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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HAROLD WALTERS, as an individual and on
behalf all others similarly situated,

Plaintiff,

vs.

ASSOCIATED READY MIXED CONCRETE,
INC., a California Corporation; and DOES 1
through 100,

Defendants.

Case No. 21STCV05326

*[Case Assigned for all purposes to the Hon.
Gregory Keosian; Dept. 61]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF
APPROVAL OF SETTLEMENT OF
REPRESENTATIVE CLAIMS UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT**

Action Filed: February 10, 2021
Trial Date: None Set

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I, Fletcher W. Schmidt, declare as follows:

1. I am a Partner at Haines Law Group, APC, and am counsel of record for Plaintiff Harold Walters (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I submit this declaration in support of Plaintiff’s and Defendant Associated Ready Mixed Concrete, Inc.’s (“Defendant”) joint request for the Court to approve their settlement of claims brought pursuant to the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”).

3. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated cum laude and was awarded membership in the Order of the Coif. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

4. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class and representative PAGA actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

5. The following is a non-exhaustive list of class action and/or PAGA settlements in which I have been named as Class Counsel, and which have been granted final approval:

- *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);

- 1 • *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468,
2 California Superior Court, County of Los Angeles, Honorable Judge Kenneth
3 Freeman presiding (approving an hourly rate of \$350 for work performed in 2013,
4 2014 and 2015);
- 5 • *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569,
6 California Superior Court, County of San Luis Obispo, Honorable Martin J.
7 Tangeman presiding (approving an hourly rate of \$350 for work performed in 2014
8 and 2015);
- 9 • *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County
10 of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350
11 for work performed in 2013, 2014 and 2015);
- 12 • *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179,
13 California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue
14 presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- 15 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
16 States District Court, Central District of California, Honorable Judge John F. Walter
17 presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- 18 • *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL,
19 California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis
20 presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and
21 2016);
- 22 • *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los
23 Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly
24 rate of \$375 for work performed in 2014, 2015, and 2016);
- 25 • *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court,
26 County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly
27 rate of \$375 for work performed in 2013, 2014, 2015, and 2016);
- 28 • *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County
of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of

- 1 \$375 for work performed in 2013, 2014, 2015, and 2016);
- 2 • *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California
- 3 Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding
- 4 (approving an hourly rate of \$375 for work performed in 2015 and 2016);
- 5 • *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior
- 6 Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle
- 7 presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- 8 • *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No.
- 9 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange,
- 10 Honorable Judge Thierry Patrick Colaw presiding (approved at an hourly rate of \$425
- 11 for work performed in 2016 and 2017);
- 12 • *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of
- 13 California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding
- 14 (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- 15 • *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior
- 16 Court of California, County of Orange, Honorable Judge William Claster presiding
- 17 (approved at an hourly rate of \$425 for work performed in 2017 and 2018);
- 18 • *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-
- 19 OE-CXC, Superior Court of California, County of Orange, Honorable William D.
- 20 Claster presiding (approving an hourly rate of \$425 for work performed in 2016, 2017
- 21 and 2018);
- 22 • *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-
- 23 2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange,
- 24 Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work
- 25 performed in 2016, 2017 and 2018);
- 26 • *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No.
- 27 BC673708, Superior Court of California, County of Los Angeles, Honorable Maren
- 28 E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016,
- 2017, and 2018);

- 1 • *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County
2 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of
3 \$475 for work performed in 2017, 2018 and 2019);
- 4 • *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No.
5 BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle,
6 presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019);
- 7 • *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles
8 County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
9 rate of \$595 for work performed in 2018, 2019 and 2020);
- 10 • *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego
11 County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly
12 rate of \$595 for work performed in 2017-2020);
- 13 • *Michael Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
14 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an
15 hourly rate of \$595 for work performed in 2019 and 2020);
- 16 • *Francisco Garcia v. Searing Industries, Inc.*, Case No. CIVDS1932477, San
17 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an
18 hourly rate of \$595 for work performed in 2019 and 2020);
- 19 • *Ahmad Teeba v. Brill, Inc.*, Case No. CIVDS1923242, San Bernardino County
20 Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595
21 for work performed in 2019-2021);
- 22 • *Angel Ochoa v. Fonseca Construction, Inc.*, Case No. CIVDS1928625, San
23 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an
24 hourly rate of \$595 for work performed in 2019 to 2021);
- 25 • *William Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los
26 Angeles County Superior Court, Honorable Amy D. Hogue, presiding (approving an
27 hourly rate of \$595 for work performed in 2018 to 2021);
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- *David Alvarado, et al. v. J.G. Boswell Company*, Case No. 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$595 for work performed in 2019 to 2021);
- *Gaudencio Arroyo Reynoso, et al. v. Cream of the Crop Ag Service, Inc.*, Case No. VCU278847, Tulare County Superior Court, Honorable Bret D. Hillman, presiding (approving an hourly rate of \$595 for work performed in 2019 to 2022);
- *Alejandra Parra v. Sixty Collective, LLC*, Case No. 19STCV01016, Los Angeles County Superior Court, Honorable Carolyn B. Kuhl, presiding (approving an hourly rate of \$625 for work performed in 2019-2022);
- *Veronica Gonzalez v. Precision Hospitality & Development, LLC*, Case No. 30-2020-01127597-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman, presiding (approving an hourly rate of \$625 for work performed in 2020-2021);
- *David Montalvo v. Warehouse Services No. 4 LLC*, Case No. CIVDS1931568, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$625 for work performed in 2019-2022);
- *Steve Qawas v. Socal Framing, Inc.*, Case No. RIC1902588, Riverside County Superior Court, Honorable Sunshine S. Sykes, presiding (approving an hourly rate of \$650 for work performed in 2019-2022);
- *Jessica Burrola v. Trademark Cosmetics, Inc.*, Case No. RIC2002311, Riverside County Superior Court, Honorable Sunshine S. Sykes, presiding (approving an hourly rate of \$650 for work performed in 2020-2022);
- *Elmy Calderon v. Personnel Staffing Group, LLC*, Case No. VCU278910, Tulare County Superior Court, Honorable David C. Mathias, presiding (approving an hourly rate of \$650 for work performed in 2019-2022); and
- *Santos Orellana v. Smarte Carte, Inc.*, Case No. 20STCV08890, Los Angeles County Superior Court, Honorable Yvette M. Palazuelos, presiding (approving an hourly rate of \$650 for work performed in 2020-2022).

6. I have also moved to certify and have received an order certifying a class action

and/or conditionally certifying a collective action as Class Counsel in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (certifying a rest period violation class and conditionally certifying a FLSA unpaid overtime wage class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Judge Jennifer L. Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster presiding (certifying unpaid overtime wage class and waiting time penalty class);
- *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Glenda Sanders presiding (certifying five separate classes for claims for unpaid wages, unreimbursed expenses, failure to authorize and permit rest periods, and derivative claims);
- *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx),

United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations);

- *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn presiding (certifying a wage statement class); and
- *Danica N. Keich, et al. v. U.S. Healthworks, Inc., et al.*, Case No. 37-2017-00015343-CU-OE-CTL, San Diego County Superior Court, Honorable Eddie C. Sturgeon, presiding (certifying classes for rest period violations, meal period violations, on-call pay violations, wage statement violations, and waiting time violations).

7. Each year from 2018 through 2022, Thomson Reuters and Los Angeles Magazine have recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

8. I have been intimately involved with every aspect of this litigation since before it was filed on February 10, 2021, and I understand the strengths and weaknesses of Plaintiff's claims. My decision to enter into the proposed settlement is informed by my evaluation of the strengths and weaknesses of Plaintiff's claims and by my extensive experience in this area of the law.

9. Defendant operates a ready-mixed concrete company, providing concrete for a variety of residential and commercial projects throughout Southern California. Plaintiff was employed by Defendant as a non-exempt "mixer driver" from March, 2015 until August 2021. Plaintiff alleges that during his employment with Defendant, Defendant required mixer drivers to sign on-duty meal period agreements based on the nature of their work with ready mixed concrete. As a result, Plaintiff alleges that mixer drivers were unable to take duty-free meal periods, and alleges that even if the on-duty meal period agreements were lawful under Section 11(C) of Wage Order 1, Defendant was still required to provide him and other mixer drivers with an opportunity

1 to eat a meal within the first five hours of their shifts, which he alleges almost never happened.
2 Furthermore, Plaintiff alleges that he and other mixer drivers were not provided with any duty-
3 free rest periods, as corroborated by the fact that they were required to sign on-duty meal period
4 agreements and remain on duty throughout their shifts. Finally, Plaintiff alleges that he and other
5 mixer drivers frequently needed to use their personal cell phones for work-related
6 communications up until Defendant introduced “CB” radios in all trucks.

7 10. On February 11, 2021, Plaintiff submitted written notice to Defendant and the
8 California Labor and Workforce Development Agency (“LWDA”) of Plaintiff’s allegations. A
9 true and correct copy of Plaintiff’s notice to the LWDA is attached hereto as **Exhibit 1**. The
10 LWDA never responded to Plaintiff’s notice. On August 23, 2021, Plaintiff filed a First Amended
11 Complaint which alleged a single cause of action for PAGA civil penalties based on the alleged
12 violations outlined in Paragraph 9 herein.

13 11. Shortly after initiating the litigation, I was contacted by counsel for Defendant,
14 and we began an ongoing dialogue and exchange of information for settlement purposes. Among
15 other things, Counsel for Defendant informed me that Plaintiff had executed an arbitration
16 agreement with a class action waiver, which resulted in the dismissal of Plaintiff’s class claims
17 (which were dismissed by order of the Court signed August 18, 2021), and the matter proceeding
18 on a PAGA-only basis. Counsel for Defendant also provided me with copies of Defendant’s
19 written meal and rest period policies, the on-duty meal period agreement signed by Plaintiff, a
20 copy of a survey that Plaintiff had completed in 2015 which indicated that Plaintiff understood
21 his meal period rights and had never been prevented from exercising his meal period rights by
22 Defendant, and copies of Plaintiff’s daily handwritten timesheets, which included signed
23 attestations stating that he had voluntarily chosen not to take an off-duty meal period and that he
24 had been authorized to take all required off-duty rest periods.

25 12. Through the course of my dialogue with counsel for Defendant, the parties agreed
26 to pursue a resolution of Plaintiff’s PAGA claim. To facilitate settlement discussions, Defendant
27 provided Plaintiff with the total number of employees who worked during the PAGA time period
28 (February 11, 2020 to the present), and the total aggregate number of workweeks worked during

1 the same time period. In addition, Defendant provided a random sampling of timekeeping and
2 payroll records for 25 of the employees.

3 13. After reviewing and analyzing the timekeeping and payroll records and evaluating
4 the strengths and weaknesses of Plaintiff's claims and Defendant's defenses in light of the records
5 and information provided by Defendant, the parties were able to negotiate a proposed resolution
6 of this matter for the sum of \$90,000.00 in exchange for a release of Plaintiff's PAGA claim,
7 which will encompass all "Aggrieved Employees," defined as all current and former non-exempt
8 "mixer drivers" who worked for Defendant in California from February 11, 2020 through the date
9 of approval of this Settlement (the "Covered Time Frame"). At the time the settlement was
10 reached, there were approximately 10,000 total aggregate pay periods worked by the Aggrieved
11 Employees during the Covered Time Frame, so the settlement amount equates to approximately
12 \$9.00 per pay period. I believe that this valuation is fair, adequate, and reasonable under the
13 circumstances and in light of Defendant's defenses. A true and correct copy of the Settlement
14 Agreement

15 14. Of particular relevance here is the fact that this settlement was agreed to in
16 principle only weeks before the United States Supreme Court issued its opinion in *Viking River*
17 *Cruises, Inc. v. Moriana* ("Viking River") where it overruled the California Supreme Court's
18 holding in *Iskanian v. CLS Transportation Los Angeles, LLC* which held that a representative
19 PAGA claim could not be compelled to arbitration. *See Viking River Cruises, Inc. v. Moriana*
20 (June 15, 2022, No. 20-1573) 596 U.S. ____ [____ S.Ct. ____, 2022 WL 2135491; *Iskanian v. CLS*
21 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348. In effect, the U.S. Supreme Court's
22 ruling in *Viking River* means that if this matter had not settled, Defendant would likely be able to
23 compel this case to individual arbitration based on the arbitration agreement signed by Plaintiff,
24 precluding any PAGA recovery whatsoever. Therefore, this is a unique case where further
25 litigation would almost certainly have resulted in a smaller recovery, or even no recovery at all.

26 15. Additionally, I anticipated that the daily attestations signed by Plaintiff and other
27 Aggrieved Employees which stated that they were aware of their meal and rest period rights and
28 voluntarily chose not to take an off-duty meal period and were authorized to take off-duty rest

1 periods would pose a significant obstacle to prevailing on Plaintiff's meal and rest period claims.
2 Defendant countered Plaintiff's argument that the existence of on-duty meal period agreements
3 created an inherent conflict between Defendant claiming that employees were unable to take duty-
4 free meal periods while simultaneously claiming to authorize duty-free rest periods, by arguing
5 that rest periods could be taken on a flexible schedule while meal periods were required to be
6 taken within set timeframes. Defendant explained that the nature of working with concrete would
7 often mean that if an employee was in the process of pouring concrete when it was time to take a
8 meal period, such a meal period would need to be taken while on duty, but that there would be
9 nothing preventing the employee from taking an off-duty rest period later in the shift when the
10 pour had already been completed. Plaintiff anticipated that at a minimum, this argument could
11 create manageability issues for Plaintiff's PAGA claim, because individualized inquiries would
12 need to be conducted with respect to exactly what work was being performed during each shift.

13 16. With respect to Plaintiff's expense reimbursement claim, Defendant contends that
14 prior to the beginning of the Covered Time Frame, it had already equipped each truck with a tablet
15 computer which was the primary medium for communicating between mixer drivers and
16 supervisors, and that therefore there was no need to use a personal cellular phone unless the
17 employee preferred it for their own convenience. Furthermore, Defendant stated that it maintains
18 lawful reimbursement policies, and that no employee had ever requested reimbursement for cell
19 phone related expenses.

20 17. Plaintiff is also aware that the Court has the power to reduce the civil penalties if
21 the Court believes awarding the maximum penalty amount would be unjust, arbitrary, or
22 confiscatory. In light of Defendant's defenses and the lack of evidence of any bad faith or ill intent
23 on Defendant's part, Plaintiff anticipated that even if he were to prevail on his claims, the penalties
24 would likely face steep discounts. *See* Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit*
25 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties);
26 *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming trial court's reduction
27 of PAGA penalties to 10% of calculated exposure after bench trial).

28 18. In light of the risk of an adverse *Viking River* ruling, combined with Defendant's

1 defenses on the merits, Plaintiff believes that the chances of further litigation resulting in a greater
2 recovery for the state of California and the Aggrieved Employees than what is provided for under
3 the proposed settlement are significantly outweighed by the benefits of the proposed settlement,
4 which will result in an award to the California LWDA of approximately \$37,769.72 and average
5 payments to the Aggrieved Employees of approximately \$37.03, which significantly exceeds
6 other PAGA penalty awards approved as reasonable throughout California. *See, e.g., Penaloza v.*
7 *PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May
8 20, 2013) (average PAGA penalties of \$7.49); *Cabrera v. Advantage Sale & Marketing, LLC*,
9 Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (average
10 PAGA penalties of \$3.33). The Aggrieved Employees will not be releasing any of their statutory
11 labor code claims through this settlement, and will be agreeing solely to release any claims that
12 they have for PAGA civil penalties as a result of the alleged violations.

13 19. Under the terms of the Settlement, Plaintiff shall be entitled to an award of one-
14 third of the gross settlement amount for attorney's fees (\$30,000.00), plus reimbursement of
15 \$3,390.37 in actual out-of-pocket litigation costs. Attached hereto as **Exhibit 2** is a true and
16 correct copy of Plaintiff's counsel's itemized litigation costs for this matter, which amount to
17 \$3,314.54 to date. In addition to this amount, Plaintiff is also requesting reimbursement of an
18 additional \$75.83, which represents the costs associated with the filing and service of this
19 Stipulation, which will be incurred by Plaintiff at the time of this filing. California state and
20 federal courts routinely award fee awards of one-third of the settlement fund in class actions.
21 *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11; *see also Wershba, supra*, 91 Cal.
22 App. 4th at 254 (recognizing the "percentage of recovery" method); *In re Pacific Enterprises*
23 *Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming 33% fee award). Indeed, the
24 California Supreme Court approved the use of the "percentage of fund" method in California. *See*
25 *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 ("the percentage of fund method
26 survives in California class action cases..."). Here, Plaintiff's counsel's fee request of \$30,000.00
27 (one-third of the gross settlement) is the same percentage sought in *Laffitte* and is fair and
28 reasonable based on the percentage of the recovery method.

1 20. Plaintiff is also requesting an award of \$1,000.00 to Plaintiff as a service award to
2 recognize his efforts in litigating the case and bringing this settlement to fruition for the benefit
3 of the LWDA and Aggrieved Employees. Courts routinely approve service awards to compensate
4 named plaintiffs for the services they provide and the risks they incur during class and
5 representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726
6 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
7 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 service
8 award). There is a well-established history of courts awarding service awards in PAGA-only
9 settlements. Attached hereto as **Exhibit 3** are a sampling of court orders granting service awards
10 in PAGA-Only settlements. In this case, Plaintiff has placed his reputation on the line by agreeing
11 to be a representative Plaintiff, and has provided invaluable information and documents to my
12 office which led directly to this Settlement, and I believe the requested \$1,000.00 service award
13 is more than justified under the circumstances.

14 21. Plaintiff is also requesting that the Court appoint CPT Group, Inc. as the third-
15 party administrator for administering the Settlement, and award them \$5,250.00 from the gross
16 settlement amount to compensate them for their administration services. A true and correct copy
17 of CPT Group, Inc.’s administration bid is attached hereto as **Exhibit 4**. I am personally familiar
18 with CPT Group, Inc.’s qualifications and services and believe that they are well suited to handle
19 the administration of this Settlement.

20 22. After deducting the Court-approved awards for Plaintiff’s counsel’s attorney’s
21 fees, litigation costs, Plaintiff’s service award and administration costs, the remaining \$50,359.63
22 will constitute the Net Settlement Fund, and will be distributed 75% to the LWDA and 25% to
23 the Aggrieved Employees, which each Aggrieved Employee receiving a proportionate share
24 based on their weeks worked during the Covered Time Frame. Plaintiff estimates that the average
25 Aggrieved Employee payment will be approximately \$37.03.

26 23. The LWDA is being served with a copy of the Settlement agreement, and all of
27 the papers in support being submitted herewith, concurrently with this filing.

28 24. In light of all the facts, evidence, and law, and the benefits of the proposed

1 Settlement as compared to the risks of further litigation, I believe the proposed settlement to be
2 fair, reasonable, and adequate and I respectfully request that the Court enter the proposed Order
3 submitted concurrently herewith, to approve this Settlement.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed on November 22, 2022, at El Segundo, California.

6
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8 By:



9 Fletcher W. Schmidt
10 Attorneys for Plaintiff
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EXHIBIT 1

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

February 11, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Harold Walters v. Associated Ready Mixed Concrete, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Harold Walters (“Mr. Walters”) in claims arising from his employment with Associated Ready Mixed Concrete, Inc.; and Does 1 through 100 (collectively “Defendants”). Mr. Walters is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who were employed by Defendants during the one year immediately preceding the date of this letter through the present.

Mr. Walters was hired by Defendants as a non-exempt Truck Driver on or about March 15, 2015. Mr. Walters still works for Defendants but has been on medical leave since about July 25, 2020. As a Truck Driver, Mr. Walters is responsible for driving cement mixing trucks around Los Angeles County. Mr. Walters’ hours are sporadic, but he typically works Monday through Saturday from about 6:30 a.m. to 7:00 or 8:00 p.m.

Defendants fail to provide Mr. Walters and other aggrieved employees with all required meal periods because, upon information and belief, Mr. Walters and other aggrieved employees are unable to take meal periods due to the demands of their job, and as a result, Defendants have required Mr. Walters and other aggrieved employees to sign on-duty meal period agreements. However, Defendants also do not allow Mr. Walters and other aggrieved employees to eat in their vehicles, so Mr. Walters and other aggrieved employees often are not able to eat at all during their shifts. Additionally, Mr. Walters and other aggrieved employees face discipline from Defendants if they are caught snacking in their vehicles, which are monitored by Defendants through onboard cameras. Thus, even though Mr. Walters and other aggrieved employees signed on-duty meal agreements, they are not valid given that Mr. Walters and other aggrieved employees are prohibited from taking any meal periods, even while remaining on-duty.

Defendants also fail to authorize and permit Mr. Walters and other aggrieved employees to take all required duty-free rest periods because the nature of the work being performed by Mr. Walters and other aggrieved employees does not permit for duty-free rest periods while working. This truth is necessarily admitted by Defendants by requiring employees to sign on-duty meal period agreements. Additionally, despite Defendants' failure to provide Mr. Walters and other aggrieved employees with all meal and rest periods to which they are legally entitled due to Defendants' uniform and unlawful policies and/or practices, Defendants do not provide Mr. Walters and other aggrieved employees with an hour of pay at their regular rate for each meal and rest period violation as required by Labor Code 226.7.

Defendants also did not introduce "CB" radios to their vehicles until recently, and prior to the introduction of "CB" radios, required Mr. Walters and other aggrieved employees to use their personal cellphones for all necessary work-related communications with Defendants' dispatchers. Despite requiring employees to use their personal cell phones for work-related purposes Defendants have failed to reimburse Mr. Walters and other aggrieved employees for any portion of the cellphone bills, in direct violation of *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014), and Labor Code § 2802.

As a result of Defendants' failure to pay meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Walters and other aggrieved employees.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Meal Period Violations

Defendants failed in their affirmative obligation to provide all of their aggrieved employees in California, including Mr. Walters and other aggrieved employees, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Mr. Walters and other aggrieved employees at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7, 512, 558.

Rest Period Violations

Due to Defendants' unlawful rest period policy and practices, Defendants did not authorize and permit Mr. Walters and other aggrieved employees to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Mr. Walters and other aggrieved employees at their respective regular rates of pay for each violation, in accordance with California Labor Code §§ 226.7, 516, and 558.

Failure to Reimburse Necessary Business Expenses

Defendants did not introduce “CB” radios to their vehicles until recently, and prior to the introduction of “CB” radios, required Mr. Walters and other aggrieved employees to use their personal cellphones for all necessary work-related communications with Defendants’ dispatchers. Although Mr. Walters and other aggrieved employees incurred these expenses in the direct discharge of their job duties, Defendants failed to reimburse Mr. Walters and other aggrieved employees for such necessary work expenditures. At all relevant times herein, Defendants were subject to Wage Order 1, § 9(B), which states that “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.” Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.” Defendants were subject to Labor Code § 2804, which states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Walters and other aggrieved employees with complete and accurate wage statements with respect to all hours worked, total gross wages earned, all meal and rest period premium wages earned, and total net wages earned, in violation of Labor Code § 226 et seq. Defendants’ failures in furnishing Mr. Walters and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages as well as meal and rest period premium wages and deprived them of the information necessary to identify the discrepancies in Defendants’ reported data and whether they have been paid all wages earned.

As an “aggrieved employee,” Mr. Walters will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Walters’ own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Walters and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;

- b. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Walters and other aggrieved employees all required rest periods and failing to pay rest period premiums to Mr. Walters and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- c. Defendants have violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Walters and other aggrieved employees for all necessary business expenditures incurred.
- d. Defendants violated Labor Code § 226 by failing to furnish Mr. Walters and other aggrieved employees with accurate and compliant itemized wage statements;
- e. Defendants violated Labor Code § 204 by failing to pay Mr. Walters and other aggrieved employees all wages earned at least twice during each calendar month; and
- f. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Walters and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Associated Ready Mixed Concrete, Inc., c/o Kurt Caillier, Agent for Service of Process (via certified mail);

EXHIBIT 2

November 22, 2022

Harold Walters

Additional Charges :

		<u>Qty/Price</u>	<u>Amount</u>
12/31/2020	PKH Postage for December, 2020.	1 6.90	6.90
	PKH Copying cost for December, 2020.	5 0.25	1.25
1/7/2021	PKH Document Purchase Fee	1 53.40	53.40
2/10/2021	PKH Express Network's fee for filing of Initial and Complex Complaint	1 1,792.25	1,792.25
2/11/2021	PKH Filing fee for LWDA	1 75.00	75.00
3/22/2021	PKH First legal's fee for service of summons and complaint	1 151.38	151.38
3/26/2021	PKH First legal's fee for service of proof of service	1 9.00	9.00
3/31/2021	PKH Copying cost for March, 2021.	8 0.25	2.00
5/31/2021	PKH Westlaw cost for May, 2021.	1 1.05	1.05
6/30/2021	PKH Westlaw cost for JUNE, 2021.	1 1.71	1.71
	PKH First legals fee for service of Court Service	1 29.80	29.80

11/22/2022

			<u>Qty/Price</u>	<u>Amount</u>
7/3/2021	PKH	service fee for 4/27/21-6/30/21	1 115.20	115.20
8/16/2021	PKH	First legal filing fee	1 63.05	63.05
8/23/2021	PKH	First legal filing fee for First Amended Complaint	1 76.50	76.50
8/27/2021	PKH	First legal service fee for Notice of Case Reassignment	1 1.20	1.20
	PKH	First legal filing fee for Notice of Case Reassignment	1 12.95	12.95
8/30/2021	PKH	First legal service fee for Notice of Case Management Conference	1 1.20	1.20
	PKH	First legal filing fee for Notice of Case Management Conference	1 12.95	12.95
10/5/2021	KI	First Legal's Service Fee for: Case Management Statement (eServed)	1 1.20	1.20
	KI	First Legal's Filing Fee for: Case Management Statement (eFiled)	1 12.95	12.95
	PKH	Case Anywhere service fee for 7/1/21-9/30/21	1 150.00	150.00
1/5/2022	PKH	Case Anywhere service fee for 10/1/21-12/31/21	1 120.00	120.00
1/14/2022	KI	First Legal Service Fee for: Stip and Order (eServed)	1 2.50	2.50
	KI	First Legal Filing Fee for: Joint Case Management Statement and Stip to Continue CMC (eFiled)	1 33.75	33.75
1/31/2022	PKH	Copying cost for January, 2022.	5 0.25	1.25
4/10/2022	ALL	Case anywhere service fee for 1/1/22-3/31/22	1 120.00	120.00
5/20/2022	KI	One Legal Filing Fee for: Stip and Order	1 38.81	38.81
6/3/2022	KI	Document Purchase Fee from LASC for: Joint Ntc of Settlement and Stip to Continue CMC	1 4.00	4.00

11/22/2022

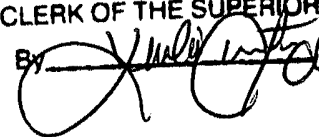
			<u>Qty/Price</u>	<u>Amount</u>
7/6/2022	ALL	Case Anywhere service fee for 4/1/22-6/30/22	1 120.00	120.00
8/26/2022	IDLC	One legal's fee for filing of: Joint stipulation to continue case management conference; [proposed] order	1 39.84	39.84
	IDLC	service fee for courtesy copy of joint stipulation to continue case management conference; [proposed] order	1 42.21	42.21
8/30/2022	IDLC	One legal's fee for filing of: Notice re; Continuance of hearing and order	1 17.19	17.19
10/7/2022	IDLC	One legal's filing fee for: Joint stipulation to continue case management conference; [Proposed] order Order #: 19061224	1 39.84	39.84
	IDLC	One legal's service fee for: Joint stipulation to continue case management conference; [Proposed] order Order #: 19061225	1 42.21	42.21
10/9/2022	ALL	Case Anywhere service fee for 7/1/22-9/30/22	1 120.00	120.00
10/13/2022	KI	Document Purchase Fee from LASC for - Ntc re: Continuance of Hearing and Order	1 2.00	2.00
Total additional charges				<u>\$3,314.54</u>
Balance due				<u><u>\$3,314.54</u></u>

EXHIBIT 3

FILED
ALAMEDA COUNTY

AUG 02 2018

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA - OAKLAND - RCD COURTHOUSE

VALERIE ENOMBANG, individually and
on behalf of all other similarly situated
aggrieved employees,

Plaintiff,

v.

TARGET CORPORATION, and DOES
1-10, inclusive,

Defendants.

CASE NO. RG17853948

~~PROPOSED~~ ORDER GRANTING JOINT
MOTION FOR APPROVAL OF
SETTLEMENT AND JUDGMENT
THEREON; AND AWARDING
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARDS

Date: July 24, 2018

Time: 3:00 p.m.

Dept: 23

Judge: Hon. Brad Seligman

The hearing on the parties' Joint Motion for Approval of Settlement came for hearing on July 24, 2018, in the Alameda County Superior Court, the Honorable Brad Seligman, presiding. The Court has reviewed the materials submitted by the parties, including the Settlement Agreement ("Settlement") and various motions and supplemental briefs.

During the hearing, the Court expressed concern about Section II(E)(2) of the Settlement, which sets forth a waiver of rights under Civil Code section 1542. The parties have agreed to strike Section II(E)(2) from the Settlement. With that revision, the Court finds the Settlement is entitled to judicial approval and meets all of the requirements for approval under the Labor Code Private Attorneys General Act, including the notice of the Settlement having been properly provided to the California Labor and Workforce Development Agency

1 ("LWDA"). The Court also finds that the LWDA has not objected to, and is deemed to have
2 approved of, the terms of the Settlement. The Court further finds that, although no one other
3 than the LWDA has standing to object to the terms of the Settlement, no other objection to the
4 Settlement has been received by the Court.

5 The Court further finds that executing the seating program set forth in Section
6 II(B)(2)(a-d) of the Settlement, namely notifying each affected employee of the right to request
7 and be provided with a suitable seat or stool, and by actually providing a suitable seat or stool
8 if requested, complies with Section 14 of Wage Order 7-2001.

9 The Court additionally finds that the dismissal of the PAGA cause of action in
10 *Thompson* without prejudice as to non-Cashiers comports with the requirements of PAGA, that
11 because the PAGA cause of action in *Thompson* was brought solely as a representative action
12 under PAGA, and not as a class action, the non-Cashiers have no legally cognizable interest
13 that is impacted by the dismissal of *Thompson*, the non-Cashiers in *Thompson* have no right to
14 notice of the dismissal, and the non-Cashiers in *Thompson* have no standing to object or
15 otherwise challenge the dismissal.

16 Accordingly, the Court hereby orders, adjudges, and decrees as follows:

17 1. The Parties, their Counsel, and the Settlement Administrator shall take all steps
18 necessary to implement and consummate the Settlement according to the terms and provisions,
19 including but not limited to the parties effectuating the dismissals of *Murphy v. Target*
20 *Corporation*, U.S. District Court for the Southern District of California Case No. 09-1436 and
21 *Thompson v. Target Corporation*, U.S. District Court of the Central District of California Case
22 No. 16-0839, pursuant to Section II(D)(2) of the Settlement.

23 2. The Court awards plaintiffs' counsel attorneys' fees in the amount of Three
24 Million, Six Hundred Thousand Dollars and No Cents (\$3,600,000.00), plus costs in the
25 amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00). The Court finds the
26 attorney hours, hourly rates, and costs incurred by plaintiffs' counsel over this nine-year
27 litigation as reflected in their declarations were reasonable, and further that plaintiffs' counsel
28 are entitled to a multiplier given the novelty of the claims and the contingent nature of the fee.

1 The Court further awards the representative plaintiffs, Valerie Enombang, Danyell Murpy,
2 Candi Perry, and Stacy Thompson, Twenty Thousand Dollars (\$20,000.00) each for the time
3 they spent, and the risk they undertook, in prosecuting these actions on behalf of the State and
4 the aggrieved employees. All of these amounts shall be deducted from the \$9 million
5 settlement fund. Attorneys' fees shall be distributed consistent with the Settlement.

6 3. Without affecting the finality of this Judgment or the Settlement, this Court
7 shall, pursuant to Section II(F)(3) of the Settlement, retain continuing jurisdiction over the
8 parties to this action to ensure effectuation of the Settlement in accordance with the terms of
9 the Settlement and this Judgment.

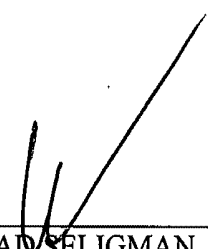
10 4. To the extent any settlement checks are uncashed by the deadline provided in
11 the Settlement, or in the event there any other undistributed settlement funds, such funds shall
12 be paid to the Equal Access Fund of the Judicial Branch, to be distributed in accordance with
13 Bus. & Prof. Code sections 6216 to 6223.

14 5. Judgment and dismissal is hereby entered as to Plaintiff Valerie Enombang, the
15 LWDA, and all individuals who worked for Defendant in California as a Cashier as that term
16 is defined in the Settlement Agreement at any time from April 14, 2008 through the date of
17 this Order.

18 6. Except as otherwise provided by the Settlement, each side shall bear their own
19 attorneys' fees and costs.

20 **IT IS SO ORDERED.**

21
22
23 DATED: 8/2/18


HON. BRAD SELIGMAN
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG17853948

Case name: Enombang v. Target Corporation

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of this Order was emailed to the addresses shown on at the bottom of this document.

Dated: August 03, 2018

Jhalisa A. Castaneda

Courtroom Clerk, Dept. 23

James Clapp <jclapp@clapplegal.com>; Marita Lauinger <mlauinger@clapplegal.com>;
Wilson Claudette G. <CWilson@wilsonturnerkosmo.com>; allen@gravesfirm.com;
'jeffwohl@paulhastings.com'; Kevin McInerney kevin@mcinerneylaw.net

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 07/24/2018

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM: T. Huffman CSR# 13789

BAILIFF/COURT ATTENDANT: M. Oreschak, M. Meraz

CASE NO: **34-2017-00220347-CU-OE-GDS** CASE INIT.DATE: 10/10/2017

CASE TITLE: **Grace vs. Flowmaster Inc**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion - Other - Civil Law and Motion

APPEARANCES

Theresa Mak, counsel, present for Defendant(s).

Jill Vecchi, counsel present for plaintiff, telephonically

Nature of Proceeding: Motion for Approval of Settlement

TENTATIVE RULING

Plaintiff Carrie Grace's unopposed motion for approval of settlement of claims brought pursuant to the Private Attorney General Act of 2004 ("PAGA") is granted.

Plaintiff seeks an order approving settlement of claims brought in this action on behalf of herself and all persons employed by Defendant Flowmaster, Inc. in non-exempt positions in its warehouses between August 7, 2016 and July 27, 2018 or the date the Court approves the settlement, whichever is earlier. The PAGA claims were premised on six alleged violations of Labor Code (e.g., failure to pay wages, failure to provide meal and rest breaks, failure to provide itemized wage statements). Approximately 323 employees suffered the alleged Labor Code violations during the relevant period. Plaintiff calculated Flowmaster's maximum potential exposure at approximately \$3,459,000 based on multiplying 5,765 pay periods by 6 PAGA violations by \$100. Flowmaster contends its exposure is limited to \$576,500. Flowmaster asserted numerous defenses including that the case could not be managed. The parties reached a settlement for \$750,000. The settlement includes attorneys' fees of \$247,500 (33% of the settlement), \$15,588.67 in costs, a \$10,000 service payment to Plaintiff, and up to \$5,000 in claims administration costs. The net settlement amount is \$471,911.33. 75% of that amount (\$353,933.50) will be distributed to the Labor and Workforce Development Agency [LWDA] and 25% (\$117,977.83) to the aggrieved employees based on the number of pay periods worked during the relevant time period.

Settlement of PAGA claims requires Court approval. Labor Code § 2699(l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action pursuant to this part." Thus, the settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." (See Labor Code § 2699(1)(2).) As with any settlement, the Court must be mindful in conducting its inquiry that "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (See *In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222, 24 (N.D. Cal. Sept. 12, 2011).) Indeed, "the very essence of a

settlement is ... 'a yielding of absolutes and an abandoning of highest hopes'" [*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir., 1982)], as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (See *Id.*, at 625.) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (See *Id.*)

Although the operative PAGA statute does not set forth the criteria on which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement under Fed. R. Civ. P. 23 ("Rule 23"), CCP. § 382 and Rule 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims encompassed within class action settlements using Rule 23 criteria. However, it is important to underscore that not all Rule 23 factors can be applied, as "a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23." (See *Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal. Inc.* 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or CCP. § 382 and 15 Rule 3.769, Cal. Rules of Court.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount which "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages" [*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454, 11 (E.D. Cal. June 30, 2010)], and "[u]nlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774, 12 (N.D. Cal. Apr. 2, 2010). Second, consistent with the fact that unnamed employees have no properly interest in a PAGA claim, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." (See *Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 13.) Finally, unlike a class action settlement under Rule 23(e) or CCP. § 382, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding" [*Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986], "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (See *Id.*, at 987.) Thus, the scope of a release in a PAGA settlement is necessarily strictly confined to the civil penalties alleged in the first amended complaint.

In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate and reasonable. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation. The settlement was the product of arms-length negotiations reached at mediation and was negotiated by counsel with significant experience in wage and hour litigation and occurred after counsel conducted significant investigation to evaluate the strength and potential value of the PAGA claims and risks of litigating through trial. (Turley Decl. ¶¶ 2-29) In addition, the settlement achieves a significant benefit given it results in a recovery of \$750,000 for the PAGA penalties. Further, the scope of the release is

narrowly tailored and is only limited to the civil penalties asserted in the action under PAGA, in conformity with *Arias, supra*, 46 Cal.4th at 987. In addition, Plaintiff submitted the proposed settlement to the Labor and Workforce Development Agency at the same time it was presented to the Court as required by Labor Code § 2699(l)(2). (Id. ¶ 18.) As a result, the Court finds that the instant settlement is fair, adequate and reasonable and it is approved.

In addition, the Court approves Plaintiff's Counsel's request for fees and costs. Counsel is entitled to recover attorneys' fees and costs under the "common fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." (See *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.) In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn. 19, the California Supreme Court upheld an attorneys' fee award based on a percentage of the common benefit obtained in a lawsuit by a city employees' association for retroactive wages. "When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases." (See *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010).) Plaintiff's Counsel's request for attorneys' fees in the amount of \$247,500 (33%) from the \$750,000 PAGA Settlement Sum falls well within the "zone of reasonableness." It is important to highlight at the outset that the fee amount presently sought is not extraordinary, but actually falls at the "average" fee deemed reasonable under California State court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million." (See, e.g. *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). Moreover, taking into account the contingency risk Plaintiff's Counsel agreed to incur for the benefit of the State of California (which elected not to take the case after receiving the PAGA Notice), and the significant results achieved - facts which justify the requested fee - Plaintiff's Counsel's requested fee is reasonable under all applicable standards. In addition the \$15,588.67 in litigation costs are reasonable.

Further, the \$10,000 service payment to Plaintiff is appropriate. Case authority supports the award of incentive payments in private attorney general actions. A named plaintiff's "willingness to act as a private attorney general" can justify an award of an incentive payment. (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

In addition, the \$5,000 in administration costs for Simpluris, Inc. to administer the settlement is reasonable.

The Court will sign the proposed order.

COURT RULING

The tentative ruling was affirmed as modified on the record.

CASE NAME: Resendez v. Bridgestone Retail Operations, LLC
CASE NO.: BC596892
HEARING DATE: 6/13/16
DEPARTMENT: 37
CALENDAR NO.: 9
TRIAL DATE: 2/14/17
NOTICE: OK
SUBJECT: Motion for Approval of Settlement of Claims Brought Under the Private Attorneys General Act
MOVING PARTY: Plaintiff Sophia P. Resendez, on behalf of herself and all others similarly situated
OPPOSING PARTY: None

FILED
Superior Court of California
County of Los Angeles

JUN 13 2016

Shérri A. Carter, Executive Officer/Clerk
By K. Mason Deputy
K. Mason

COURT'S TENTATIVE RULING

The unopposed motion is granted. Counsel for Plaintiff to give notice.

STATEMENT OF THE CASE

This is an action for civil penalties under the Private Attorneys General Act of 2004 (PAGA), which is codified in the Labor Code (Lab. Code, § 2698 et seq.). Defendant Bridgestone Retail Operations, LLC operates a chain of auto care and tire stores and employed Plaintiff Sophia P. Resendez from August 18, 2013 until May 14, 2015. Plaintiff alleges that Defendant failed to include its address on employee wage statements in violation of Labor Code section 226, subdivision (a)(8), and that Defendant paid meal period premiums to non-exempt employees pursuant to Labor Code section 226.7, thereby acknowledging that it had violated Labor Code section 512 regarding the provision of meal periods. Plaintiff filed suit on October 5, 2015, and the parties settled the matter during mediation with the Honorable Ronald M. Sabraw (Ret.) on February 25, 2016.

DISCUSSION

I. General Legal Principles Applicable to PAGA Settlements

A. The PAGA

Plaintiff moves the court to review and approve the civil penalties sought as part of the settlement of her PAGA claims. (Lab. Code, § 2699, subd. (f).) The PAGA is "a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.) The statute provides a mechanism for private enforcement of Labor Code violations for the public benefit. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D.Cal. 2010) 2010 WL 1340777, at p. *4.) To incentivize employees to bring PAGA actions, the statute

06/15/2016

provides aggrieved employees 25 percent of the recovered civil penalties. (Lab. Code, § 2699, subd. (i).) The remaining 75 percent is distributed to the Labor and Workforce Development Agency (LWDA) "for enforcement of labor laws and education of employers and employees about their rights and responsibilities under [the Labor Code]." (*Ibid.*)

B. Settlement Generally

In reviewing the terms of a settlement agreement, the court determines whether the settlement is fair, reasonable, and adequate to all concerned, and not the product of fraud, collusion, or overreaching. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 581.) In the context of a class action settlement, the court considers various factors including whether (1) the settlement is the result of arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. (*Nordstrom*, at p. 581; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) In considering the amount of settlement, the court is mindful that compromise is inherent and necessary in the settlement process. (*Wershba*, at p. 250.)¹

II. Application of General Principles

A. Terms of the Settlement

The settlement provides for Defendant to pay a Gross Settlement Amount (GSA) of \$950,000. After deducting one-third of the GSA (\$316,666.66) for attorney fees, attorney costs (\$7,005.82), an enhancement award for Plaintiff (\$10,000), and settlement administration costs (\$30,000), the settlement provides for distribution of a PAGA penalty fund of no less than \$585,833.34, with no less than \$439,375 to be paid to the LWDA, and no less than \$146,458.34 to be paid to the aggrieved employees. The parties have agreed to use CPT Group, Inc. (CPT) as the third-party settlement administrator. In that capacity, CPT will attempt to notify the aggrieved employees based on information provided by Defendant and distribute payments to the

¹ As Plaintiff points out, a PAGA settlement is different from a class action settlement in at least two respects. First, in considering a PAGA settlement, the court considers whether the total settlement amount achieves the PAGA's objective. Civil penalties are not meant to compensate employees but to serve law enforcement purposes by deterring unlawful conduct. Second, because the PAGA does not create property or substantive rights, aggrieved employees represented by the PAGA representative need not be given notice of the PAGA claim and cannot "opt out" of such a claim. Notwithstanding these difference, the general principles applicable to class action settlements apply equally in this context.

employees.² Aggrieved employees will not be required to submit claim forms to participate, will automatically receive the share of the settlement, and will have 180 days to cash their settlement checks. The amount of any checks that are returned as undeliverable or not cashed within 180 days shall be tendered to a fund benefitting Defendant's employees with personal or family emergencies.

B. Analysis of the Civil Penalties

The settlement represents a compromise with respect to the strength of Plaintiff's claims and Defendant's defenses to those claims. For instance, while Plaintiff contends that Defendant violated Labor Code section 226 by failing to include its address on wage statements, she acknowledges that Labor Code section was amended shortly before she filed suit to permit employers to "cure" such a violation by providing compliant wage statements to affected employees. The parties dispute whether Defendant timely cured the defective wage statements. Similarly, while Plaintiff contends that Defendant violated Labor Code section 512, which obligates employers to provide meal periods, Defendant maintains that it provided employees an extra hour of pay as a "meal period premium" pursuant to Labor Code section 226.7. Although Plaintiff disagrees, it is Defendant's position that it should not be penalized twice for the same violation. After considering the parties' respective positions before and during mediation, Plaintiff calculated civil penalties of \$842,511 for the failure to include an address on wage statements and \$178,145 for the failure to provide meal periods. The GSA represents about 93 percent of Plaintiff's projected total recovery of \$1,020,656.

The parties arrived at the settlement amount with the benefit of informal discovery and experienced counsel. For instance, Defendant provided Plaintiff with payroll data and calculations for aggrieved employees, including the number of deficient wage statements and the number of pay periods in which meal period premiums were paid. Plaintiff's counsel is experienced in wage-and-hour class actions, who believes the settlement to be fair and adequate for all involved. In addition, the parties reached their agreement with the benefit of a neutral mediator. These circumstances demonstrate that the agreement represents an arm's length transaction untainted by fraud, collusion, or self-dealing. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Accordingly, for these reasons, the court determines that the settlement is fair, adequate, and reasonable.

C. Attorney Fees and Costs

The PAGA contains a fee-shifting provision providing the prevailing party recovery of attorney fees and costs. (Lab. Code, § 2699, subd. (g).) Here, the one-third fee award is reasonable and consistent with fee awards in class action cases. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 ["Empirical studies show

² Plaintiff represents that based on the latest information, there are 3,002 persons who fall into the definition of "aggrieved employees" in this case. The estimated average payment for each aggrieved employee is \$48.23.

that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery' "). In addition, the GSA exceeds other PAGA awards that have been approved by courts in this state. (E.g., *Aguirre v. DSW, Inc.* (C.D.Cal. 2012) 2012 WL 11875296, at p. *3 [approving \$10,000 PAGA payment]; *Boyd v. Bank of America Corp.* (C.D.Cal. 2014) 2014 WL 6473804, at p. *8 [approving \$18,750 PAGA payment].) The success of the litigation and the experience of counsel in handling similar matters also favors an award of one-third of the recovery.

The reimbursement of costs of \$7,005.82 is also warranted. Plaintiff presents an itemization of costs, which consists of (1) copying, postage, and research costs; (2) mediation fees; (3) filing and jury fees; (4) CourtCall fees; and (5) parking and mileage. (Declaration of Paul K. Haines, Exh. F.) Similarly, Plaintiff demonstrates that the \$30,000 of administrative costs for CPT is reasonable and warranted. CPT is experienced as a settlement administrator (Declaration of Julie Green ¶¶ 4-7), and Plaintiff represents that the bid of \$30,000 was low and discounted. Accordingly, the attorney and administrative costs are approved as well.

D. Enhancement Award

Finally, Plaintiff's enhancement award of \$10,000 is reasonable. The purpose of such an award is to incentive aggrieved employees to undertake the risks associated with serving in a representative capacity. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 ["service payments" compensate named plaintiff "for their efforts in bringing the action"]; *Ingram v. The Coca-Cola Co.* (N.D.Ga. 2001) 200 F.R.D. 685, 694 ["Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation' "). Here, Plaintiff provided factual information and documentation to Plaintiff's counsel, assisted in identifying potential witnesses, and attended meetings with counsel. She estimates that she has spent at least 15 hours on these activities to help move the case forward. (Declaration of Sophia Resendez ¶ 5.) In addition, Plaintiff has agreed to a broader release of all known and unknown claims, including those that are not wage and hour related, subject to a waiver of Civil Code section 1542. Given Plaintiff's participation in the case and the broader waiver she has agreed to, the enhancement award is reasonable.

In sum, the settlement is fair, reasonable, and adequate for those concerned. The unopposed motion is granted.

06/15/2016

**Superior Court of California
County of Los Angeles**

Shelley Pickett, *et al.*,

Plaintiff,

vs.

99 Cents Only Stores, *et al.*

Defendants.

Case **BC473038**

No.:

Tentative Ruling

FILED
Superior Court of California
County of Los Angeles
AUG 01 2017
By Sherri R. Carter, Executive Officer/Clerk
Steve Temblador, Deputy

Hearing Date: August 1, 2017

Department 54, Judge Ernest M. Hiroshige

Motion for Approval of Representative Action Settlement

Moving Party: Plaintiff/Cross-Defendant Shelley Pickett ("Pickett")

Responding Party: Defendant/Cross-Complainant 99 Cents Only Stores ("99 Cents Only") [non-opposition]

T/R: THE MOTION IS GRANTED.

PLAINTIFF TO NOTICE.

The Court considers the moving papers and Defendant/Cross-Complainant's notice of non-opposition.

Plaintiff moves for an order granting approval of the proposed settlement of claims brought pursuant to the Private Attorneys general Act of 2004 ("PAGA"), Cal. Lab Code § 2698, *et seq.* Pursuant to the proposed settlement, the parties agree to the following terms: (1) 99 Cents Only will provide all of its cashiers in its California stores with suitable seating under Section 14(B) of Wage Order 7-2001, and to create, implement, and communicate pertinent policies to its cashiers regarding this change in policy; (2) \$75,000 to be paid to the California Workforce Development Agency; (3) \$12,500 to be paid to each of the two Plaintiffs; and (4) \$1,190,000 to be paid to Plaintiffs' Counsel for attorney fees and litigation costs. 99 Cents Only filed a statement of non-opposition. Based on the moving papers, the Court finds that the settlement is reasonable and meets the requirements of PAGA. Accordingly, the motion is GRANTED.

Date: August 1, 2017


Judge Ernest M. Hiroshige

08/03/2017

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JUN 19 2020

Filing Window

FILED
Superior Court of California
County of Los Angeles

SEP 24 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By *[Signature]*, Deputy

FILED
Superior Court of California
County of Los Angeles

SEP 24 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By *[Signature]*, Deputy
Lori M. Greene

FAXED

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Attorneys for Plaintiff
and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HELEN CATALINA VARGAS, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

GRUMA CORPORATION, a Nevada
Corporation; and DOES 1 through 100,

Defendants.

Case No. BC707897

[Assigned for all purposes to the Carolyn B.
Kuhl, Dept. SSC-12]

~~PROPOSED~~ JUDGMENT AND ORDER
GRANTING PLAINTIFF'S MOTION
FOR APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES, COSTS, AND SERVICE AWARD

Date: July 21, 2020

Time: 1:45 p.m.

Dept.: SSC-12

Complaint Filed: June 5, 2018

Trial Date: None Set

RECEIVED
LOS ANGELES SUPERIOR COURT
JUN 19 2020
I. LOVO

09/25/2020

CSK

Sept. 24, 2020 at 10:00 am

1 This matter came on regularly for hearing before this Court on July 21, 2020 at 1:45 p.m.
2 Having considered the parties' Stipulation for PAGA Settlement ("Settlement");¹ the documents
3 and evidence presented in support thereof; and recognizing the outcome of Plaintiff's
4 investigation of her claims and allegations, the disputed factual and legal issues involved in this
5 case, the risks of further prosecution, the substantial benefits to be received by the State of
6 California and the Allegedly Aggrieved Employees pursuant to the Settlement, and the fair,
7 reasonable, and adequate nature of the settlement obtained as a result of good faith arm's-length
8 negotiations between the parties; and the absence of any objection or comment from the California
9 Labor and Workforce Development Agency ("LWDA") after having received notice of the
10 parties' Settlement and Plaintiff's motion; the Court hereby makes a final ruling that the
11 Settlement is approved pursuant to Labor Code section 2699(l). Good cause appearing therefor,
12 the Court hereby GRANTS Plaintiff's Motion for PAGA Settlement Approval of Claims and
13 ORDERS as follows:

- 14 1. The "Allegedly Aggrieved Employees" shall be defined as:
15 All individuals who worked for Defendant Gruma Corporation as
16 nonexempt employees within the State of California at any time from
17 June 11, 2017 through the date the Court Order granting approval of the
18 PAGA Settlement Agreement.
- 19 2. The "PAGA Period" means June 11, 2017 through the date the Court Order
20 granting approval of the Settlement.
- 21 3. The Court hereby approves the settlement set forth in the Settlement as fair,
22 reasonable, and adequate, and directs the parties to effectuate the Settlement according to its
23 terms.
- 24 4. The Court orders that Defendant Gruma Corporation ("Defendant") shall pay the
25 Settlement Fund of \$1,917,500 to the Settlement Administrator within thirty (30) days after the
26 Court's order granting final approval of the PAGA Settlement Agreement and is no longer subject
27 to appeal.

28 ¹ All terms used in this Order shall have the same meaning as that assigned to them in the Settlement, attached as Exhibit A to the Declaration of Paul K. Haines submitted concurrently with the Motion for Approval of PAGA Settlement.

09/25/2020

1 5. The Court hereby approves, as to form and content, the explanatory Notice
2 submitted by the parties and included as Exhibit A to the Settlement.

3 6. The Court hereby appoints Phoenix Settlement Administrators as the Settlement
4 Administrator.

5 7. Within fourteen (14) business days of the Effective Date, Defendant shall provide
6 the Settlement Administrator with a list containing the Allegedly Aggrieved Employees' names,
7 last known addresses, social security numbers, and dates of employment and/or number of pay
8 periods worked during the PAGA Period.

9 8. The Settlement Administrator is directed to mail the individual PAGA payments
10 and the Notice to the Allegedly Aggrieved Employees within five (5) business days after
11 Defendant provides the Settlement Fund to the Settlement Administrator.

12 9. The Court finds that attorneys' fees in the amount of \$639,166.67 for Plaintiff's
13 counsel, and reimbursement of litigation costs of \$29,396.60 to Plaintiff's counsel, are fair,
14 *in light of the benefit obtained for the state and the class* reasonable, and adequate, and orders the Settlement Administrator to distribute these payments
15 to Plaintiff's counsel as provided for in the Settlement.

16 10. The Court orders that Phoenix Settlement Administrators shall be paid \$11,000 for
17 all of its work done and to be done until the completion of this matter, and finds that sum
18 appropriate.

19 11. The Court finds that the Representative Plaintiff Service Award of \$5,000.00 to
20 Plaintiff Helen Catalina Vargas, is fair and reasonable in recognition of the unique contributions
21 she has made and the risks she undertook in representing the State of California and the LWDA
22 in this action, on behalf of the Allegedly Aggrieved Employees and the State, and orders that the
23 Settlement Administrator distribute this payment to Plaintiff as provided for in the Settlement.

24 12. The Court finds that the distribution of the PAGA Fund to the LWDA and to
25 Allegedly Aggrieved Employees as provided for in the Settlement, is fair, adequate, and
26 reasonable, and orders that payment be made to the LWDA and Allegedly Aggrieved Employees
27 in accordance with the terms of the Settlement.

28 13. The court approves the scope of the release set forth in the Settlement. Following

1 entry of this Judgment and Order and upon the Effective Date, the State of California, Plaintiff
2 and Allegedly Aggrieved Employees, on behalf of themselves and each of their heirs,
3 representatives, successors, assigns, and attorneys, hereby release, and settle any and all claims
4 against the Released Parties for civil penalties they and the State of California may have under
5 the California Labor Code, Wage Orders, regulations, and/or any other provisions of state law
6 arising from allegations that the Allegedly Aggrieved Employees (including Plaintiff) suffered
7 California Labor Code Violations based on (1) non-compliant rest breaks, (2) non-compliant meal
8 periods, (3) non-compliant meal and rest period premium payments, (4) unpaid minimum and
9 overtime wages, (5) failure to pay all wages at the agreed-upon rate and/or without discount, (6)
10 untimely payment of earned wages during employment and at separation of employment, (7) non-
11 compliant wage statements, (8) failure to maintain complete and accurate records, and (9) any
12 other Labor Code violations that were alleged in the Complaint, or that could have been alleged
13 in the Complaint based on the facts alleged in the Complaint, which includes alleged violations
14 of Labor Code sections 201-204, 210, 221-223, 226, 226.3, 226.7, 510, 512, 516, 558, 1174,
15 1174.1, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 (collectively, the "Released Claims").
16 "Released Parties" means Defendant and each and all of its present, former and future controlling
17 persons, parents, affiliates, business partners, subsidiaries, successors-in-interest, benefit plans
18 sponsored by such companies, shareholders, owners, officers, directors, principals, employees,
19 agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, divisions,
20 predecessors, successors, and assigns.

21 *This release in no way*
22 */// affects any claim an Allegedly Aggrieved*
23 */// Employee may have against the Released*
24 */// Parties for unpaid wages.*

25 *///*
26 *///*
27 *///*
28 *///*

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14. ~~Upon entry of this Final Order and Judgment and upon the Effective Date, the~~
(Upon payment being made in accordance with paragraph 4 hereof,

2 Court permanently enjoins and forever bars the Plaintiff or the Allegedly Aggrieved Employees
3 from instituting or prosecuting any of the "Released Claims" against the "Released Parties,"
4 which were fully and completely resolved as part of the Settlement. Without affecting the finality
5 of this Final Order and Judgment in any way, the Court retains jurisdiction to enforce the terms
6 of the Settlement.

7 15. The Settlement Administrator shall make a final report confirming the final
8 distribution of funds on or before Aug. 4, 2021. A Non-Appeal
9 Case Review Re: Submission of the Final Report of Disbursement is scheduled for
10 Aug. 11, 2021 at 4:30 a.m./p.m.

Cik

11 **IT IS SO ORDERED.**

12
13 Dated: Sept. 24, 2020 By: Carolyn B. Kuhl
14 Honorable Carolyn B. Kuhl
15 Judge of the Superior Court
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09/25/2020

PAUL K. HAINES (Cal. State Bar No. 248226)
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Rachael Buhl

(Additional counsel of record on next page)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

RACHAEL BUHL, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

SDX HOME CARE OPERATIONS, LLC, a
California Limited Liability Company; and
DOES 1 through 100,

Defendants.

No. 19STCV23623

**~~[PROPOSED]~~ ORDER GRANTING
JOINT MOTION FOR APPROVAL OF
PAGA SETTLEMENT (Cal. Lab. Code
§ 2699(1)(2)) AND PLAINTIFF'S
MOTION FOR APPROVAL OF
REASONABLE ATTORNEYS' FEES
AND COSTS AND ENHANCEMENT
AWARD**

Date: July 29, 2020
Time: 8:30 a.m.
Dept.: 20, 111 North Hill St., 3rd Flr.,
Los Angeles, CA
Judge: Hon. David J. Cowan

Complaint filed: July 1, 2019
Trial date: None set

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Rachael Buhl

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paulholton@paulhastings.com

11 Attorneys for Defendant
12 SDX Home Care Operations, LLC
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1 On July 29, 2020, a hearing was held on the joint motion of plaintiff Rachael Buhl and
2 defendant SDX Home Care Operations, LLC, for approval of the settlement of this action under
3 the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et*
4 *seq.*, and on plaintiff’s motion for reasonable attorneys’ fees and costs and enhancement award.

5 The Court having read and considered the parties’ Settlement Agreement (the “Settlement
6 Agreement” or “Settlement”), the papers on the motions, the arguments of counsel, the parties’
7 joint supplemental brief in support of the joint motion, and the law, and recognizing the disputed
8 factual and legal issues involved in this case, the risks of further prosecution, the substantial
9 benefits to be received by the State of California and the alleged aggrieved employees pursuant to
10 the Settlement, the Court hereby makes a final ruling pursuant to California Labor Code section
11 2699(*l*) that the Settlement is fair, reasonable, and adequate, and is the product of good faith, arm’s
12 length negotiations between the parties. Good cause appearing therefor, the Court hereby
13 GRANTS the parties’ joint motion and plaintiff’s motion and HEREBY ORDERS as follows:

14 1. All terms used for purposes of this order, not otherwise defined, will have the same
15 meaning as given in the Settlement. A copy of the Settlement Agreement executed between the
16 Parties is attached as Exhibit A to this order.

17 2. Pursuant to PAGA, Cal. Lab. Code § 2699(*l*)(2), the California Labor and
18 Workforce Development Agency (the “LWDA”) has been given notice of the Settlement and the
19 joint motion for approval of the Settlement and plaintiff’s motion; on April 15, 2020, plaintiff
20 submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement.
21 The Court finds and determines that this notice of the Settlement complied with the statutory
22 requirements of PAGA.

23 3. The Court confirms approval of the Settlement with respect to the following group
24 of individuals (“Settlement Group Members”):

25 All non-exempt employees employed by defendant SDX Home Care Operations,
26 LLC, in California as “Caregivers” or “Home Health Assistants” from April 24,
2018, through June 30, 2020.

27 ///

1 4. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate.
2 Accordingly, the Court hereby approves the Settlement, and directs the parties to effectuate the
3 Settlement according to its terms.

4 5. The Court finds that the form of Letter Enclosing Settlement Share Checks (the
5 “Cover Letter”), attached as Exhibit A to the Settlement Agreement, fairly and adequately
6 describes the Action, the approved Settlement, and the manner in which Settlement Group
7 Members may ask questions regarding their Settlement Shares, and orders that the Cover Letter
8 be mailed via first-class U.S. mail to the Settlement Group Members in English and Spanish, along
9 with the Settlement Share checks.

10 6. The Court finds that the Total Settlement Amount, Net Settlement Amount, and the
11 methodology used to calculate and pay each Settlement Share, in accordance with the Settlement,
12 are fair and reasonable.

13 7. Phoenix Settlement Administrators is appointed to act as the Settlement
14 Administrator, pursuant to the terms of the Settlement Agreement.

15 8. The Court finds that attorneys’ fees in the amount of 35% of the Total Settlement
16 Amount (\$280,000.00) for plaintiff’s counsel, and reimbursement of litigation costs of \$25,534.58
17 to plaintiff’s counsel are fair, reasonable, and adequate, and orders that the Settlement
18 Administrator distribute these payments to plaintiff’s counsel as provided for in the Settlement.

19 9. The Court orders that the Settlement Administrator shall be paid \$3,500.00 for all
20 of its work done and to be done until the completion of this matter, and finds that sum appropriate.

21 10. The Court finds that a Representative Plaintiff’s Payment of \$5,000.00 to plaintiff
22 is fair and reasonable in recognition of the contributions she has made and the risks she undertook
23 on behalf of the Settlement Group Members and the State of California, and orders that the
24 Settlement Administrator distribute this payment to plaintiff as provided for in the Settlement.

25 11. The Court finds that the amount of \$364,474.06 (representing 75% of the PAGA
26 civil penalties under California Labor Code section 2699(i)) payable to the LWDA as provided
27 for by the Settlement, is fair, adequate, and reasonable, and orders that payment be made to the
28 LWDA in accordance with the terms of the Settlement.

1 12. The Court authorizes the Settlement Administrator to calculate and pay the
2 Settlement Shares, in accordance with the terms of the Settlement, and to pay the LWDA Payment,
3 the Representative Plaintiff's Payment, and the Plaintiff's Counsel Fees and Expenses Payment at
4 the same time as the Settlement Shares.

5 13. Defendant is ordered to provide to the Settlement Administrator not later than 14
6 days after this order becomes Final the names, last known mailing addresses and telephone
7 numbers, Social Security numbers, and Covered Workweeks of all Settlement Group Members.
8 This information will not be disclosed to plaintiff or her counsel, and may be used solely for
9 purposes of administering the Settlement.

10 14. All payments due under the Settlement will be made pursuant to the Settlement.

11 15. If a Settlement Share check comes back to the Settlement Administrator as non-
12 deliverable, the Settlement Administrator will make reasonable efforts to find a current address
13 for the Settlement Group Member and re-mail the check.

14 16. If a Settlement Group Member fails to cash the check for his or her Settlement
15 Shares within 180 days after it is mailed to the Settlement Group Member (or, in the case where
16 the check was returned as non-deliverable, within 180 days after the initial mailing or within 90
17 days after it is mailed to the new address for the Settlement Group Member, whichever is later),
18 the Settlement Administrator will transfer the money represented by the check to the California
19 State Controller's Office Unclaimed Property Fund with an accounting of the amounts being
20 transferred.

21 17. The Court retains exclusive and continuing jurisdiction over this Action under
22 California Code of Civil Procedure section 664.6 for purposes of supervising, administering,
23 implementing, interpreting, and enforcing this order, as well as the Settlement Agreement.

24 18. Nothing in this order or the Settlement Agreement will be construed as an
25 admission or concession by any party, including an admission or concession that defendant bears
26 any liability to the Settlement Group Members or that they were owed the amounts being paid or
27 any amounts. The Settlement Agreement and this resulting order simply represent a compromise
28 of disputed allegations.

1 19. Plaintiff is directed to submit a copy of this order to the LWDA within 10 days of
2 the date of this order.

3 20. Upon entry of this order, plaintiff and the Settlement Group Members will waive
4 and release all claims against the Released Parties that were pled or could have been pled under
5 PAGA under the California Labor Code, Wage Orders, regulations, and/or other provisions of law
6 alleged in the Action to have been violated with respect to herself and the Settlement Group
7 Members during the Covered Period.

8 21. Based on the foregoing, and in accordance with the Settlement Agreement, this
9 action is DISMISSED WITH PREJUDICE, each side to bear its own costs and attorneys' fees
10 except as provided by the Settlement Agreement.

11 IT IS SO ORDERED.

12 Dated: July 30, 2020.



A handwritten signature in black ink, appearing to read "David J. Cowan".

David J. Cowan
Judge of the Superior Court
David J. Cowan / Judge

13
14 Counsel for plaintiff is ordered to give notice.

PROOF OF SERVICE

Rachel Buhl v. SDX Home Care Operations, LLC
Los Angeles County Superior Court Case No. 19STCV23623

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On July 29, 2020, I served the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING JOINT MOTION FOR APPROVAL OF PAGA SETTLEMENT (Cal. Lab. Code § 2699(l)(2)) AND PLAINTIFF'S MOTION FOR APPROVAL OF REASONABLE ATTORNEYS' FEES AND COSTS AND ENHANCEMENT AWARD

on the interested party(ies) in this action as follows:

Jeffrey D. Wohl, Esq.
Email: jeffwohl@paulhastings.com
Paul A. Holton, Esq.
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Attorneys for Defendant SDX HOME CARE OPERATIONS

[X] (VIA ELECTRONIC MAIL) Pursuant to Emergency Rule # 12 of the California Rules of Court, I caused the document described above to be sent to the persons at the electronic service addresses listed above via third party cloud service First Legal.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 29, 2020, at El Segundo, California.


Jonathan Ramirez

09/19/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: O. Chavez Deputy

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JORGE GUTIERREZ, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

SEIDNER & CO., INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No.: BC724132

*[Assigned for all purposes to the Hon. Holly
J. Fujie; Dept. 56]*

**[PROPOSED] ORDER AND
JUDGMENT GRANTING PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD**

Date: September 16, 2019

Time: 8:30 a.m.

Dept.: 56

Reservation No.: 122557984660

Action Filed: October 3, 2018

Trial Date: None Set

1 This matter came on regularly for hearing before this Court on September 16, 2019 at
2 8:30 a.m. Having considered the parties' Settlement Agreement, the documents and evidence
3 presented in support thereof, and recognizing the disputed factual and legal issues involved in
4 this case, the risks of further prosecution, the substantial benefits to be received by the State of
5 California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and
6 adequate nature of the settlement obtained as a result of good faith arm's-length negotiations
7 between the parties, the Court hereby makes a final ruling that the settlement is approved pursuant
8 to Labor Code § 2699(l). Good cause appearing therefor, the Court hereby GRANTS Plaintiff's
9 Motion for Approval of PAGA Settlement and Reasonable Attorneys' Fees, Costs, and
10 Enhancement Award and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All current and former non-exempt employees of Defendant
13 in California from October 3, 2017, until the date that the
14 Court approves this settlement or September 16, 2019,
whichever comes earlier ("PAGA Period").

15 2. The Court hereby approves the Settlement as set forth in the Settlement
16 Agreement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement
17 according to the terms of the Settlement Agreement.

18 3. The Court orders that Defendant Seidner & Co., Inc. shall deposit the Maximum
19 Settlement Amount of \$325,000.00 to the Settlement Administrator within fourteen (14) business
20 days of the Court's approval of the Settlement Agreement.

21 4. The Court hereby approves, as to form and content, the Notice of PAGA
22 Settlement and Release of Claims, submitted by the parties.

23 5. The Court hereby appoints CPT Group, Inc. as Settlement Administrator.

24 6. Within fourteen (14) business days of Court approval, Defendant Seidner & Co,
25 Inc. ("Seidner") will provide CPT with a list containing the Aggrieved Employees' full name,
26 last known mailing address, last known telephone number, start date(s) of employment, end
27 date(s) of employment, total pay periods worked, and Social Security numbers. The list will also
28 contain the total of all pay periods worked by Aggrieved Employees during the PAGA Period.

1 Within ten (10) business days of receipt of this information, the Settlement Administrator will
2 circulate to counsel for Plaintiff and Defendant an anonymized spreadsheet containing the
3 Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said
4 payments.

5 7. CPT Group, Inc. is directed to mail the individual settlement payments (which
6 will include the Aggrieved Employees' 25% share of civil penalties paid under Labor Code §
7 2699(i) and their share of civil penalties under Underpaid Wages and Civil Penalty) and Notice
8 of PAGA Settlement and Release of Claims to the Aggrieved Employees after approval of the
9 anonymized spreadsheet containing the individual settlement payments to each Aggrieved
10 Employee and the data used to calculate said payments from the parties.

11 8. The Court finds that attorneys' fees in the amount of \$108,333.33 for Plaintiff's
12 Counsel, and reimbursement of litigation costs of \$10,357.93 to Plaintiff's Counsel are fair,
13 reasonable, and adequate, and orders that the Settlement Administrator distribute these payments
14 to Plaintiff's Counsel as provided for in the Settlement Agreement.

15 9. The Court orders that the Settlement Administrator shall be paid \$7,750.00 for all
16 of its work done and to be done until the completion of this matter and finds that sum appropriate.

17 10. The Court finds that an enhancement award of \$5,000.00 to Plaintiff is fair and
18 reasonable in recognition of the unique contributions he has made and the risks he undertook on
19 behalf of the Aggrieved Employees and the State of California, and orders that the Settlement
20 Administrator distribute this payment to Plaintiff as provided for in the Settlement Agreement.

21 11. The Court finds that the amount of \$15,000.00 (representing 75% of the
22 \$20,000.00 set aside for PAGA civil penalties under Labor Code § 2699(i)) shall to be paid to
23 the California Labor and Workforce Development Agency ("LWDA") as provided for by the
24 Settlement, is fair, adequate, and reasonable, and orders that payment be made to the LWDA in
25 accordance with the terms of the Settlement Agreement.

26 12. The court approves the limited scope of the release. Following entry of this Order
27 and Final Judgment, all Aggrieved Employees will release Defendant Seidner & Co., Inc. and its
28 respective heirs, executors, administrators, successors, assignees, parents, subsidiaries and

1 related entities, officers, directors, shareholders, employees, agents, servants, representatives,
2 members, attorneys, insurers, re-insurers, assigns, and affiliates, and any and all other entities
3 with whom they have been, are now, or may hereafter be affiliated, and any of their affiliated
4 companies, predecessors, successors and assigns, as well as their past or present officers,
5 directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees
6 (collectively, the "Released Parties") from any and all claims under PAGA that are pled in
7 Plaintiff's Complaint (including Labor Code § 558), or which could have been pled under the
8 PAGA based on the factual allegations in Plaintiff's Complaint, that arose during the PAGA
9 Period.

10 13. Upon entry of this Order and Judgment, the Court permanently enjoins and
11 forever bars Plaintiff and the Aggrieved Employees from instituting or prosecuting any action
12 against the Released Persons which was released as part of the Settlement Agreement. Without
13 affecting the finality of this Order and Judgment in any way, the Court retains jurisdiction to
14 enforce the terms of the Settlement.

15 14. Plaintiff shall file a declaration confirming the final distribution of funds on or
16 before June 5, 2020.

17
18 **IT IS SO ORDERED.**

19 09/19/2019

20 Dated: _____



Holly J. Fujie

Holly J. Fujie / Judge

Honorable Holly J. Fujie
Judge of the Superior Court

NOV 19 2018

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Attorneys for Plaintiff Silva and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JORGE GONZALEZ, individually and on
behalf of himself and other persons similarly
situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
corporation; and DOES 1 through 30,
inclusive,

Defendants.

LUIS SILVA, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
Corporation, and DOES 1 through 100,

Defendants.

Case No. BC620115 (Lead Case)
Case No. BC622512

*[Assigned for all purposes to the Honorable
David S. Cunningham III, Dept. 37]*

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION
FOR APPROVAL OF SETTLEMENT
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES, COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION EXPENSES**

Date: September 27, 2018
Time: 8:30 a.m.
Dept.: 37
Reservation ID: 180409304435

Complaint Filed [Lead Case]: May 10, 2016
FSC: October 22, 2018
Trial Date: October 30, 2018

NOVEMBER 19, 2018

1 This matter came on regularly for hearing before this Court on ~~September 27, 2018~~ at
2 8:30 a.m. Having considered the parties' Joint Stipulation of Settlement and Release
3 ("Settlement Agreement" or "Settlement"),¹ the documents and evidence presented in support
4 thereof, and recognizing the disputed factual and legal issues involved in this case, the risks of
5 further prosecution, the substantial benefits to be received by the State of California and the
6 Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and adequate nature of
7 the settlement obtained as a result of good faith arm's-length negotiations between the parties,
8 the Court hereby makes a final ruling that the settlement is approved pursuant to Labor Code
9 section 2699(1). Good cause appearing therefor, the Court hereby GRANTS Plaintiffs' Motion
10 for Approval of Settlement of Claims and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All persons who, at any time during the Settlement and Release Period
13 were employed by Defendant in non-exempt hourly positions in the State
of California who were provided with at least one wage statement.

14 2. "Defendant" means CitiStaff Solutions, Inc.

15 3. The "Settlement and Release Period" means from May 10, 2015 to September 12, 2016.

16 4. The Court hereby approves the Settlement as set forth in the Settlement Agreement as
17 fair, reasonable, and adequate, and directs the parties to effectuate the Settlement according to
18 the terms of the Settlement Agreement.

19 5. The Court orders that Defendant shall pay the Gross Settlement Amount of \$275,000.00
20 to the Settlement Administrator on the following schedule, as provided for in the Settlement
21 Agreement: Payment 1: \$15,000.00, to be paid within five (5) business days from an Order
22 from the Court approving this Settlement or June 1, 2018, whichever is later, representing
23 Representative Plaintiffs' Enhancement Payments; Payment 2: \$12,146.04 to be paid on July 1,
24 2018 representing Aggrieved Employees' Counsel Costs; Payment 3: \$30,555.55 to be paid on
25 August 1, 2018, representing the first 1/3 of the Aggrieved Employees' Counsel Fees; Payment
26 4: \$30,555.55 to be paid on October 1, 2018, representing the second 1/3 of the Aggrieved

27
28 ¹ All terms used in this Order shall have the same meaning as that assigned to them in the Settlement Agreement.

1 Employees' Counsel Fees; Payment 5: \$30,555.55 to be paid on December 1, 2018,
2 representing the third 1/3 of the Aggrieved Employees' Counsel Fees; Payment 6: \$15,630.78
3 to be paid on January 1, 2019 representing the amounts distributable to the LWDA, Aggrieved
4 Employees and Settlement Administration Costs; Payments 7 through 18: \$12,777.78 to be
5 paid monthly, commencing on February 1, 2019 through December 1, 2019, to be paid on the
6 first date of each month, representing the amounts distributable to the LWDA, Aggrieved
7 Employees and Settlement Administration Costs.² See Settlement, § III.H.2.

8 6. The Court hereby approves, as to form and content, the Notice of Settlement submitted
9 by the parties.

10 7. The Court hereby appoints CPT Group, Inc. as Settlement Administrator.

11 8. Within fifteen (15) business days of settlement approval, CitiStaff will provide CPT
12 with a list containing the Aggrieved Employees' names, last known addresses, last known
13 telephone numbers, and social security numbers.

14 9. CPT Group, Inc. is directed to mail the individual settlement payments and Notice of
15 Settlement to the Aggrieved Employees within ten (10) days of receipt of the Defendant's final
16 payment of the Gross Settlement Amount.

17 10. The Court finds that attorneys' fees in the amount of \$91,666.66 for Plaintiffs' counsel,
18 and reimbursement of litigation costs of ~~\$12,147.00~~ ^{\$11,842.95} to Plaintiffs' counsel, are fair, reasonable,
19 and adequate, and orders that the Settlement Administrator distribute these payments to
20 Plaintiffs' Counsel as provided for in the Settlement Agreement.

21 11. The Court orders that the Settlement Administrator shall be paid up to \$65,000.00 for
22 all of its work done and to be done until the completion of this matter, and finds that sum
23 appropriate.

24 12. The Court finds that Representative Plaintiff Enhancement Payments of \$5,000.00 each
25 to Plaintiffs Jorge Gonzalez, Teresa Nieto, and Luis Silva for a total amount of \$15,000.00, is
26

27 ² The parties have agreed and this Court approves that to the extent that any of the payment
28 deadlines fall prior to the date that this Court issues its approval order, CitiStaff will make any
payments on the due dates with the Settlement Administrator holding the funds in escrow.

1 fair and reasonable in recognition of the unique contributions they have made and the risks they
2 undertook, on behalf of the Aggrieved Employees and the State of California, and orders that
3 the Settlement Administrator distribute this payment to Plaintiffs as provided for in the
4 Settlement Agreement.

5 13. The Court finds that the amount of \$68,389.75, representing 75% of the \$91,186.34
6 allocated as PAGA penalties in this action, to be paid to the California Labor and Workforce
7 Development Agency ("LWDA") as provided for by the Settlement, is fair, adequate, and
8 reasonable, and orders that payment be made to the LWDA in accordance with the terms of the
9 Settlement Agreement.

10 14. The court approves the limited scope of the release. Following entry of this Order and
11 Final Judgment, Representative Plaintiffs and Aggrieved Employees will have released all
12 Released Claims against Released Persons, meaning that PAGA civil penalties recoverable
13 under any theory of liability upon which such civil penalties under the PAGA could have been
14 recovered based upon the allegations in the operative Complaint, including specifically any and
15 all claims, causes of action, damages, wages, benefits, expenses, penalties, interest, debts,
16 liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy
17 in law, equity, or whatever kind or nature that were asserted or could have been asserted
18 pursuant to Labor Code §§ 558 or 2698 et seq. for violation of Labor Code Section 226.

19 15. Upon entry of this Final Order and Judgment, the Court permanently enjoins and
20 forever bars the Representative Plaintiffs, Aggrieved Employees' Counsel, or the Aggrieved
21 Employees from instituting or prosecuting any action against the Released Persons which was
22 resolved as part of the Settlement. Without affecting the finality of this Final Order and
23 Judgment in any way, the Court retains jurisdiction to enforce the terms of the Settlement.
24 Plaintiffs shall file a declaration confirming the final distribution of funds on or before

25 JANUARY 21, ²⁰²⁰~~2019~~.

26 **IT IS SO ORDERED.**

27 Dated: 11-19-2018

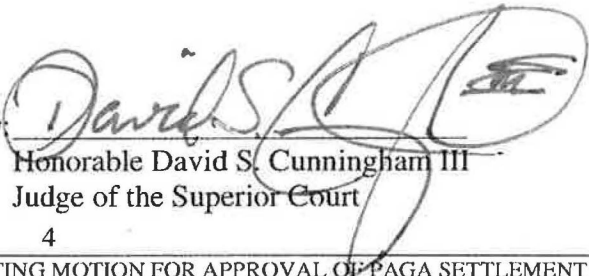
28 By: 
Honorable David S. Cunningham III
Judge of the Superior Court

EXHIBIT 4

CASE NAME: WIP

Date: October 12, 2022
Requesting Attorney: Fletcher W. Schmidt
Plaintiff or Defense: Plaintiff
Firm Name: Haines Law Group, APC
Telephone: (424) 292-2350
Email: fschmidt@haineslawgroup.com

PAGA Disbursement Only
Aggrieved Employees: 350
Postage Total: \$229.20
Grand Total: \$7,869.20
DISCOUNTED FLAT FEE: \$5,250.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Aggrieved Employees will be Assigned a Unique Mailing ID which will be Used Throughout Administration. CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Call Center Support Representatives During Normal Business Hours (Monday-Friday, 9:00 AM - 5:30 PM, PST).

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	3	\$285.00
Project Manager: Notice Format	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	3	\$450.00
Live Call Center Support Reps.*	\$3.00	70	\$210.00
TOTAL			\$1,040.00

* Up to 120 days after disbursement

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.20	350	\$70.00
TOTAL			\$505.00

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check and Notice to Valid Aggrieved Employees. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashied and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	2	\$300.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice, Checks & 1099	\$3.00	350	\$1,050.00
First-Class Postage (up to 1 oz.)*	\$0.60	350	\$210.00
TOTAL			\$3,235.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

CPT Estimates that 8% of the Checks will be Returned Undeliverable and Skip Traced to Locate a Current Address and Remaild Accordingly. CPT will Process all Requests for Check Re-Issues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF. Throughout the Duration of Administration, CPT will Provide the Parties with Bi-Weekly Status Reports. Upon the Conclusion of the Disbursement, CPT will Issue a Due Process Declaration. Uncashed Check will be Sent to Cy Pres.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Re-Issue Checks as Required	\$5.00	4	\$20.00
Project Supervisor: Account Reconciliation	\$150.00	6	\$900.00
Skip Trace for Best Address	\$0.75	28	\$21.00
Remail Undeliverable Checks	\$3.00	28	\$84.00
First-Class Postage (up to 1 oz.)	\$0.60	32	\$19.20
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	1	\$150.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
Project Supervisor: Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Uncashed Checks Sent to Cy Pres	Included	1	Included
TOTAL			\$3,089.20

*CPT will file Federal taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

GRAND TOTAL	\$7,869.20
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TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.