leflorida Leslie ("Free Energy" or "Defendants") based on their alleged failure to (1) pay overtime wages; (2) pay minimum wages; (3) pay meal period compensation; (4) pay rest period compensation; (5) furnish accurate wage and hour statements; (6) pay wages due upon discharge; and (7) indemnify for business expenses. Plaintiffs seek Court approval of a \$200,000.00 non-reversionary settlement. Attached as Exhibit 1 is true and correct copy of the Joint Stipulation of PAGA Settlement and Release ("Settlement Agreement" or "SA").

13. Free Energy Savings Company, LLC is a licensed heating and air conditioning, insulation, and weatherization contractor providing free weatherization, insulation, and other energy improvements to California residents statewide, funded by local gas and electric utilities. Free Energy Savings Company, LLC operates out of the city of Montclair in San Bernardino County, California. Plaintiffs contend that Allan Rago, Kristine Vanneman, and Leflorida Leslie are each an owner, manager, or managing agent of Free Energy Savings Company, LLC.

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1 14. Plaintiff Daniel Colmenares performed work as an Outreach Specialist for Free
2 Energy from approximately 2013 to 2020. Plaintiff Cathy Hernandez performed work as an
3 Outreach Specialist for Free Energy from approximately 2017 to 2020. The PAGA Members
4 are hourly-paid employees of Defendants in California or persons retained as independent
5 contractor Outreach Specialists for Defendants during the PAGA Period.

6 15. Plaintiffs gave notice of their claims to the Labor and Workforce Development
7 Agency (“LWDA”) on November 19, 2020. Labor Code § 2699.3(a)(1). The LWDA declined
8 to investigate and on December 9, 2020 Plaintiff Daniel Colmenares commenced a putative
9 class action lawsuit against Defendant asserting multiple causes of action under the California
10 Labor Code and Code of Business & Professions § 17200. Attached as Exhibit 2 is a true and
11 correct copy of the PAGA Notice, November 19, 2020.

12 16. Prior to reaching the Settlement, Plaintiffs and their counsel conducted extensive
13 investigation and discovery into the claims alleged in the Action. Before the mediation,
14 Defendants produced timekeeping and payroll data for a 25% randomly selected sample of
15 aggrieved employees from November 2019 to April 2023. Plaintiffs’ expert analyzed the time
16 and payroll data for a total of approximately 77 allegedly aggrieved employees and over
17 120,000 shifts, and assisted Plaintiffs’ counsel in preparing a model of the potential civil
18 penalties prior to mediation. In addition, Defendants produced relevant wage-and-hour policies
19 and procedures, job descriptions, and the applicable independent contractor agreements. Based
20 on this discovery and investigation, Plaintiffs’ counsel was able to act intelligently and
21 effectively in negotiating the proposed Settlement.

22 17. The Parties mediated a full-day mediation with Louis Marlin on June 19, 2023.
23 Settlement was not reached at the mediation, but Mr. Marlin tendered a mediator’s proposal that
24 was subsequently accepted by the parties. After many conversations and emails, a detailed
25 Settlement Agreement and Release was signed in August 2023.

26 18. Of the PAGA Members, 31 individuals, including Plaintiffs, were retained by
27 Defendants as Outreach Specialists (“OSs”), and were classified as independent contractors
28 until January 2021, when they were reclassified from independent contractors to W-2

employees. Plaintiffs contend that based on the job duties of OSs, they were misclassified and should have at all times been treated as non-exempt employees.

19. After the COVID-19 pandemic, Defendants reclassified OSs from independent contractors to non-exempt employees. Plaintiffs contend that OS' job duties remained unchanged. In fact, nothing about their employment with Defendants changed (OSs were still not provided with legally compliant meal/rest breaks and were not reimbursed for all business expenses incurred) other than they were officially switched to W2 employees.

20. As such, the alleged violations continued after the reclassification. Therefore, Plaintiffs bring claims on behalf of all non-exempt employees in addition to the individuals who were misclassified for a period of time during the relevant time period. There are approximately 392 non-exempt employees who are PAGA Members. Si

21. Under the Settlement, the claims of all PAGA Members shall be settled for the Gross Settlement Amount ("GSA") of \$200,000.00, which is inclusive all attorneys' fees and costs to Plaintiffs' Counsel, Settlement Administration Costs, and payment to the LWDA and PAGA Members.

22. The GSA shall be allocated as follows:

<u>GROSS SETTLEMENT AMOUNT:</u>	\$ 200,000.00
Plaintiffs' Counsel's Fees:	-\$ 66,600.00
Plaintiffs' Counsel's Litigation Costs:	-\$ 19,372.00
Administration Costs:	-\$ 3,995.00
<u>NET SETTLEMENT FUND:</u>	\$ 110,033.00
Labor Workforce & Development Agency: 75%	-\$ 82,524.75
Aggrieved Employees: 25%	-\$ 27,508.25

23. Pursuant to the PAGA, 25% of PAGA penalties estimated at \$27,508.25 will be distributed proportionately to the 423 PAGA Members who worked during the PAGA Period based on the number pay periods each worked during the PAGA Period. With an aggregate 14,325 pay periods worked by all PAGA Members, each will receive an estimated \$1.92 per pay period ("PAGA Pay Period Value").

24. Defendants will provide contact information to ILYM Group, Inc., ("ILYM"), who will mail each PAGA Member a cover letter explaining the settlement, the basis for the payment, and a settlement check for that amount.

1 25. The Gross Settlement Amount of \$200,000.00 is significant enough to deter
2 Defendants from future violations, creating an effective disincentive for Defendants to engage
3 in unlawful business practices. The Settlement provides a substantial benefit to the State of
4 California, with the LWDA receiving \$82,524.75, as 75 percent of the Net Settlement Amount,
5 to assist with future enforcement of state labor laws. The Settlement also provides a substantial
6 benefit to the PAGA Members, who will share approximately \$27,508.25 as 25 percent of the
7 Net Settlement Amount.

8 26. Plaintiffs obtained a meaningful amount in civil penalties despite facing
9 significant challenges and risks had the litigation continued. Plaintiffs considered several factors
10 in reaching the decision to settle at this point in the litigation, including (a) the risk that the
11 Court would strike all or parts of Plaintiffs' claims on manageability grounds given the current
12 split of authority as to whether the court has inherent power to strike PAGA claims on
13 manageability grounds; (b) the risk and uncertainty in proving liability and PAGA penalties at
14 trial; (c) the prospect that the Court could substantially reduce any award of civil penalties on
15 the grounds that "to do otherwise would result in an award that is unjust, arbitrary and
16 oppressive, or confiscatory," pursuant to Labor Code § 2699(e)(2); and (d) the risk that
17 Defendants would appeal any unfavorable judgment. Continued litigation would be an
18 expensive, time-consuming and extremely uncertain proposition, and could lead to an
19 unfavorable judgment and/or a lengthy and unsuccessful appeal.

20 27. Plaintiffs contend that Defendants willfully misclassified OSs as independent
21 contractors until approximately January 2021, resulting in violations of the Labor Code,
22 including failure to: (1) pay overtime wages; (2) pay minimum wages; (3) pay meal period
23 compensation; (4) pay rest period compensation; (5) furnish accurate wage and hour statements;
24 (6) pay wages due upon discharge; and (7) indemnify for business expenses. In January 2021,
25 Defendants stopped classifying OSs as independent contractors and reclassified the role of OS
26 to a W-2 employee, classified as an exempt outside salesperson. Plaintiffs also contend that
27 subsequent to the reclassification, OSs were improperly classified as outside salespersons
28 because their compensation was not based on the price of a product or service since

1 Defendants' customers do not pay anything for the services and products they obtain from
2 Defendants. Additionally, OSs do not spend more than 50% of their time engaged in selling.
3 Therefore, Plaintiffs contend that violations continued after reclassification.

4 28. Defendants contended that OSs were properly classified as independent
5 contractors because OSs had a legally required business license, maintained a business location
6 separate from the Defendants' location, had authority to hire and fire other persons to assist in
7 providing services to Defendants, and regularly spent more than half the working time away
8 from the Defendants' place of business obtaining contracts for services. Defendants also
9 contended that OSs regularly spent more than 50% of their time engaged in selling products and
10 obtaining contracts for services and therefore meet the outside salesperson exemption.
11 Plaintiffs' claims for violations of the Labor Code hinged on proving that OSs were
12 misclassified. Misclassification claims such as the claims alleged here can be challenging to
13 prove on a group-wide basis because how each individual spends their time can vary drastically
14 from day-to-day. While Plaintiffs believe in the strength of their claims, it was possible that a
15 judge would decide aggrieved employees were not willfully misclassified and did not suffer any
16 of the alleged violations.

17 29. Defendants supported its contentions with written policies distributed to
18 Plaintiffs and aggrieved employees, a random sample of time and pay records, and citations to
19 relevant authority. If its evidence and arguments were accepted, the possibility of penalties
20 would not merely be reduced, but eliminated. Plaintiffs' counsel considered the risks of
21 summary adjudication/ judgment, trial, and, if successful, the risk penalties would be severely
22 reduced, or the decision reversed.

23 30. Considering the risks of continued litigation, the uncertainties involved in the
24 split of authority on the issue of manageability of PAGA claims, the burdens of proof necessary
25 to establish liability, and the probability of appeal of a favorable judgment, it is clear that the
26 non-reversionary settlement amount of \$200,000 is fair, adequate, and reasonable in light of
27 PAGA's purpose to remediate present labor law violations, to deter future violations, and to
28 maximize enforcement of the Labor Code.

1 31. Plaintiffs calculated the maximum potential penalties in an “everything goes
2 right” scenario to be approximately \$7,465,500, using only initial violation rate of \$100 for
3 each aggrieved employee per pay period. Defendants employed 423 PAGA Members during the
4 PAGA Period, who worked an aggregate 14,325 pay periods.

5 32. PAGA penalties were estimated by Plaintiffs for eight alleged underlying
6 violations at the initial violation rate of \$100, assuming one violation per aggrieved employee
7 (423 EEs) per pay period (14,325 PPs) as follows:

- 8 • Failure to Pay Wages (§ 1194) (14,325 PPs x \$100): \$1,432,500
- 9 • Failure to Pay Overtime Wages (§ 510) (14,325 PPs x \$100): \$1,432,500
- 10 • Meal Periods (§ 512) (14,325 PPs x \$100): \$1,432,500
- 11 • Rest Periods (§ 226.7) (14,325 PPs x \$100): \$1,432,500
- 12 • Wage Statements (§ 226) (423 EEs x \$250): \$105,750
- 13 • Expense Reimbursement (§ 2802) (14,325 PPs x \$100): \$1,432,500
- 14 • Final Wages (§ 203) (423 EEs x \$100): \$42,300
- 15 • Misclassification (§ 226.8) (31 ICs x \$5,000): \$155,000

16 **Maximum PAGA Penalties: \$7,465,550**

17 33. Maximum exposure was highly discounted for several reasons. First, Defendants
18 claimed that nearly all non-exempt employees, including Plaintiffs, signed arbitration
19 agreements limiting their claims to individual disputes. Second, at the time of the settlement,
20 Plaintiffs’ counsel estimated a 50 percent likelihood that Plaintiffs’ claims could be dismissed
21 based on manageability grounds, given that Defendants argued that there are 26 unique non-
22 exempt positions, reducing the value of the PAGA claims to \$3,732,750.

23 34. Lastly, Plaintiffs’ counsel estimated a 50 percent likelihood that Plaintiffs would
24 prevail at trial on their claims, further reducing the value to the PAGA claims to approximately
25 \$1,866,375. Plaintiffs’ counsel estimated a 50 percent likelihood that Plaintiffs would prevail at
26 trial on their claims, further reducing the value to the PAGA claims to approximately
27 \$1,866,375.

28 35. Additionally, the Court could exercise its discretion to reduce the amount of

1 PAGA penalties under Labor Code § 2699(e)(2).

2 36. After considering the risk the scope of the action could be limited, liability may
3 not be proven, and penalties, if awarded, could be substantially reduced, Plaintiffs assessed the
4 realistic exposure as \$1,866,375 (25% of 7,465,550).

5 37. The proposed \$200,000 settlement represents nearly 11% of Plaintiffs' Counsel's
6 assessment of the realistic exposure of what may have been obtained through lengthy,
7 expensive, risky litigation. (2.68% of \$7,465,550 maximum exposure). The settlement amount
8 is reasonable, fulfills the purpose of PAGA and provides a substantial amount to the LWDA for
9 education and enforcement.

10 38. The settlement was reached after extensive informal discovery and review and
11 analysis of all relevant policies, expert analysis, and protracted negotiation. Taking all factors
12 into consideration, Plaintiffs' Counsel concluded the settlement is more than "fair, reasonable,
13 and adequate," and avoids the risk, after extended litigation, there could be little or no recovery.

14 39. Plaintiffs' Counsel requests \$66,600.00 for their attorneys' fees, (33.33% of the
15 Gross Settlement Amount), and \$19,372.00 in litigation costs. As of the date of the filing of this
16 Motion and to bring this settlement to a final closure, Plaintiff's Counsel will have incurred
17 \$121,150.00 in attorneys' fees and \$19,372.00 in litigation costs. Attached as Exhibit 3 is a true
18 and correct copy of the Consolidated Summary of Plaintiff's Counsel's Time & Costs; Exhibit 4
19 is a true and correct copy of Cohelan Khoury & Singer's Itemization of Costs.

20 40. Plaintiffs' request for attorneys' fees in the amount of 33.33% of the gross
21 Settlement is reasonable given the significant result achieved on behalf of the State of
22 California and PAGA Members. The settlement amount of \$200,000 represents approximately
23 11% of the realistic value of the PAGA claims, after discounting for risks.

24 41. Since 2020, Cohelan Khoury & Singer has been awarded one-third of a common
25 fund in many class and representative action settlements, including:

26 a) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No.
27 2018-01017838 (Hon. Glenda Sanders – approving attorneys' fees of 33-1/3% of \$175,000
28 settlement in a PAGA action).

b) *Redin v. Accountabilities Professional Group, Et al.*, Orange County Superior Court, Case No. 2017-00929734 (Hon. Glenda Sanders –attorneys’ fees of 33-1/3% of \$255,000 settlement in Class action).

c) *White v. Sacramento Regional Transit District*, Sacramento County Superior Court, Case No. 234-2018-00240461 (Hon. David D. Alba –attorneys’ fees of 33-1/3% of \$385,000 settlement in Class action).

d) *Burris v. Resort Vacations, Inc.*, Orange County Superior Court, Case No. 30-2018-00997260 (Hon. Randall J. Sherman –attorneys’ fees of 33-1/3% of \$1,485,000 settlement in Class action).

e) *Jimenez v. Reyes Holdings, LLC, et al.*, San Diego County Superior Court, Case No. 37-2019-00051577 (Hon. Joel R. Wohfeil –attorneys’ fees of 33-1/3% of \$650,000 settlement in Class and Representative action).

f) *Santos, et al. v. National General Management Corp.*, San Bernardino County Superior Court, Case No. CIVDS 1918865 (Hon. David Cohn –attorneys’ fees of 33-1/3% of \$680,000 settlement in PAGA action).

g) *Loreto v. General Dynamics Information Technology, Inc.*, USDC Southern District of California, Case No. 3:19-cv-01366-GPC-MSB (Hon. Gonzalo P. Curiel –attorneys’ fees of 33-1/3% of \$900,000 settlement in a pre-certification wage and hour class action).

h) *Romanov v. Amazon Services LLC.*, USDC Central District of California, Case No. 2:20-cv-02692-SB-KS (Hon. Stanley Blumenfeld, Jr. – approving attorneys’ fees of 33-1/3% of \$700,000 settlement in a pre-certification wage and hour class action).

i) *Olson v. Wrike, Inc.*, Santa Clara County Superior Court, Case No. 20CV366599 (Hon. Patricia M. Lucas – approving attorneys’ fees of 33-1/3% of \$2,000,000 settlement in a pre-certification wage and hour class action).

j) *Gutierrez v. Kite Electric Incorporated*, Orange County Superior Court, Case No. 30-2020-01133960 (Hon. Peter J. Wilson – approving attorneys’ fees of 33-1/3% of \$458,991 settlement in a pre-certification wage and hour class action).

k) *Ramos Gonzalez v. Staff Pro, LLC, et al.*, San Diego County Superior Court, Case No. 37-2019-00044561 (Hon. Joel R. Wohfeil –attorneys’ fees of 33-1/3% of \$1,500,000 settlement in Class and Representative action).

l) *Gutierrez v. Kite Electric Incorporated*, Orange County Superior Court, Case No. 30-2020-01133960 (Hon. Peter J. Wilson – approving attorneys’ fees of 33-1/3% of \$458,991 settlement in a pre-certification wage and hour class action).

m) *Dolan v. Abacus Data Systems, Inc.*, San Diego County Superior Court, Case No. 37-2019-00051447 (Hon. Katherine Bacal –attorneys’ fees of 33-1/3% of \$600,000 settlement in Class and Representative action).

n) *Lopez, et al. v. Pacific Gas and Electric Company.*, San Francisco County Superior Court, Case No. CGC-17-562970 (Hon. Richard B. Ulmer, Jr. –attorneys’ fees of 33-1/3% of \$350,000 settlement in Class and Representative action).

o) *Popal v. Wells Fargo Bank, National Associate*, San Diego County Superior Court, Case No. 37-2020-00038101 (Hon. Gregory W. Pollack –attorneys’ fees of 33-1/3% of \$3,000,000 settlement in Class and Representative action).

p) *Randolph v. Konica Minolta Business Solutions U.S.A., Inc.*, Sacramento County Superior Court, Case No. 34-2018-00237087 (Hon. Lauri A. Damrell – attorneys’ fees of 33-1/3% of \$325,000 settlement in Class and Representative action).

1 q) *Sanchez, et al. v. Renzenberger, Inc. et al.*, Los Angeles County Superior Court,
2 Case No. 19STCV46131 (Hon. Yvette M. Palazuelos – attorneys’ fees of 33-1/3% of
\$2,400,000 settlement in Class and Representative action).

3 r) *De Benning v. Costco Wholesale Corporation*, Sacramento County Superior
4 Court, Case No. 34-2021-00309030 (Hon. Gregory W. Pollack – attorneys’ fees of 33-1/3% of
\$9,000,000 settlement in Class and Representative action).

5 s) *Tam v. Q Tech Corporation*, Los Angeles County Superior Court, Case No.
21STCV18635, (Hon. Elihu M. Berle – attorneys’ fees of 33-1/3% of \$650,000 settlement in
Class and Representative action).

6 t) *Mireles v. Lodi Memorial Hospital Association, Inc., et al.*, San Joaquin County
7 Superior Court, Case No. STK-CV-UOE-2020-0004458 (Hon. Erin Guy Castillo – attorneys’
fees of 35% of \$1,500,000 settlement in PAGA action).

8 42. Plaintiffs’ counsel litigated this case on a purely contingent basis, incurring over
9 \$19,000.00 in costs with no guarantee of recovery.

10 43. Plaintiffs’ counsel invested over 184 hours of attorney and support staff time into
11 this action, with payment deferred to the end and entirely contingent on the outcome.

12 44. The efforts of Plaintiffs’ counsel have resulted in benefits beyond the settlement
13 fund as, after Plaintiffs mailed notice of the alleged violations to the LWDA, Defendants
14 reclassified OSs to W-2 employees.

15 45. The lodestar of Plaintiffs’ counsel is \$121,150.00 which is based on 184.2 hours
16 of attorney and support staff time at customary hourly rates. The hours expended are reasonable
17 in light of the complexity and duration of the litigation.

18 46. Plaintiffs’ Counsel’s skill and experience support their hourly rates and are in
19 line with rates typically approved in California wage and hour class actions. Cohelan Khoury &
20 Singer’s practice is limited to litigating class and representative actions on behalf of employees
21 and consumers, and our firm has been appointed Class Counsel or co-Class Counsel in over 300
22 such cases.

23 47. Plaintiffs’ Counsel’s skill and experience support their hourly rates: Cohelan
24 Khoury & Singer: Managing Partner, Michael D. Singer - \$925; Associate, Marta Manus -
25 \$700; Srourian Law Firm, P.C.: Founding Partner, Daniel Srourian - \$650. These rates are in
26 line with those typically approved in California wage-and hour class action litigation. Indeed,
27 the Laffey Matrix would actually provide for a rate increase. Attached as Exhibit 5 is a true and
28 correct copy of the Laffey Matrix (accessed October 5, 2023, available at

1 <http://www.laffeymatrix.com/see.html>).

2 48. The Settlement provides for reimbursement of costs not to exceed \$22,000.
3 Plaintiffs' Counsel seeks reimbursement of actual costs of \$19,372.00. These costs are
4 reasonable and were necessary to prosecute this case.

5 49. The Settlement provides for settlement administration costs not to exceed \$4,500
6 to be paid from the Gross Settlement Amount to ILYM Group, Inc. ILYM Group, Inc. has
7 submitted a bid for the capped amount of \$3,995.

8 50. Free Energy's arbitration agreements prevented Plaintiffs from bringing
9 individual damages claims in court.

10 51. Plaintiffs released all claims, and waived Civil Code section 1542, in exchange
11 for \$12,500 each. Ms. Hernandez was employed as an Outreach Specialist for three years. As
12 with the representative PAGA claims, Free Energy strongly denies the merits of the individual
13 claims, asserted credible defenses, and resolved the claims only to buy peace and avoid the
14 inconvenience and expense of arbitration.

15 52. Subject to the usual litigation risks, the settlement amount is less than what may
16 have reasonably been obtained in arbitration if successful. If considered only as a payment for a
17 general release of claims, no part of the payment is consideration for agreeing to settlement of
18 PAGA claims. Counsel is taking no fees or costs from the \$12,500 payment

19 53. On the same date the instant motion is filed with the Court, it will be served
20 upon Defendant and provided to the Labor and Workforce Development Agency ("LWDA")
21 electronically through the LWDA's website, using the appropriate intake form. Attached as
22 Exhibit 6 is a true and correct copy of the filing confirmation.

23 I declare under the penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct and that this declaration is executed on October 6, 2023 in San
25 Diego, California.

26 

27 Michael D. Singer
28

EXHIBIT 1

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

DANIEL COLMENARES, an individual,
CATHY HERNANDEZ, an individual, on
behalf of themselves and all others similarly
situated;

Plaintiff,

v.

FREE ENERGY SAVINGS COMPANY,
LLC, a California Limited Liability
Corporation; ALLAN RAGO, an individual;
KRISTINE VANNEMAN, an individual;
LEFLORIDA LESLIE, an individual and
DOES 1 through 100, inclusive;

Defendants.

Case No.: CIVSB2028719

*[Assigned for all purposes to Honorable David
Cohn; Department S-26]*

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE**

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This Joint Stipulation of Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiffs Daniel Colmenares and Cathy Hernandez (“Plaintiffs”), and Defendant Free Energy Savings Company, LLC (“Defendant”) (collectively with Plaintiffs, the “Parties”).

I. RECITALS

1. On December 9, 2020 Plaintiff Daniel Colmenares commenced a lawsuit against Defendant asserting multiple causes of action under the California Labor Code and the Private Attorneys General Act of 2004 (“PAGA”). On April 22, 2021, Plaintiffs Daniel Colmenares and Cathy Hernandez filed a First Amended Complaint for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to pay meal period compensation; (4) failure to pay rest period compensation; (5) failure to furnish accurate wage and hour statements; (6) failure to pay wages due upon discharge; (7) failure to indemnify; (8) unfair competition; and (9) violation of the PAGA.

2. On June 19, 2023, the Parties attended a full-day mediation with mediator Louis Marlin. The Parties thereafter accepted a mediator’s proposal on the terms memorialized by this Settlement Agreement.

3. The Parties wish to avoid the expense and risks of further proceedings and any future prosecution of Plaintiffs’ PAGA claims, as alleged in the Action (defined below).

II. DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Daniel Colmenares, et al. v. Free Energy Savings Company, LLC, et al.*, San Bernardino County Superior Court Case Number CIVSB2028719.

2. “Attorneys’ Fees and Costs” means attorneys’ fees for Plaintiffs’ Counsel’s litigation and resolution of the Action, and their expenses and costs incurred in connection with the Action, which shall be paid from the Gross Settlement Amount. Plaintiffs’ Counsel will request attorneys’ fees not in excess of Thirty-Three and One Third Percent (33 1/3%) of the Gross Settlement Amount, i.e., Sixty-Six

1 Thousand, Six Hundred Dollars and Zero Cents (\$66,600.00) and the reimbursement of costs and
2 expenses associated with Plaintiffs' Counsel's litigation and settlement of the Action, up to Twenty-Two
3 Thousand Dollars and Zero Cents (\$22,000), subject to the Court's approval. Defendant has agreed not
4 to oppose Plaintiffs' Counsel's request for fees and reimbursement of costs as set forth above.

5 3. "Plaintiffs' Counsel" means Srourian Law Firm, P.C. and Cohelan Khoury & Singer.

6 4. "PAGA Member List" means a complete list of all PAGA Members that Defendant will
7 diligently and in good faith compile from its records and provide only to the Settlement Administrator
8 within thirty (30) calendar days after Approval of this Settlement. The PAGA Member List will be
9 formatted in Microsoft Office Excel and will include each PAGA Member's full name; most recent
10 mailing address and telephone number; Social Security number; dates of employment; the number of
11 pay periods that each PAGA Member worked during the PAGA Period.

12 5. "Court" means the San Bernardino Superior Court.

13 6. "Defendant" means Defendant Free Energy Savings Company, LLC.

14 7. "Effective Date" means the date of Settlement Approval. "Effective Date" means
15 the sixty-first (61) calendar day after the date of Approval, provided no appeal is initiated; or if a timely
16 appeal is initiated, then the Effective Date will be the date of final resolution of that appeal (including any
17 requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

18 8. "Gross Settlement Amount" means the Gross Settlement Amount of Two Hundred
19 Thousand Dollars and Zero Cents (\$200,000.00), to be paid by Defendant in full satisfaction of all
20 Released Claims, which includes Attorneys' Fees and Costs, the PAGA Settlement Amount, and
21 Settlement Administration Costs. In no event will Defendant be liable for more than the Gross
22 Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the
23 Gross Settlement Amount to Defendant.

24 9. "Individual Settlement Payment" means each PAGA Member's respective share of the
25 Net Settlement Fund, after payment to the Labor and Workforce Development Agency ("LWDA") of
26 75% of the Net Settlement Fund.

27 10. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining
28 after deducting the Attorneys' Fees and Costs and Settlement Administration Costs. The Net Settlement

1 Fund will be distributed to the LWDA and PAGA Members. There will be no reversion of the Net
2 Settlement Fund to Defendant.

3 11. "Settlement Cover Letter" means a letter, substantially in the form attached as Exhibit A,
4 which will be sent to each PAGA Member along with the Settlement Check for the PAGA Member's
5 Individual Settlement Payment.

6 12. "PAGA Members" means all persons who worked for Defendant as non-exempt, hourly
7 paid employees in California or persons retained as independent contractor Outreach Specialists for
8 Defendant at any time during the PAGA Period.

9 13. "PAGA Period" means the period from November 19, 2019 to August 18, 2023 or the
10 Court's Approval of this Settlement, whichever comes first.

11 14. "Parties" means Plaintiffs and Defendant collectively.

12 15. "Plaintiffs" means Plaintiffs Daniel Colmenares and Cathy Hernandez.

13 16. "Approval" means the date on which the Court enters an order granting approval of the
14 Settlement Agreement.

15 17. "Released Claims" means all claims, rights, demands, damages, and penalties pursuant
16 to the Private Attorneys General Act (Labor Code section 2699, *et seq.*) for alleged violations of the
17 California Labor Code, arising at any time during the PAGA Period for the claims brought by Plaintiffs
18 in the Action or that could have been brought against Released Parties in the Action based on the facts or
19 theories alleged in Plaintiffs' PAGA letter or the Action. This includes any claims for civil penalties
20 under Labor Code section 2699, including but not limited to, (1) misclassification; (2) failure to provide
21 meal periods; (3) failure to provide rest periods; (4) failure to provide accurate wages statements;
22 (5) failure to keep accurate payroll records; (6) failure to pay minimum wages; (7) violation of Labor
23 Code § 1199; (8) failure to pay overtime wages; (9) failure to timely pay wages at separation; (10) failure
24 to indemnify; (11) failure to timely pay wages; (12) violation of Labor Code § 216; (13) failure to pay
25 meal period compensation; (14) failure to pay rest period compensation.

26 18. "Released Parties" means Defendant Free Energy Savings Company, LLC, its current
27 and former parent, subsidiaries and/or related companies, affiliated and related corporations and other
28 entities, their successors and assigns, and all of its current and former owners, shareholders, directors,

officers, partners, principals, managers, members, employees, agents, attorneys, representatives, firms, associations, partnerships, joint ventures, and entities, and their agents, guardians, successors, assigns, heirs, executors, and administrators, specifically including Allen Rago, Kristine Vanneman, LeFlorida Leslie, and Richard Esteves. Each Released Party is an intended beneficiary of this Agreement.

19. “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. The Settlement Administration Costs shall not exceed Four Thousand, Five Hundred Dollars and Zero Cents (\$4,500).

20. “Settlement Administrator” means ILYM Group, Inc., or any other third-party settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

21. “Settlement Check” means the checks that will be issued to each PAGA Members pursuant to this Agreement, which will be enclosed with the Settlement Cover Letter.

III. TERMS OF AGREEMENT

The Plaintiffs and Defendant agrees as follows:

22. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of the Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) into a Qualified Settlement Account to be established by the Settlement Administrator. After the Effective Date, the Gross Settlement Amount will be used for: (i) Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii) Attorneys’ Fees and Costs; and (iv) Settlement Administration Costs. Defendant will deposit the Gross Settlement Amount within forty-five (45) calendar days of the Effective Date (“Funding Date”).

23. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Plaintiffs' Counsel for Attorneys' Fees and Costs of not more than Sixty-Six Thousand, Six Hundred Dollars and Zero Cents (\$66,600.00), plus the reimbursement of all out-of-pocket costs and expenses associated with Plaintiffs' Counsel's litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed Twenty-Two Thousand Dollars and Zero Cents (\$22,000), both of which will be paid from the Gross Settlement Amount.

24. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount, which shall not exceed Four Thousand, Five Hundred Dollars and Zero Cents (\$4,500). These costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of IRS Form 1099s, distributing Settlement Cover Letter, calculating and distributing the Gross Settlement Amount, and providing necessary reports and declarations.

25. PAGA Settlement Amount. Pursuant to PAGA, Seventy-Five Percent (75%) of the Net Settlement Amount will be paid to the LWDA and Twenty-Five Percent (25%) will be paid to PAGA Members in proportion to the number of pay periods, or for independent contractors, pay period equivalents, worked during the PAGA Period.

26. Notice to the LWDA. The Parties' settlement is expressly conditioned upon the Court's approval of the Settlement. Plaintiffs shall be responsible for timely providing notice to the LWDA and providing Defendant's counsel confirmation of same, under California Labor Code § 2699(1)(2), and submission of any judgment within 10 days after entry of same, under California Labor Code § 2699(1)(3).

27. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA Member has the right to exclude himself or herself from the Settlement. PAGA Members will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no

1 PAGA Member has the right to object to the terms of the Settlement Agreement.

2 28. Net Settlement Fund. The entire Net Settlement Fund will be distributed to the LWDA
3 and PAGA Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

4 29. Individual Settlement Payment Calculations. Individual Settlement Payments will be
5 calculated and apportioned from the Net Settlement Fund based on the number of pay periods a PAGA
6 Member worked during the PAGA Period. All PAGA Members will be credited with at least one pay
7 period during the PAGA Period. Specific calculations of Individual Settlement Payments will be made
8 as follows: Defendant will calculate the total number of pay periods worked by each PAGA Member
9 during the PAGA Period and the aggregate total number of pay periods worked by all PAGA Members
10 during the PAGA Period. To determine each PAGA Member's estimated "Individual Settlement
11 Payment," the Settlement Administrator will use the following formula: The PAGA Member portion of
12 the Net Settlement Fund (i.e., 25% of the Net Settlement Fund) will be divided by the aggregate total
13 number of pay periods, resulting in the "PAGA Pay Period Value." Each PAGA Member's "Individual
14 Settlement Payment" will be calculated by multiplying each individual PAGA Member's total number
15 of pay periods by the PAGA Pay Period Value. The entire PAGA Fund will be disbursed to all PAGA
16 Members.

17 30. Defendant estimates that there are approximately 14,325 pay periods. If this number is
18 incorrect by more than 10%, then the Gross Settlement Amount will be increased proportionately. For
19 example, if the number is 11% higher, the Gross Settlement Amount will be increased by 1%. In the
20 alternative, the Defendant may elect to shorten the PAGA Period in order to stay within the 10%
21 cushion.

22 31. Administration Process. The Parties agree to cooperate in the administration of the
23 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
24 administration of the Settlement.

25 32. Delivery of the PAGA Member List. Within thirty (30) calendar days of Approval,
26 Defendant will provide the PAGA Member List to the Settlement Administrator.

27 33. Confirmation of Contact Information in the PAGA Member List. Prior to mailing, the
28 Settlement Administrator will perform a search based on the National Change of Address Database for

1 information to update and correct for any known or identifiable address changes. Any Settlement Cover
2 Letter returned to the Settlement Administrator as non-deliverable will be sent promptly via regular First-
3 Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate
4 the date of such re-mailing on the Settlement Cover Letter. If no forwarding address is provided, the
5 Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or
6 other search using the name, address and/or Social Security number of the PAGA Member involved, and
7 will then perform a single re-mailing.

8 34. Settlement Cover Letter. All PAGA Members will be mailed, at their last known
9 mailing address identified in the PAGA Member List, their respective Individual Settlement Payment,
10 which will be enclosed with each PAGA Member's respective Settlement Cover Letter.

11 35. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
12 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
13 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys,
14 shall, by operation of the Court's Order approving this settlement, fully and forever release and discharge
15 all of the Released Parties, or any of them, from each of the Released Claims during the PAGA Period.

16 36. Distribution Timing of Individual Settlement Payments. Within twenty (20) calendar
17 days of the Funding Date, the Settlement Administrator will issue payments, enclosed with the
18 Settlement Cover Letter, to: (i) PAGA Members; (ii) the Labor and Workforce Development Agency;
19 and (iii) Plaintiffs' Counsel. The Settlement Administrator will also issue a payment to itself for Court-
20 approved services performed in connection with the Settlement.

21 37. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
22 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
23 more than one hundred eighty (180) calendar days after issuance will be tendered to the State of
24 California, Controller's Office, Unclaimed Property Division.

25 38. Certification of Completion. Upon completion of administration of the Settlement, the
26 Settlement Administrator will provide a written declaration under oath to certify such completion to
27 counsel for all Parties, and the Court, if necessary.

28 39. Treatment of Individual Settlement Payments. All Individual Settlement Payments will

1 be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

2 40. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
3 will be responsible for issuing to PAGA Members and Plaintiffs' Counsel any 1099, or other tax forms
4 as may be required by law for all amounts paid pursuant to this Settlement.

5 41. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
6 of the payments called for hereunder, and PAGA Members are not relying on any statement,
7 representation, or calculation by Defendant or by the Settlement Administrator in this regard.

8 42. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
9 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
10 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
11 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
12 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
13 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
14 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
15 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
16 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
17 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
18 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
19 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
20 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
21 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
22 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
23 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
24 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
25 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
26 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
27 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
28 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY

TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

43. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

44. Nullification of Settlement Agreement. In the event that the Court does not approve the Settlement as provided herein, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

45. Approval Hearing. The Parties recognize in accordance with Labor Code §2699(l)(2) that Court approval is required in the event of any settlement of a PAGA action. Within thirty (30) calendar days of the full execution of this Agreement, Plaintiffs shall file a motion to the Settlement Court identifying the key terms of the Settlement and requesting that the Court approve the PAGA Penalties provided for in this Settlement Agreement (“Approval Motion”). Plaintiffs shall provide for review the Approval Motion to Defendant at least seven (7) calendar days prior to filing and shall not file without Defendant’s approval. The Approval Motion submitted to the Settlement Court shall request the entry of an order approving the Settlement Amount provided for in this Settlement.

46. Judgment and Continued Jurisdiction. Upon approval of the Settlement by the Court, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement Administrator’s website.

47. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

48. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the

1 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
2 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
3 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
4 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
5 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
6 contradict the terms of this Settlement Agreement.

7 49. Amendment or Modification. No amendment, change, or modification to this Settlement
8 Agreement will be valid unless in writing and signed, either by all the Parties or all their counsel in this
9 Action.

10 50. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
11 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
12 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
13 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
14 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
15 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
16 reach agreement on the form or content of any document needed to implement the Settlement, or on any
17 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
18 may seek the assistance of the Court to resolve such disagreement.

19 51. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
20 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

21 52. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
22 will be governed by and interpreted according to the laws of the State of California.

23 53. Execution and Counterparts. This Settlement Agreement is subject only to the execution
24 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
25 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
26 copies of the signature page, will be deemed to be one and the same instrument.

27 54. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
28 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this

1 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
2 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
3 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
4 fairness and reasonableness of this Settlement.

5 55. Invalidity of Any Provision. Before declaring any provision of this Settlement
6 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
7 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
8 valid and enforceable.

9 56. Waiver of Certain Appeals. The Parties agree to waive appeals in the event that this
10 Settlement is approved.

11 57. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
12 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
13 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any
14 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
15 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
16 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
17 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any
18 of the negotiations connected with it, will be construed as an admission or concession by Defendant of
19 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
20 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
21 offered or received as evidence in any action or proceeding to establish any liability or admission on the
22 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
23 compliance with, federal, state, local or other applicable law.

24 58. No Public Comment. The Parties and their counsel agree that they will not issue any
25 press releases, initiate any contact with the press, respond to any press inquiry, or have any
26 communication with the press about the fact, amount or terms of the Settlement.

27 59. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
28 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or

1 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

2 60. Mutual Preparation. The Parties participated in the negotiating of and drafting of the
3 Settlement Agreement and have had a full opportunity to negotiate the terms and conditions of this
4 Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly
5 against one party than another merely by virtue of the fact that it may have been prepared by counsel for
6 one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties,
7 all Parties have contributed to the preparation of this Settlement Agreement.

8 61. Representation By Counsel. The Parties acknowledge that they have been represented
9 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
10 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
11 Plaintiff and Plaintiffs' Counsel warrant and represent that there are no liens on the Settlement
12 Agreement.

13 62. All Terms Subject to Final Court Approval. All amounts and procedures described in
14 this Settlement Agreement herein will be subject to Court approval.

15 63. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
16 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
17 Settlement Agreement.

18 64. Binding Agreement. The Parties warrant that they understand and have full authority to
19 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
20 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in
21 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
22 otherwise might apply under federal or state law.

23 **READ CAREFULLY BEFORE SIGNING**

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25
26 Dated: 8/17/2023

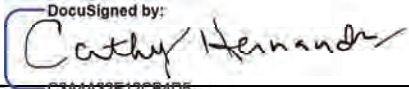
PLAINTIFF

DocuSigned by:
Daniel Colmenares
AZ55B34C0EB94CE...
Daniel Colmenares

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PLAINTIFF

Dated: 8/17/2023

DocuSigned by:

Cathy Hernandez

DEFENDANT

Dated: _____

Free Energy Savings Company, LLC
By Its: _____

APPROVED AS TO FORM

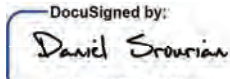
COHELAN KHOURY & SINGER

Dated: 8/17/2023

By: 
Michael D. Singer
Marta Manus
Attorneys for Plaintiffs

SROURIAN LAW FIRM, P.C.

Dated: 8/17/2023

By: 
Daniel Srourian
Attorneys for Plaintiffs

GREENBERG TRAURIG, LLP

Dated: _____

By: _____
Ryan C. Bykerk
Matthew J. Weber
Attorneys for Defendant

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PLAINTIFF

Dated: _____

Cathy Hernandez

DEFENDANT

Dated: 08/16/2023



Free Energy Savings Company, LLC
By Its: President and CEO

APPROVED AS TO FORM

COHELAN KHOURY & SINGER

Dated: _____

By: _____
Michael D. Singer
Marta Manus
Attorneys for Plaintiffs

SROURIAN LAW FIRM, P.C.

Dated: _____

By: _____
Daniel Srourian
Attorneys for Plaintiffs

GREENBERG TRAURIG, LLP

Dated: 08/17/2023

By: 

Ryan C. Bykerk
Matthew J. Weber
Attorneys for Defendant

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EXHIBIT A
(Notice of PAGA Settlement)

1 [Mailing Date]

2 **NOTICE OF SETTLEMENT**

3 *Re: Daniel Colmenares v. Free Energy Savings Company, LLC, San Bernardino County*
4 *Superior Court Case Number CIVSB2028719*

5 [Claims Admin Info]

6 Dear Sir or Madam:

7 The enclosed payment is made to you pursuant to a court-approved settlement between Plaintiffs
8 Daniel Colmenares and Cathy Hernandez ("Plaintiffs"), on behalf of themselves and the people
9 of the State of California and as "aggrieved employees" under the Labor Code Private Attorneys
10 General Act of 2004, section 2698, *et seq.* ("PAGA"), and Defendant Free Energy Savings
Company, LLC. ("Defendant"), in the above-referenced matter (the "Action") in which Plaintiffs
made claims against Defendant.

11 Defendant denies any liability or wrongdoing of any kind and no finding of liability has been
12 made by the Court. However, the Parties have reached a settlement, which has been approved by
13 the Court, and whereby all current and former (1) non-exempt California employees employed by
14 Defendant at any time during the PAGA Period and (2) independent contractor outreachers who
15 performed work for Defendant at any time during the PAGA Period ("PAGA Members") will
16 receive a portion of the settlement in exchange for a release of all claims that could be made
17 pursuant PAGA for alleged violations of the California Labor Code, arising at any time during
18 the PAGA Period for the claims brought by Plaintiffs in the Action or that could have been brought
against Released Parties in the Action based on the facts or theories alleged in Plaintiffs' PAGA
letter or the Action, between November 19, 2019 and August 18, 2023. There is no opportunity
to opt-out of this PAGA settlement. The enclosed check represents your portion of the settlement
recovery. Your enclosed check is valid for 180 days from the date of issuance. We suggest you
cash it promptly. For tax purposes, an IRS Form 1099 will be issued to you for this payment.

EXHIBIT 2



Los Angeles Office
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010

Orange County Office
1072 Bristol St., Suite 203
Costa Mesa, CA 92626

Westwood Office
10855 Wilshire Blvd., Suite 400
Los Angeles, CA 90024

Woodland Hills Office
6230 Canoga Ave., Suite 1547
Woodland Hills, CA 91367

November 19, 2020

FREE ENERGY SAVINGS COMPANY, LLC
4751 ARROW HIGHWAY
MONTCLAIR CA 91763

via U.S. Certified Mail

ALLAN RAGO
4751 ARROW HIGHWAY
MONTCLAIR CA 91763

via U.S. Certified Mail

KRISTINE VANNEMAN
4751 ARROW HIGHWAY
MONTCLAIR CA 91763

via U.S. Certified Mail

Labor and Workforce Development Agency -
Department of Industrial Relations - Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Filed online at <http://www.dir.ca.gov/>

Re: Daniel Colmenares' Notice of Labor Code Violations Pursuant to California Labor Code Section 2699 Et. Seq.

Dear Sir or Madam:

Please be advised that **Daniel Colmenares** (hereinafter "Plaintiff") has retained Srourian Law Firm, PC to represent him and other aggrieved employees for claims against FREE ENERGY SAVINGS COMPANY, LLC, ALLAN RAGO, and KRISTINE VANNEMAN (collectively referred to as "Employers" or "You" and/or referred to with "Your" and "Yours"). You are hereby on notice that Plaintiff seeks all available relief.

Pursuant to the procedures specified in California Labor Code Section 2699.3, Plaintiff claims that You have violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code 2698 et sq. You willfully and wrongfully misclassified as independent contractors Plaintiff and other aggrieved employees and You deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, minimum wage, meal and rest periods, and failure to reimburse necessary business expenses under Labor Code 2802, and treated Plaintiff and the other aggrieved employees as exempt from those protections. You further willfully and wrongfully misclassified Plaintiff and other aggrieved employees as exempt outside salespersons, and denied them minimum wage, overtime pay at a correct rate, meal breaks, rest

breaks, among other violations, despite Plaintiff and other aggrieved employees did not qualify as outside salespeople.

Plaintiff and other aggrieved employees primarily engage(d) in duties that fail to meet the requirements of the various exemptions. Plaintiff and other aggrieved employees engaged in installation and sales. They lacked the requisite discretion and independent judgment required by the Labor Code and the IWC Orders (without limitation). By misclassifying Plaintiff and other aggrieved employees, You deprived them of many protections. Plaintiff was unable to take uninterrupted meal and rest breaks as required by law due to work duties.

Misclassification of Employee as Independent Contractor

It unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). This permits Plaintiff to recovery a civil penalty of from five thousand dollars (\$5,000) to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b)-(c). Plaintiff and others were always employees as evidenced by the following facts: Plaintiff's position required him to perform installation and sales under Your supervision, control and direction. These duties are directly related to the usual services provided by You. Furthermore, You supplied Plaintiff and others the instrumentalities, tools, and the place for the employees to do their work. All work was done under Your supervision and control. Further, the employee's investment in the equipment or materials required were limited or non-existent, no special skills were required of the employees, the employee's services were to be performed for a long period of time with a high degree of permanence in the working relationship, and the parties believed they were maintaining an employer-employee relationship.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

You failed to maintain a policy that provides Plaintiff and other employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Wage Orders 4 and 9. You failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. Some employees were also due a second meal break as they worked in excess of ten (10) hours. They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. As a result of violations of California Labor Code §§ 226.7 and 512 and applicable Wage Orders 4 and 9, You are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

You failed to maintain a policy that provides Plaintiff and other employees with off-duty rest periods as required by California law. Plaintiff and other employees regularly worked in excess of 3.5 hours or major fraction thereof during work days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7,

512 and Orders 7-2001 and 17-2001. You failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Wage Orders, You are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

You violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other employees with required full and complete wage statement information by paying employees in part or in full in cash without proper corresponding wage statements. As a result of violations of California Labor Code § 226(a), You are liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Plaintiff and others were deprived of wage statements altogether, or various necessary items of information such as total hours worked, applicable hourly rates, deductions, net wages, period dates, and the employers' address. Moreover, employees' work hours, overtime time hours and pay, missed rest or meal break premiums, wages, without limitation, were misreported on their wage statements. As a result of violations of California Labor Code § 226(a), You are liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

You failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other employees by paying employees in part or in full in cash without proper corresponding wage statements. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees "Because Employers did not keep accurate time records reflecting hours worked for Plaintiff and other employees, including but not limited to beginning work prior to opening, and after closing, it is liable for civil penalties pursuant to California Labor Code §2698 *et seq.* To the extent that You failed to keep accurate payroll records was willful, it is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Failure to Pay Minimum Wage

You failed to maintain a policy that compensates Plaintiff and other employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission applicable Wage Orders. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission applicable Wage Orders for failure to pay minimum wage, You are liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.*, an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of the Labor Code regarding employees 'wages, hours, and working conditions, is subject to PAGA penalties. As described above, You required Plaintiff and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage, failed to appropriately account for and pay for commissions, and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)). Accordingly, You are liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Overtime

You failed to maintain a policy that compensates Plaintiff and other employees for all hours worked, including overtime. Specifically, Plaintiff worked shifts of 10, 13 and 15 hours, and sometimes more, without being paid overtime or double time in accordance with California law. As a result of violations of California Labor Code §§ 510, 1194, and Industrial Welfare Commission applicable Wage Orders for failure to pay overtime, You are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Pay Wages Due Upon Termination

You violated California Labor Code § § 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other employees at the time employment was terminated. You willfully failed to pay Plaintiff and other employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202. Plaintiffs and other employees' overtime work were deliberately ignored, and payment avoided by You. Pursuant to §§ 203 and 256 of the Labor Code, Plaintiffs and other employees are now also entitled to recover up to thirty (30) days of wages due to Defendant's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because You violated California Labor Code §§ 201, 201and 203 of the Labor Code, You are liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, You required employees to work hours in excess of eight hours in a day and forty in a week but has not paid these employees overtime compensation. As a result, Plaintiffs and other employees have been denied "the unpaid balance of the full amount of this ... overtime compensation" as required by California Labor Code §1194, and You are liable for civil penalties pursuant to California Labor Code §2698 *et seq.*

Unlawful Failure to Reimburse Expenses

You failed to indemnify Plaintiff and other employees for all necessary expenditures or losses incurred by Plaintiff. You did not reimburse Plaintiff for various work-related expenses, including but not limited to gas, mileage, tolls, fares, insurance, and maintenance. California Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge their duties. As a result of violations of California Labor Code§ 2802, You are liable for civil penalties pursuant to California Labor Code §§ 558, 2802 and 2698 *et seq.*

Violation of Labor Code § 204

California Labor Code § 204 states:

All wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

By failing to pay minimum wage, overtime wage, double wages, and break premiums You violated Labor Code § 204, and are liable for penalties as such.

Violation of Labor Code § 216

California Labor Code § 216 states:

In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:

(a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made.

(b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

By failing to pay minimum wage, overtime wage, double wages, and break premiums You violated Labor Code § 216, and are liable for penalties as such.

Conclusion

You violated or caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,
SROURIAN LAW FIRM

A handwritten signature in black ink, appearing to read 'Daniel Srourian', with a stylized flourish at the end.

Daniel Srourian, Esq.

EXHIBIT 3

SUMMARY OF TIME AND COSTS
Colmenares, et al. v. Free Energy Company, LLC, et al.
San Bernardino County Superior Court Case No. CIVSB2028719

Total Attorneys' Hours: 184.2
Total Lodestar Fees: \$121,150.00
Total Costs: \$ 19,372.00

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
COHELAN KHOURY & SINGER				
Michael P. Singer, Managing Partner	1984	18.3	\$925	\$16,927.50
Marta Manus, Associate	2008	44.7	\$700	\$31,290.00
Amber Worden, Certified Paralegal	N/A	7.4	\$200	\$ 1,480.00
Matthew Atlas, Paralegal	N/A	5.3	\$175	\$927.50
TOTAL:		75.7		\$50,625.00

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
Srourian Law Firm, P.C.				
Daniel Srourian, Esq.	2012	106.5	\$650	\$69,225.00
<i>Anticipated Additional Hours</i>		2.0	\$650	\$1,300.00
TOTAL:		108.5		\$70,525.00

Total Aggregate Hours: 184.2	Total Lodestar: \$121,150.00
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LITIGATION EXPENSES	
Cohelan Khoury & Singer	\$7,129.33
Srourian Law Firm, P.C.	\$12,242.67
TOTAL COSTS	\$19,372.00

EXHIBIT 4

Litigation Cost

Colmenares, et al. v. Free Energy Company, LLC, et al.

San Bernardino County Superior Court Case No. CIVSB2028719

7/13/23

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
2/10/2023	SBSC	Stipulation and Order Filed	\$ 3.00
2/10/2023	SBSC	Tentative Decisions	\$ 3.00
4/26/2023	Louis Marlin Mediation	Mediation Fee 6/19/23	\$ 4,500.00
6/19/2023	Express Network	Notice of Association of Counsel	\$ 99.00
7/13/2023	Berger Consulting Group	Statistician	\$ 2,380.00
<i>Est</i>	<i>One Legal</i>	<i>Settlement Approval Mtn. - Efile</i>	<i>\$ 65.00</i>
<i>Est</i>	<i>One Legal</i>	<i>Settlement Approval Mtn. - Courtesy Copy</i>	<i>\$ 75.00</i>
	In House	Postage	\$ 0.60
	In House	Photocopies (62@.06)	\$ 3.78
	Total:		\$ 7,129.38

EXHIBIT 5

LAFFEY MATRIX

History

Case Law

See the Matrix

Contact us

Home

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $\frac{1}{2}$ Years Out of Law School $\frac{1}{2}$ is calculated from June 1 of each year, when most law students graduate. $\frac{1}{2}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $\frac{1}{2}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $\frac{1}{2}$ 1-3" from June 1, 1996 until May 31, 1999, would move into tier $\frac{1}{2}$ 4-7" on June 1, 1999, and tier $\frac{1}{2}$ 8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 6