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Attorneys for Plaintiff(s)

ALYSIA FORD

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ALYSIA FORD and RENE LOPEZ,
individually, and on behalf of all others similarly
situated, and as an “aggrieved employee” on
behalf of other “aggrieved employees” under the
Labor Code Private Attorneys General act of
2004,

Plaintiffs,

v.

BOAVIDA COMMUNITIES LLC, a California
limited liability company; THE BOAVIDA
GROUP, LP, a limited partnership; and DOES 1
through 10, inclusive,

Defendants.

Case No. 34-2021-00299610-CU-OE-GDS

CLASS ACTION

[Assigned to: Hon. Jill H. Talley, Dept. 25]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: July 29, 2022

Hearing Time: 1:30 p.m.

Time:

Hearing Dept.: 25

Dept.: The Hon. Jill H. Talley

Action filed: April 28, 2021

Trial Date: Not Set

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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Attorneys for Plaintiff(s)
RENE LOPEZ

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiffs Alysia Ford (“Plaintiff Ford”) and Rene Lopez (“Plaintiff Lopez” and together with Plaintiff Ford, the “Plaintiffs”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiffs Rene Lopez and Alysia Ford’s Motion for Preliminary Approval of Class Action Settlement.

2. BoaVida Communities LLC and The BoaVida Group, LP (“Defendants”) are RV park and resort owners and operators with approximately 65 properties in California. Plaintiff Ford worked for Defendants from approximately February 2020 to approximately February 2021.

4. On April 30, 2021, Plaintiff Ford notified Defendants and the California Labor & Workforce Development Agency (“LWDA”) of her intent to pursue a California Private Attorneys General Act (“PAGA”) case against Defendants. A true and correct copy of the PAGA Notice is

1 attached hereto as **Exhibit A**.

2 5. On May 9, 2022, Plaintiff Ford filed a First Amended Class Action Complaint,
3 which added Plaintiff Lopez as an additional Plaintiff/class representative, included a claim for
4 civil penalties under PAGA, and added counsel for Plaintiff Lopez to the Class Action Complaint.

5 6. Plaintiffs allege that Defendants' payroll, timekeeping, and wage and hour practices
6 resulted in Labor Code violations. Plaintiffs allege that Defendants failed to pay for all hours
7 worked by not recording the actual start and end times of shifts for each workday. Plaintiffs further
8 allege that Defendants failed to provide employees with legally compliant meal and rest periods.
9 Plaintiffs further allege that Defendants failed to indemnify employees for all necessary business
10 expenditures.

11 7. Plaintiffs and putative class members worked in California as hourly-paid, non-
12 exempt employees for Defendants during the Class Period, which is defined as the period from
13 July 1, 2019 through the date of Preliminary Approval of the Settlement by the Court or 90 days
14 from the date of the full execution of the Settlement Agreement (August 1, 2022), whichever is
15 earlier.

16 DISCOVERY AND INVESTIGATION

17 8. The Parties engaged in an informal discovery exchange before mediating this action.
18 Defendants produced a sample of time and pay records for the class members. Defendants also
19 provided documents of their wage and hour policies and practices during the class period, and
20 information regarding the total number of current and former employees in its informal discovery
21 responses.

22 9. After reviewing documents regarding Defendants' wage and hour policies and
23 practices, analyzing Defendants' timekeeping and payroll records, Class Counsel was able to
24 evaluate the probability of class certification, success on the merits, and Defendants' maximum
25 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding
26 the claims and defenses asserted in the litigation. Class Counsel reviewed these records and
27 utilized an expert to prepare a damages analysis prior to mediation.

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14. The Parties sought and reviewed bids from several experienced class action settlement administrators to handle the responsibilities of the Settlement Administrator under this Settlement. The Parties accepted the bid of Phoenix Class Action Administration Solutions. Phoenix Class Action Administration Solutions has multiple years of experience in the field of Class Action Administration, particularly in the wage and hour arena. In its bid, Phoenix Class Action Administration Solutions agreed to cap its costs at \$9,000.00. The bid also provides that class notice will be provided in English and Spanish.

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1 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

2 15. Class Counsel has conducted a thorough investigation into the facts of this case.
3 Based on the foregoing discovery and their own independent investigation and evaluation, Class
4 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
5 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
6 of significant delay, the defenses that could be asserted by Defendants both to certification and on
7 the merits, trial risk, and appellate risk.

8 16. Based on an analysis of the facts and legal contentions in this case, documents and
9 information from Defendants, I evaluated Defendants' maximum exposure with assistance from
10 counsel for Plaintiff Lopez. I took into account the risk of not having the claims certified and the
11 risk of not prevailing at trial, even if the claims are certified. After using the data Defendants
12 provided, including information regarding class member demographics (i.e., the number of class
13 members, workweeks, and average total compensation of the class), with the assistance of a
14 statistics expert and counsel for Plaintiff Lopez, we created a damages model to evaluate the
15 realistic range of potential recovery for the class. The damages analysis is outlined in the
16 Declaration of David Spivak. The damages analysis does not take into account the risks, as
17 outlined below, associated with further litigating this action. Therefore, I believe a class settlement
18 of \$275,000.00 is fair and reasonable.

19 EXPOSURE AND RISK ANALYSIS

20 17. While Plaintiffs are confident in the merits of their claims, a legitimate controversy
21 exists as to each cause of action. Plaintiffs also recognize that proving the amount of wages due
22 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

23 18. This Settlement avoids the risks and the accompanying expense of further litigation.
24 Although the Parties had engaged in a significant amount of investigation, informal discovery and
25 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiffs
26 intended to depose corporate officers and managers of Defendants. Moreover, preparation for class
27 certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a
28 disputed class certification ruling for Plaintiffs and/or adverse summary judgment ruling. Had the

1 Court certified any claims, Defendants could move to decertify the claims. As a result, the Parties
2 would incur considerably more attorneys' fees and costs through trial.

3 19. As outlined in the Declaration of David Spivak, there are numerous risks associated
4 with pursuing this case in litigation. I have met and conferred with counsel for Plaintiff Lopez on
5 numerous occasions, and I agree with Plaintiff Lopez's Counsel assessment of the risk as discussed
6 in the Declaration of David Spivak. As such, by further litigating this action to trial, Plaintiffs run
7 the high risk of suffering defeat due to the existence of the arbitration agreements and reasonable
8 defenses that can be (and have been) asserted by Defendants.

9 ENHANCEMENT AWARDS FOR PLAINTIFFS ARE REASONABLE

10 20. Class Counsel represent that Plaintiffs devoted a great deal of time and work
11 assisting counsel in the case, communicated with counsel very frequently for litigation and to
12 prepare for mediation, and were frequently in contact with Class Counsel during the mediation.
13 Plaintiffs' requested enhancement awards are reasonable particularly in light of the substantial
14 benefits Plaintiffs generated for all class members.

15 21. Throughout this litigation, Plaintiffs, who are former employees of Defendants,
16 have cooperated immensely with this action and have taken many actions to protect the interests
17 of the class. Plaintiffs provided valuable information regarding unpaid overtime, meal period, and
18 rest period claims. Plaintiffs also informed Class Counsel of developments and information
19 relevant to this action, participated in decisions concerning this action, made themselves available
20 to answer questions during the mediation, and provided my office with the names and contact
21 information of potential witnesses in this action. Plaintiffs provided Class Counsel with several
22 documents, including policy documents and communications from Defendants regarding the
23 claims alleged in this action. The information and documentation provided by Plaintiffs was
24 instrumental in establishing the wage and hour violations alleged, and the recovery provided for in
25 the Settlement Agreement would have been impossible to obtain without Plaintiffs' participation.

26 22. At the same time, Plaintiffs faced many risks in adding themselves as the class
27 representatives in this matter. Plaintiffs faced actual risks with their future employment, as putting
28 themselves on public record in an employment lawsuit could also very well affect their likelihood

1 for future employment. Furthermore, as part of this Settlement, Plaintiffs are executing a general
2 release of all claims against Defendants.

3 23. In turn, class members will now have the opportunity to participate in a settlement,
4 reimbursing them for alleged wage violations they may have never known about on their own or
5 been willing to pursue on their own. If these class members would have each tried to pursue their
6 legal remedies on their own, that would have resulted in each having to expend a significant amount
7 of their own monetary resources and time, which were obviated by Plaintiffs putting themselves
8 on the line on behalf of these other class members.

9 24. In the final analysis, this class action would not have been possible without the aid
10 of Plaintiffs, who put their own time and effort into this litigation, sacrificed the value of their own
11 individual claims, and placed themselves at risk for the sake of the class members. The requested
12 enhancement awards for Plaintiffs for their services as the class representatives and for their
13 general release of all individual claims is a relatively small amount of money when the time and
14 effort put into the litigation are considered and in comparison to enhancements granted in other
15 class actions. The requested incentive award is therefore reasonable to compensate Plaintiffs for
16 their active participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar*
17 *Corporation*, et al., No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class
18 members were misclassified as exempt outside salespersons, I was co-lead Class Counsel and
19 helped negotiate a \$2.5 million class action settlement for 339 class members, and the court
20 approved a \$25,000.00 class representative incentive award for each named plaintiff.

21 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

22 25. The Settlement provides for attorneys' fees payable to Class Counsel in an amount
23 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$91,666.67,
24 plus actual costs and expenses not to exceed \$35,000.00. The proposed award of attorneys' fees
25 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
26 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
27 percentage method as many of the entries in the time records will have to be redacted to preserve
28 attorney-client and attorney work product privileges.

1 26. I am informed and believe that the fee and costs provision is reasonable. The fee
2 percentage requested is less than that charged by my office for most employment cases. My office
3 invested significant time and resources into the case, with payment deferred to the end of the case,
4 and then, of course, contingent on the outcome.

5 27. It is further estimated that my office, along with co-counsel's office, will need to
6 expend at least another 50 to 100 hours to monitor the process leading up to the final approval and
7 payments made to the class. We also bear the risk of taking whatever actions are necessary if
8 Defendants fails to pay.

9 28. The risk of litigating this action has been very significant, particularly if we would
10 not be successful in pursuing this class action. In that case, we would have been left with no
11 compensation for all the time taken in litigating this case. Indeed, I have taken on a number of
12 class action cases that have resulted in thousands of attorney hours being expended and ultimately
13 having certification denied or the defendant company going bankrupt. The contingent risk in these
14 types of cases is very real and they do occur regularly. Furthermore, we were precluded from
15 focusing on, or taking on, other cases which could have resulted in a larger, and less risky,
16 monetary gain.

17 29. Because most individuals cannot afford to pay for representation in litigation on an
18 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
19 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
20 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
21 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
22 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
23 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
24 that we recover more than our regular hourly rate when we win if we are to remain in practice so
25 as to be able to continue representing other individuals in civil rights employment disputes.

26 MY EXPERIENCE AND QUALIFICATIONS

27 30. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
28 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and

1 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
2 employment litigation, representing employees in both individual and class actions in both state
3 and federal courts throughout California.

4 31. Wilshire Law Firm, PLC is qualified to handle this litigation because its attorneys
5 are experienced in litigating Labor Code violations in both individual, class action, and
6 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
7 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
8 and data privacy litigation.

9 32. I graduated from the University of California, Los Angeles's College Honors
10 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
11 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
12 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
13 2008.

14 33. My practice is focused on advocating for the rights of consumers and employees in
15 class action litigation and appellate litigation. I am currently the primary attorney in charge of
16 litigating several class action cases in state and federal courts across the United States.

17 34. I have received numerous awards for my legal work. From 2017 to 2020, Super
18 Lawyers selected me as a "Southern California Rising Star," and in 2022, I was selected as a
19 "Southern California Super Lawyer." In 2016 and 2017, the National Trial Lawyers selected me
20 as a "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

21 35. I am on the California Employment Lawyers Association ("CELA")'s Wage and
22 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced
23 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
24 mentored young attorneys through CELA's mentorship program.

25 36. I am also an active member of the Consumer Attorneys of California ("CAOC"). In
26 2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's
27 Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed,
28 I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB

1 443, which proposed legislation that sought to limit the enforceability of California Labor Code §
2 226.

3 37. As the attorney responsible for day-to-day management of this matter at the
4 Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour
5 class actions. Over the last eleven years, I have managed and assisted with the litigation and
6 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
7 as those performed in the course of prosecuting this action. My litigation experience includes:

- 8 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
9 million in gross recovery to class members for each year during 2020 and 2021.
- 10 b. To my knowledge, I am the only attorney to appear on each of the following *Top*
11 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
12 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 13 c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
14 winning class certification on behalf of hundreds of thousands of consumers for
15 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
16 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 17 d. As lead counsel, I prevailed against Bank of America by: winning class certification
18 on behalf of thousands of employees for California Labor Code violations; defeating
19 appellate review of the court's order certifying the class; defeating summary
20 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
21 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
22 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
23 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
24 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
25 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
26 3d Art. 8.
- 27 e. I was the primary author of the class certification and expert briefs in *ABM*
28 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action

1 for over 40,000 class members for off-the-clock, meal period, split shift, and
2 reimbursement claims. *ABM Industries Overtime Cases* is the first published
3 California appellate authority to hold that an employer’s “auto-deduct policy for
4 meal breaks in light of the recordkeeping requirements for California employers is
5 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)¹ Notably, the Court
6 of Appeal also held that expert analysis of timekeeping records can also support the
7 predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the
8 case settled for \$140 million, making it one of the largest ever wage and hour class
9 action settlements for hourly-paid employees in California.

10 f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
11 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
12 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
13 calculate the amount in controversy under the Class Action Fairness Act (“CAFA”).
14 This case is cited in several leading treatises such as *Wright & Miller’s Federal*
15 *Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S.
16 Supreme Court denied review of a case that primarily concerned *Yocupicio*. That
17 effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus
18 support from a brief authored by Andrew J. Pincus.² Considering that leading
19 Supreme Court practitioners from the class action defense bar were very motivated
20 in undermining *Yocupicio* case, but failed, this demonstrates the national importance
21 of the *Yocupicio* decision.

22 g. On December 13, 2018, the United States District Court granted final approval of
23 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*
24 *LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in
25 which I served as lead counsel. In doing so, the Court found: “Class Counsel’s

26 ¹ As a California district court observed before the *ABM Industries Overtime* decision,
27 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE*
28 *Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL
1758048, *7.)

² <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 declarations show that the attorneys are experienced and successful litigators.” (*Id.*
2 at p. *10.)

3 h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a
4 reported decision permitting class-wide discovery even though the employer has a
5 lawful policy because “[t]he fact that a company has a policy of not violating the
6 law does not mean that the employees follow it, which is the issue here.” The court
7 also ordered defendant to pay for the cost of *Belaire-West* notice.

8 i. In 2013, I represented a whistleblower that reported that his former employer was
9 defrauding the State of California with the help of bribes to public employees. The
10 case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution
11 of State of California employees by the California Attorney General’s Office.

12 j. In 2013, I was part of a team of attorneys that obtained conditional certification for
13 over 2,000,000 class members in a federal labor law case for misclassification of
14 independent contractors that did crowdsourced work on the Internet, *Otey v.*
15 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
16 following pro-plaintiff reported decisions:

17 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
18 that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and
19 granting plaintiff’s motion to strike defendant’s affirmative defenses
20 based on *Twombly/Iqbal*).

21 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
22 granting conditional collective certification).

23 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
24 magistrate judge’s discovery ruling which held that “evidence of
25 other sources of income is irrelevant to the question of whether a
26 plaintiff is an employee within the meaning of the FLSA”).

27 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
28 broad discovery because “an FLSA plaintiff is entitled to discovery

from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

- j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

38. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior Court, Small Claims Division. Since graduating law school, he has focused his legal work primarily on wage and hour class action litigation.

39. My current contingent billing rate of \$850 per hour is consistent with my practice area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received, legal market and accepted hourly rates:

- a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of wage-and-hour class actions that I opposed when litigating wage-and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year - \$455. I am a 12th year attorney and Senior Partner, with most of my experience in class action litigation as a primary practice area. Having successfully briefed and argued a published appeal in the Ninth Circuit Court of Appeals involving CAFA and PAGA, having experience certifying large class actions

(including *ABM Industries Overtime Cases*, which was decided on appeal), and having received numerous awards for my legal work, my hourly rate should be adjusted upward.

- b. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court approved my \$800 hourly rate when he granted final approval of the class action settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-01066522-CU-OE-CXC.
- c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District Court granted final approval of the \$1,600,000 class action settlement in *Carlos Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the Court approved my then \$750 hourly rate after finding it was “reasonable, given the qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- d. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior Court approved my \$750 hourly rate when he granted final approval of the class action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No. 19STCV32396.
- e. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court, District of Puerto Rico, approved my \$850 hourly rate when he granted final approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

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

Executed on July 7, 2022, at Los Angeles, California.

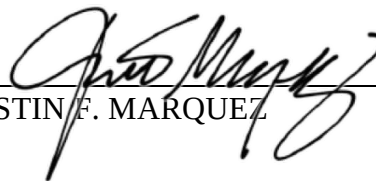

JUSTIN F. MARQUEZ

EXHIBIT A

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Sutton A. Shapiro, Esq.
Daniel B. Miller, Esq.
Hazel Chang, Esq.

Daniel DeSantis, Esq.
Tae Kim, Esq.
Peter Cho, Esq.
Gregory Stuck, Esq.
Nicol Hajjar, Esq.
Thiago Coelho, Esq.
Erik Harper, Esq.
Johnny Ogata, Esq.

April 30, 2021

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Boavida Communities, LLC
1910 Terracina Drive
Sacramento, CA 95834
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9724 23

Dan Trescott
Agent for Service of Process for Boavida Communities, LLC
3511 Del Paso Rd., Suite 160147
Sacramento, CA 95835
(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9723 93

The Boavida Group, LP
1914 Terracina Dr., Suite 130
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#9489 0090 0027 6272 9724 09

Dan Trescott
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3511 Del Paso Rd., Suite 160/147
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(Via Certified Mail, Return Receipt Requested)
#9489 0090 0027 6272 9724 16

Re: ***Alysia Ford v. Boavida Communities, LLC, et al.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Alysia Ford ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, et

seq.) against her former employer, Boavida Communications, LLC and The Boavida Group, LP (“Defendants”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ Aggrieved Employees.

Plaintiff wishes to pursue this action on behalf of herself as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendants in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendants suffered the Labor Code violations described below.

Plaintiff’s Employment with Defendants

Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Sacramento County. As such, and based upon all the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

Plaintiff Alysia Ford is a California resident who worked for Defendant in California as an hourly-paid, non-exempt employee from approximately February 2020 to approximately February 2021. Throughout Plaintiff’s employment, Defendants failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendants terminated her employment, failed to furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures. As discussed below, Plaintiff’s experience working for Defendants was typical and illustrative.

Failure to Reimburse and Indemnify Business Expenses

Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendants have wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses in the form of gas mileage and automobile wear and tear. Defendants did not reimburse them for these expenses. As a result, Plaintiff and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for

Defendants, but Defendants failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Defendants Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees to work “off-the-clock,” uncompensated, by, for example, requiring Plaintiff and the Aggrieved Employees to continue working after they had clocked out for the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees to work on-call in order to respond to urgent work-related matters. Defendants, however, did not compensate Plaintiff and the Aggrieved Employees for all their work time. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendants regularly used a system of time rounding and/or synthetic timekeeping that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the

realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

Throughout the statutory period, Defendants wrongfully failed to include non-discretionary bonuses, commissions, incentive pay, production pay, performance pay, and/or shift differentials in the calculation of Plaintiff's and the other Aggrieved Employees' regular rate of pay used to calculate their overtime rate for the payment of overtime wages. Plaintiff and the other Aggrieved Employees earned non-discretionary bonuses, commissions, incentive pay, production pay, performance pay, and/or shift differentials and overtime wages in the same pay period where they worked overtime hours. Accordingly, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all overtime compensation they were owed.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period. Defendants also regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendants also never informed Plaintiff of her right to, nor permitted her to take, a second meal period when Plaintiff worked at least ten hours of work in a workday. Accordingly, Defendants' policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendants have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the California Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendants failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their ending employment with Defendants. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 (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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law). Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 2802 and applicable Wage Orders for failing to indemnify employees for expenditures;
2. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
3. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
4. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
5. Labor Code § 204 by failing to pay all earned wages two times per month;
6. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;

7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
and
8. Labor Code § 226 by failing to provide accurate itemized wage statements.

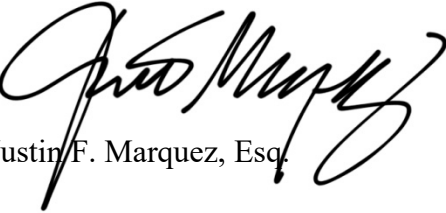
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

A handwritten signature in black ink, appearing to read "Justin Marquez", written over the printed name.

Justin F. Marquez, Esq.