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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**
14

15 STEPHEN CLEGG and MICHAEL
16 EMMENS; individually, and on behalf of
17 other aggrieved employees;

18 PLAINTIFFS,

19 v.

20 BOB'S DISCOUNT FURNITURE, LLC, a
21 Massachusetts Limited Liability Company;
22 and DOES 1 thru 10, inclusive,

23 DEFENDANTS.
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Case No. 21STCV15281

[Case Assigned for All Purposes to Hon. Jon. R.
Takasugi in Dept. 17]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF MOTION FOR
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT**

Date: May 28, 2024
Time: 9:30 AM
Dept.: 17

Complaint Filed: April 22, 2021
Trial Date: None Set

Reservation No. 950803998414

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I, Kelsey M. Szamet, declare as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am the attorney of record for Plaintiff MICHAEL EMMENS in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Plaintiffs' Motion for Approval of Representative Action in the above-captioned case.

3. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

4. I have been involved in all of the settlement discussions leading to the present settlement as embodied in the PAGA¹ Settlement Agreement (“Settlement Agreement” or “Agreement”). A true and correct copy of the Settlement is attached hereto as Exhibit “1”.

LITIGATION OVERVIEW AND PROCEDURAL HISTORY

5. On January 12, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff Clegg provided written notice to Defendant and the Labor and Workforce Development Agency (“LWDA”), giving notice of Defendant’s alleged Labor Code violations, setting forth specific allegations, and seeking civil penalties under PAGA.

6. On February 8, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff Emmens provided written notice to Defendant and the LWDA, seeking civil penalties under PAGA for Defendant's violation of California Labor Code.

7. Plaintiffs have complied with all of the requirements set forth in Labor Code § 2699.3 to commence a representative action under PAGA.

¹ PAGA refers to the Private Attorneys General Act of 2004 at Labor Code Section 2699, et seq.

1 8. On April 22, 2021, Plaintiffs commenced this representative Action by filing a
2 Complaint alleging causes of actions against Defendant for: 1) violation of California Labor Code
3 sections 2800, 2802, 2804; 2) violation of California’s unfair competition law (“UCL”) Business and
4 Professions Code section 17200, et seq.; 3) PAGA penalties for failure to reimburse expenses; 4)
5 PAGA penalties for failure to provide meal periods or pay in lieu thereof; 5) PAGA penalties for
6 failure to provide paid sick leave; and 6) PAGA penalties for failure to provide accurate itemized
7 wage statements.

8 9. On July 8, 2021, Defendant filed a notice of removal, removing this Action to the
9 United States District Court for the Central District of California, Western Division, Case No. 2:21-
10 cv-05552-SB-PD. On August 4, 2021, Plaintiffs filed a motion for remand. On September 7, 2021,
11 the Court issued an Order remanding this Action to the Superior Court of Los Angeles County.

12 10. On October 5, 2023, Plaintiff Emmens submitted an Amended PAGA notice to the
13 LWDA and to Defendant by certified U.S. Mail. On October 24, 2023, Plaintiff Emmens submitted
14 a second Amended PAGA notice to the LWDA and to Defendant by certified U.S. Mail,
15 incorporating Plaintiff Clegg’s representative claims, as a part of the settlement.

16 11. On March 28, 2024, as a part of settlement, Plaintiff filed a First Amended Complaint
17 for Damages and Restitution and Representative Action for Recovery of Civil Penalties Pursuant to
18 PAGA (“FAC”). The First Amended Complaint is the operative complaint in the Action (the
19 “Operative Complaint”).

20 12. On September 22, 2021, Plaintiff Clegg served his first set of Special Interrogatories,
21 Requests for Production of Documents, Form Interrogatories – General, Form Interrogatories –
22 Employment, and Requests for Admission.

23 13. Prior to mediation, Plaintiff obtained, through formal discovery, the total number of
24 pay periods and the number of Aggrieved Employees during the Expense Reimbursement PAGA
25 Period and the PAGA Period, and timekeeping and payroll data for Aggrieved Employees indicating,
26 among other things, time punch records for meal and rest breaks.

27 14. On or about May 8, 2020, the parties in *Clarence Williams v. Bob’s Discount*
28 *Furniture, LLC et al.*, case number 19STCV03679, reached a settlement that was approved, which

1 released PAGA claims from November 29, 2017, up through and including July 22, 2020, effectively
2 shortening the period of liability for all the claims at issue by way of this Action, except for the
3 expense reimbursement claim.

4 15. On August 2, 2022, the Parties participated in a mediation presided over by mediator
5 Kelly A. Knight, Esq. The Parties did not reach a settlement at this mediation.

6 16. On October 18, 2023, the Parties participated in a second mediation presided over by
7 mediator Kevin D. Barnes, Esq., which led to the present Agreement to settle the Action, subject to
8 the approval of the Court.

9 17. Although Defendant denies that it violated any pertinent law, it recognized the risks
10 and attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to
11 finalization of a formal PAGA Settlement Agreement and the approval of the Court. The Parties
12 negotiated the terms and conditions of the Agreement and now present the agreed-upon Settlement
13 to the Court for Approval.

14 18. After engaging in pertinent informal discovery in this Action, Plaintiffs' counsel
15 determined that a settlement of \$900,000.00 is reasonable given the above risks.

16 THE SETTLEMENT

17 19. Defendant will pay the total sum of \$900,000.00 in full and final settlement of the
18 PAGA claims alleged.

19 20. Per the Agreement, the amount is allocated as follows:

20 Gross Settlement Amount	\$900,000.00
PAGA Counsel Fees Payment	\$300,000.00
21 PAGA Counsel Litigation Expenses Payment	\$19,077.32
22 Administrator Expenses Payment	\$8,700.00
Plaintiffs' Service Payments	\$10,000.00
23 PAGA Penalties	\$562,222.68 (\$421,667.01 to the LWDA; \$140,555.67 to Aggrieved Employees)

24 21. The Agreement provides for counsel to receive cost reimbursement up to \$22,000.00.
25 However, counsel's final costs come to \$19,077.32.

26 22. The extra \$2,922.68 will remain in the net settlement fund, causing the net amount
27 for distribution to the LWDA and Aggrieved Employees to be slightly higher than the \$559,300.00
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1 contemplated in the settlement agreement.

2 23. For settlement purposes, the Aggrieved Employees are defined as: “all current and
3 former non-exempt employees who worked for BOB'S DISCOUNT FURNITURE, LLC in the State
4 of California at any time during the Expense Reimbursement PAGA Period or the PAGA Period”
5 (“Aggrieved Employee”).

6 24. The PAGA Period is July 23, 2020 to December 17, 2023.

7 25. The Expense Reimbursement PAGA Period is January 12, 2020 to December 17,
8 2023.

9 26. Each aggrieved employee shall receive a pro-rata portion of the remaining amount in
10 PAGA penalties based by dividing the amount of the Aggrieved Employees’ 25% share of PAGA
11 Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
12 during the PAGA Period and/or Expense Reimbursement PAGA Period, and then multiplying the
13 result by each Aggrieved employee’s PAGA Period Pay Periods.

14 **RISKS AND EVALUATION OF THE SETTLEMENT**

15 27. To help the Court evaluate the fairness of the Settlement, a discussion of the risk
16 evaluation and discount taken follows.

17 28. Plaintiffs believed that Defendant may persuasively argue that the Court should
18 exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under
19 PAGA.

20 29. Pursuant to Labor Code §226.3, the Labor Commissioner has the discretion to
21 “decide not to penalize an employer for a first violation when that violation was due to a clerical
22 error or inadvertent mistake.”

23 30. In accordance with PAGA, the court in a PAGA action has the same discretion “to
24 assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to
25 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on
26 the facts and circumstances of the particular case, to do otherwise would result in an award that is
27 unjust, arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(1) and (e)(2)).

28 31. PAGA Counsel anticipated that, at trial, Counsel for Defendant could make a

1 potentially persuasive argument that: (1) the Aggrieved Employees were properly paid and/or
2 reimbursed in accordance with Defendant's lawful policies and practices, and that any alleged failure
3 to compensate the Aggrieved Employees was the result of inadvertence and clerical error; (2) the
4 Aggrieved Employees were provided with the opportunity to take meal and rest breaks in compliance
5 with California law; (3) until this Action was filed, no employees had compliance about any alleged
6 failure to pay wages, provide meal and/or rest breaks, reimburse expenses, issue accurate itemized
7 wage statements; (4) none of Defendant's employees suffered any harm from or actual damage as a
8 result of the conduct that forms the basis for Plaintiff's allegations. All of which, Counsel for
9 Defendant would argue, should mitigate in factor of significantly reducing or waiving any PAGA
10 penalties.

11 32. While Plaintiffs disagree that this analysis is legally correct or persuasive, PAGA
12 Counsel had to consider the foregoing facts and arguments and how they might impact any judgment
13 ultimately awarded to Aggrieved Employees if the Court were persuaded by them.

14 **1. The Risks Associated with the Reimbursement Claim**

15 33. Plaintiff Clegg alleged that Defendant failed to reimburse the aggrieved employees
16 for business-related expenses, including for use of their cell phone and vehicles, necessary in
17 executing their duties under Defendant's employ.

18 34. Plaintiff Clegg alleged that he and aggrieved employees used their cell phones daily
19 to communicate with their supervisors about their job assignments and work schedules.

20 35. Plaintiff Clegg alleged that the aggrieved employees used their personal vehicles to
21 travel between stores over the course of a work shift, which was necessary to perform their work
22 tasks.

23 36. The main risk here is the factual dispute at hand.

24 37. Defendant argued that it had a compliant policy in place and practice of reimbursing
25 employees for mileage and personal cellphones, among other things.

26 38. Defendant argued that non-exempt managers received a \$5.00 monthly cellphone
27 stipend, while Associates and Distribution Center employees (aka warehouse employees) were
28 prohibited from using their personal cellphones during and while at work.

39. Defendant argued that it provided work phones that were readily available and computers for email usage within its brick-and-mortar retail stores.

40. Defendant argued that there was no need for any other non-exempt employees to use personal cellphones.

41. To the extent there is travel between stores, Defendant argued that its records show that any mileage reimbursement requested was paid.

42. The main risk taken into account here is that if Defendant were able to establish that all of its factual arguments above were true, there is certainly a distinct risk that a Court may find that there was no liability at all.

43. Another risk Plaintiff considered was that Clegg was an assistant store manager.

44. Plaintiff Clegg anticipated that Defendant would argue primarily that it provided all necessary tools as set forth immediately above, but to the extent it did not, any exposure was limited to a very small group of assistant store managers who may have chosen to use their personal cellphones for work related purposes out of convenience.

45. Defendant argued that inter-store travel was generally not required, but if for some reason Mr. Clegg did travel between stores, this was an isolated incident that affected a few pay periods at the most.

46. If Defendant were able to establish such, there could be no recovery at all for this claim.

47. Based on these risks, Plaintiff Clegg determined that discounting this claim for settlement purposes was fair and reasonable.

2. The Risks Associated with the Wages/Overtime Claim

48. Plaintiff Emmens alleged that he and the aggrieved employees were not properly compensated at the appropriate rate of pay because Defendant adjustments to the wages and overtime wages during certain pay periods where an overpayment adjustment was made.

49. To the extent that a wage adjustment made the wages paid less than the applicable minimum wages and/or overtime wages due in a given pay period, Plaintiff Emmens alleged Defendant failed to pay all applicable minimum wages and/or overtime wages due to Plaintiff

Emmens and the aggrieved employees.

50. Defendant vehemently denied this claim and argued that its policies and practices are compliant.

51. Defendant also argued that Plaintiff's theory of liability would be extremely difficult to prove on a representative basis.

52. Defendant argued that if adjustments were ever made, it was very rare and limited to specific instances to correct mistakes, but never resulted in Plaintiff or aggrieved employees being denied wages owed to them.

53. Defendant argued that this case would devolve into a series of mini-trials wherein each of the limited instances showing an adjustment to a Class Member's pay would have to be showing by Defendant that in fact all wages were correctly paid.

54. Plaintiff acknowledges that instances of adjustments appearing in the records are very limited (appearing only twice in the statistically significant data sampling) and this can be a highly difficult type of claim to prove on common or representative proof because each instance is arguably unique.

55. Based on this acute risk, Plaintiff and his Counsel believed it was appropriate to discount this claim for settlement purposes.

3. The Risks Associated with the Accurate Records Claim

56. As a result of the unpaid wages claim, Plaintiffs alleged that Defendants fail to maintain accurate payroll records that maintain the daily hours worked and the wages paid for Plaintiff Emmens and other aggrieved employees.

57. This claim is derivative to the alleged unpaid wages/overtime claim discussed above and the risk will flow therefrom.

58. In addition to the potential defenses to the wage claim discussed above, Defendant denied this claim and insisted that it maintains accurate payroll records that maintain the daily hours worked and the wages paid.

59. Plaintiff also anticipated that in addition to arguing this was a derivative claim with the attendant risks, it is a hyper technical claim, no aggrieved employees ever complained about this

1 issue, and no aggrieved employees can show injury or that any harm was suffered.

2 60. Taking these risks into account, Plaintiff and his Counsel believes it is fair and
3 reasonable to discount this claim for settlement purposes.

4 **4. The Risks Associated with the Unlawful Deduction Claim**

5 61. Plaintiff Emmens alleged Defendants maintain a consistent policy of unlawfully
6 deducting wages from Plaintiff Emmens and all aggrieved employees in violation of Labor Code §
7 221.

8 62. By making these unauthorized deductions from Plaintiff Emmens and all aggrieved
9 employees' earned wages, Plaintiff Emmens alleged that he and all aggrieved employees were paid
10 less than the applicable minimum wage required under California law.

11 63. This claim is also derivative to the underlying unpaid wages claim discussed above.

12 64. Again, Defendant vehemently denied that it ever withheld wages and at most there
13 may have been a handful of pay periods where adjustments were reflected on Emmens' and other
14 aggrieved employees' itemized wage statements, but that wages were never withheld.

15 65. Taking this argument into account, Plaintiff and his Counsel believes it is fair and
16 reasonable to discount this claim for settlement purposes.

17 **5. The Risks Associated with the Labor Code Section 223 Claim**

18 66. Plaintiff Emmens alleged that Defendants violate Labor Code § 223 maintaining
19 wages lower than the lawful wage scale according to California law.

20 67. This claim is derivative to the underlying unpaid wages claim discussed above.

21 68. Defendant vehemently denied that it ever withheld wages and at most there may have
22 been a handful of pay periods where adjustments were reflected on Emmens' and other aggrieved
23 employees' itemized wage statements, but that lower wages were never secretly paid.

24 69. Plaintiff and his Counsel believes it is fair and reasonable to discount this claim for
25 settlement purposes.

26 **6. The Risks Associated with the Meal Period Claim**

27 70. Plaintiff Clegg alleged that Defendant violated California's meal break laws by not
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1 allowing aggrieved employees to take actual daily meal breaks.

2 71. Due to the hectic nature of their job, Plaintiff Clegg alleged that he and other
3 aggrieved employees were rarely able to ever take a meal break. Because Plaintiff Clegg and
4 aggrieved employees were required to communicate with and assist customers and schedule
5 appointments for customers throughout their shifts, they had no time to take lawful uninterrupted
6 meal periods if they were to complete their required assignments. If Plaintiff Clegg or aggrieved
7 employees ever failed to complete their assignments, they would be subject to potential discipline
8 up to and including termination.

9 72. Plaintiff Clegg alleged that he and aggrieved employees were routinely discouraged
10 and prevented from taking uninterrupted meal periods in order to complete their assignments and
11 avoid the imposition of potential disciplinary measures.

12 73. Plaintiff also alleged that Defendant violated California's meal period laws by not
13 paying Plaintiff Clegg and aggrieved employees an extra hour of wages for each missed or improper
14 meal period.

15 74. In response, Defendant argued that aggrieved employees were provided with legally
16 compliant meal periods.

17 75. As with the wage claim, Defendant argued that Plaintiff's theory of liability would
18 be extremely difficult to prove on a representative basis because the time records largely showed
19 compliant meal periods, so Defendant would argue that it would be entitled to inquire of each
20 aggrieved employee, on each day whether or not they were provided with compliant meal periods.
21 Defendant would also have argued that it has no obligation to "guarantee" or "ensure" that meal
22 periods are taken by all employees at all times. *Brinker, supra*, 53 Cal. 4th at 1040 (employers are
23 "not obligated to police meal breaks and ensure no work thereafter is performed"). Rather, an
24 employer satisfies (as Defendant would argue) its obligation to provide meal periods if "it relieves
25 its employees of all duty, relinquishes control over their activities and permits them a reasonable
26 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from
27 doing so."

28 76. Plaintiff was confident that Defendant would attempt to gather testimonial evidence

1 from aggrieved employees indicating that the records were accurate and either they took compliant
2 meal breaks as reflected in the records or were paid a meal period premium in lieu thereof.

3 77. Defendant argued that analysis of the data showed that the potential meal period
4 violation rate was just 7.19% when accounting for waivable meal periods and that when offsetting
5 for meal period premiums paid, the potential violation rate falls to 5.20%, which Plaintiff had to
6 concede is a remarkably low potential violation rate.

7 78. Though Plaintiff doubts that Defendant will be able to gather strong testimonial
8 evidence, Plaintiff must acknowledge it poses risks at trial especially in light of the data analysis.

9 79. There is risk as to both sides as to what declarations and depositions of aggrieved
10 employees might reveal.

11 80. Plaintiff had to consider that Defendant could secure several declarations from
12 aggrieved employees that all complaint breaks were “provided”, but that they chose to take late
13 breaks or forego breaks on occasion.

14 81. Taken together, Plaintiff acknowledged there was significant risk as to establishing
15 liability on the meal period claim on a representative basis.

16 82. Considering these risks, Plaintiff believes it is fair and reasonable to discount the
17 meal period claim for settlement purposes.

18 **7. The Risks Associated with the Rest Period Claim**

19 83. Plaintiff Emmen’s rest period claim arises from an allegedly common course of
20 conduct wherein Defendant failed to provide employees with the opportunity to take 10-minute rest
21 breaks in compliance with California law because the nature of the job was so hectic.

22 84. Plaintiff contends that Defendant failed to provide Plaintiff and the aggrieved
23 employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major
24 fraction thereof. Plaintiff alleged that his workload was so heavy that he was consistently and
25 regularly denied rest breaks. If the sales floor was busy, Plaintiff contends that Defendant required
26 him to miss rest breaks to help with the workload.

27 85. Defendant argued that Plaintiff’s rest period claim cannot readily be proven as to all
28 aggrieved employees because California law does not require employees to record rest periods.

86. Absent a shift-by-shift, break-by-break, employee-by-employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break was taken on any given day; and (2) if not, why not.

87. For each instance where an employee contends that she did not take a 10-minute rest period by the end of the fourth hour of work, the trier of fact would still have to determine why that particular employee had less than their full allotment of rest time. Defendant accordingly would have argued that rest break claims are inherently individualized in nature because employers only need to “authorize and permit” breaks; they need not ensure that rest breaks are taken.

88. Plaintiff had to acknowledge that it could potentially be easy for Defendant to defeat this claim if it was able to gather testimonial evidence from aggrieved employees indicating that they were provided the opportunity to take all required rest breaks each day.

89. Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses serious risks as to establishing liability.

90. Just as with meal periods, there is risk as to both sides as to what declarations and depositions of aggrieved employees might reveal.

91. Plaintiff believes discounting this claim for Settlement purposes was appropriate periods.

8. The Risks Associated with the Sick Leave Claim

92. Plaintiff Clegg alleged that Defendant failed to provide paid sick leave in accordance with Section 246 above. By failing to accurately record all hours actually worked and failing to pay for all hours worked as described above, Defendant failed to provide all paid sick leave.

93. Plaintiff Clegg alleged that Defendant provided less paid sick leave than actually owed since the hours used to accrue sick leave were allegedly inaccurate during meal periods and thus providing less paid sick leave than actually owed since the hours used to accrue sick leave were inaccurate.

94. Defendant denied this claim and argued that it provided compliant sick leave at all times during the liability period and that it did itemize the sick pay correctly.

95. A review of the itemized wage statements suggests Defendant is correct and the

1 likelihood of success of the merits was not strong.

2 96. Plaintiff believes it was reasonable to dramatically discount this claim for settlement
3 purposes.

4 **9. The Risks Associated with the Wage Statement Claims**

5 97. Plaintiff Emmens alleged that Defendant provides aggrieved employees itemized
6 wage statements that do not accurately show total hours worked or all applicable hourly rates in
7 effect during the pay period and the corresponding number of hours worked at each hourly rate in
8 violation of the Labor Code.

9 98. Plaintiff alleged that he and the aggrieved employees are furnished wage statements
10 that do not include meal and rest period premiums as a result of the claims alleged above.

11 99. Again the risks flow from the underlying unpaid wages and meal/rest claims, but the
12 main risk taken into account is that wage statement claims are vulnerable to an argument that
13 aggrieved employees did not suffer any harm.

14 100. Defendants commonly argue that, without more, wage statement claims are nothing
15 but technical violations for which a court should award a dramatically reduced civil penalty, if
16 anything at all.

17 **10. The Risks Associated with the Waiting Time Penalties Claim**

18 101. Plaintiff Emmens and numerous Aggrieved Employees are no longer employed by
19 Defendant. Plaintiff contends that Defendant failed to properly pay overtime for any work in excess
20 of eight (8) hours per day and/or any work in excess of forty (40) hours per week.

21 102. The risk analysis for the Section 203 claim flows from the risk analysis for the
22 underlying wage claim discussed above as derivative waiting-time penalties are only as strong as the
23 underlying predicate claims and are subject to good faith defenses.

24 103. If Defendant could prove, as it contends, that class members were properly paid for
25 all hours worked and any meal/rest periods actually owed, there would be no recovery of wages and
26 no waiting time penalties that flow therefrom.

27 104. The other significant risk that Plaintiff analyzed, however, is that to establish liability
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1 for waiting time penalties, Plaintiff would have to establish not only that the underlying violations
2 occurred, but also that Defendant's conduct was "willful."

3 105. If Defendant could establish that any alleged failure was the result of mistake or
4 oversight and not "willful", then it is possible that Plaintiff would not be able to recover penalties for
5 this claim.

6 106. Because of this risk, Plaintiff determined that accepting a discount for settlement
7 purposes was appropriate.

8 107. In light of all these significant risks and given that PAGA gives the Court broad
9 discretion to reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross
10 Settlement Amount of \$900,000.00 was fair and reasonable.

11 108. Based on the data, the maximum potential exposure for the PAGA claims for the
12 PAGA Members is \$9,548,100 (95,481 pay periods at issue multiplied by \$100 a pay period).

13 109. While there is no authority available on this issue, a court could conceivably "stack"
14 per pay periods violations, and the full potential value could balloon up to over \$95,000,00.00
15 (\$95,481 x 10 distinct claims alleged), but in light of the immense discretion available, Plaintiffs
16 believe the Settlement is reasonable.

17 110. Indeed, were the Court to award 10% of maximum civil penalty as occurred in
18 *Carrington, supra*, 30 Cal. App. 5th 504, the result here is well within that range (10% of the
19 maximum \$9,548,100 = \$954,810).

20 111. Given that this Settlement is within the range of awards in other trial courts, Plaintiffs
21 believe this settlement of \$900,000 is a very fair and reasonable settlement.

22 **ATTORNEY COMPETENCE**

23 112. Kingsley & Kingsley, APC is very experienced in prosecuting employment
24 litigation, and since 2000 we have focused our practice on wage, hour, and working condition
25 violations. My firm is well versed in class action litigation and has diligently and
26 aggressively pursued this action. Kingsley & Kingsley, APC currently serves as PAGA Counsel for
27 several dozens of pending class action lawsuits in Northern, Central, Eastern, and Southern
28 California in both State and Federal Court. Below is a small, but representative sampling of wage

1 and hour cases handled by my firm:

- 2 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
3 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
4 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 5 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
6 December 2005, Honorable Rita Miller granted final approval of Settlement in the
7 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 8 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
9 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
10 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 11 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
12 2008, the Honorable Mary Thornton House granted final approval of Settlement
13 in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request
14 of 33 1/3%.
- 15 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
16 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
17 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
18 33.3%.
- 19 f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
20 March 2012, the Honorable James P. Kleinberg granted final approval of
21 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
22 fees request of 33.3%.
- 23 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
24 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
25 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the
26 court granted attorneys' fees request of 38%.
- 27 h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
28 2014, the Honorable William F. Highberger granted final approval of Settlement

1 in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request
2 of 33.33%.

3 i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-
4 cv-00705 AWIJLT). This certified class action was approved for final settlement
5 by the Honorable Anthony W. Ishii in October 2015, in the gross amount
6 of \$4,550,000.00, with attorneys fees approved in the amount of \$1,137,500.00.

7 j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda
8 Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of
9 Settlement in the gross amount of \$995,000.00, and the court granted attorney's
10 fees request of 33.33%.

11 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March
12 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
13 Maguire, awarded Kingsley & Kingsley, APC and co-counsel \$996,232.72
14 in attorney's fees.

15 l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.)
16 In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in
17 the gross amount of \$2,000,000.00, and the court granted attorney's fees request
18 of 33.33%.

19 m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter
20 was proposed for final settlement by the Honorable Richard L. Fruin on February
21 19, 2016, in the gross amount of \$5,250,000.

22 n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739).
23 The matter was approved for final settlement by the Honorable Lee Smally
24 Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees
25 request of 38%.

26 o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for
27 the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The
28 matter was approved for final settlement by the Honorable Anthony W. Ishii in

November 2017, in the gross amount of \$6,100,000.00, plus interest, with attorney's fees benchmark award of \$1,525,000.

- p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-15-101333). The matter was approved for final settlement before the Hon. Stephen D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with attorneys' fees request of 33.33%.

113. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000 and since that time has been appointed PAGA Counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for class certification in 15 matters and has successfully obtained class certification in 15 of those cases. A brief sampling of which includes:

- a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927)*, approved for Class Certification in 2011.
- b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed Kingsley & Kingsley, APC as PAGA Counsel).
- c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley & Kingsley, APC as PAGA Counsel).
- d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct., filed January 27, 2015) (court granted contested class certification and appointed Kingsley & Kingsley, APC as PAGA Counsel).
- e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214). contested class certification granted in June 2020.
- f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court (BCV-16-102833), contested class certification granted in 2018.
- g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544), contested class certification granted in June 2020.

1 h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
2 contested class certification granted in August 2020.

3 114. PAGA Counsel is experienced in the handling of wage and hour class and
4 representative actions and supports this Settlement. Based on its analysis, PAGA Counsel believes
5 that this settlement is fair and reasonable and in the best interest of the aggrieved employees.

6 115. After factoring in the risks explained above, I believe that the proposed settlement is
7 fair and reasonable. I am not aware of any other pending matter or action asserting claims that will
8 be extinguished or adversely affected by this Settlement.

9 **REQUESTS FOR ATTORNEYS' FEES AND COSTS**

10 116. As detailed fully in the Settlement, the settlement provides for Defendant to create a
11 Gross Settlement Amount of \$900,000.00. (Ex. 1 at ¶3.1.) From that fund, Plaintiffs request an award
12 of attorneys' fees for PAGA Counsel in the amount of \$300,000.00, or 33.33% of the Gross
13 Settlement Amount, and \$19,077.32 in reimbursement for litigation costs. (Ex. 1 at ¶3.2.1.)

14 117. In addition to the complexity of this case, PAGA Counsel has borne the entire risk
15 and costs of this litigation during the entire time that it has been pending, all on a pure contingency
16 basis. Through the investment of substantial effort and resources, PAGA Counsel has secured an
17 outstanding Settlement of behalf of the Aggrieved Employees. Defendant vigorously contested
18 liability, the amount of claimed damages, and the propriety of class certification. It is this kind of
19 situation, involving complex issues, that has been recognized as justifying a substantial attorney fee
20 award.

21 118. I am very familiar with the contingent fee market throughout California and in the
22 Los Angeles County area, particularly as it pertains to complex employment, wage and hour, and
23 class action litigation. On behalf of my firm, I have negotiated numerous contingency fee
24 agreements with plaintiffs, both as individuals and as representatives in class action suits. Many
25 of those agreements provided that counsel will receive a fee that is between 33% and 45% of any
26 recovery that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred
27 out of the recovery amount. The named Plaintiff in this action signed a contingency fee agreement
28 that stated that counsel would be able to make a fee of up to 40% of any recovery if the case

1 settles. These are typical and standard percentages in employment-related contingency
2 agreements throughout California. Indeed, in my opinion, the aggrieved employees in this wage
3 and hour case could not have retained competent counsel in California, particularly with the
4 considerable skill and expertise of my firm, for any amount significantly less than the contingency
5 fee percentage provided in this retainer agreement. PAGA Counsel has never been paid any
6 money for attorneys' fees in this case and has advanced all costs.

7 119. There are always risks attendant to billing cases on a contingency basis. Those
8 risks are even higher in the current economic climate. Kingsley & Kingsley, APC bills the vast
9 majority of its cases on contingency, and has been affected by recent bankruptcy filings. In three
10 separate cases, *Lozoya v. Shore House Café, Inc.*, No. 30-2008-00082103-CU-OE-CJC (Orange
11 Super. Ct. filed Mar. 7, 2008) and *Davis v. Crossfire Marketing Group, LLC*, No. CIVRS1207797
12 (San Bernardino Super. Ct. filed October 5, 2012), the defendants both filed for bankruptcy
13 protection in June 2011 and January 2015 after years of litigation. My firm advanced costs and
14 incurred thousands of dollars in fees that will never be recovered.

15 120. Additionally, there are cases where PAGA Counsel takes on the extreme risk of
16 attempting to certify a class case, often times turning down class or individual settlement offers
17 that PAGA Counsel feels are not in the best interest of the settled class, only to lose class
18 certification and the costs and fees associated with the litigation. *See e.g., Prosad v. Del Taco*
19 *Restaurant Services, Inc.*, No. BC426538 (L.A. Super. Ct. filed Nov. 2009); *Perez v. Safelite*
20 *Group, Inc.*, CV-10-8653-RGK(FFMx) (C.D. Cal. filed October 5, 2010).

21 121. When PAGA Counsel's motions for class certification are denied, PAGA Counsel
22 often appeals the orders. Sometimes, these denials are overturned (*Perez v. Safelite Group, Inc.*,
23 553 Fed.Appx. 667 (9th Cir. 2015); *Anderson v. Total Renal Care, Inc.*, No. B236207 (Cal. Ct.
24 App. 2012)) and other times PAGA Counsel is unsuccessful (*Prosad v. Del Taco Restaurant*
25 *Services, Inc.*, No. B238605 (CA. Ct. App. 2012)).

26 122. In addition to appealing class certification denials, Kingsley & Kingsley, APC has
27 been involved in numerous lengthy and protracted appeals process before the California
28 Court of Appeal, the Ninth Circuit, the Seventh Circuit, and the United States Supreme Court.

1 Our firm specifically has taken and lost some issues on appeal that required the write-off of
2 significant legal fees. Also, our firm has been successful on appeal and overturned unfavorable
3 lower court rulings or successfully fought to have successful rulings affirmed. Below is just a
4 sample of some of these appeals:

- 5 a. *D'Este v. Bayer Corp.*, 565 F.3d 1119 (9th Cir. 2009) (lower court ruling that
6 pharmaceutical sales representatives are exempt employees affirmed);
- 7 b. *Budrow v. Dave & Buster's of California, Inc.*, 171 Cal. App. 4th 875 (2009)
8 (lower court ruling in employer's favor that certain employees can share in
9 mandatory tip pool affirmed);
- 10 c. *Etheridge v. Reins Int'l California, Inc.*, 172 Cal. App. 4th 908 (2009) (lower court
11 ruling in employer's favor that certain employees can share in mandatory tip pool
12 affirmed);
- 13 d. *Areso v. CarMax, Inc.*, 195 Cal. App. 4th 996 (2011) (lower court ruling in
14 employer's favor approving employer's commission pay plan affirmed) ;
- 15 e. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 183 L. Ed. 2d 153
16 (2012) (lower court ruling that pharmaceutical sales representatives are exempt
17 employees affirmed);
- 18 f. *Schaefer-LaRose v. Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) (lower court
19 ruling that pharmaceutical sales representatives are exempt employees affirmed);
- 20 g. *Fowler v. Carmax, Inc.*, No. B238426, 2013 WL 1208111 (Cal. Ct. App. Mar. 26,
21 2013), cert. granted, judgment vacated sub nom. *CarMax Auto Superstores*
22 *California, LLC v. Fowler*, 134 S. Ct. 1277, 188 L. Ed. 2d 290 (2014) (lower court
23 granted employer's motion to compel arbitration, Court of Appeal reversed, U.S.
24 Supreme Court affirmed lower court);
- 25 h. *Salazar v. Apple Am. Grp., LLC*, No. E059562, 2015 WL 314703 (Cal. Ct. App.
26 Jan. 26, 2015), review denied (Apr. 22, 2015), cert. denied, 136 S. Ct. 688, 193 L.
27 Ed. 2d 519 (2015) (lower court ruling in employee's favor on motion to compel
28 arbitration affirmed);

- i. *Anaya v. J's Maint. Serv., Inc.*, No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb. 9, 2016) (lower court ruling in employee's favor on motion to compel arbitration affirmed);
- j. *Cortez v. Doty Bros. Equipment Company, Inc.* (2017) 15 Cal.App.5th 1 (reversing in part and affirming in part trial courts order compelling arbitration);
- k. *Lopez v. Friant & Associates, L.L.C.* (2017) 15 Cal.App.5th 773 (reversing summary judgement in favor of employer on wage statement claim);
- l. *Kane v. Valley Slurry Seal Company*, Case No. C079558, Cal. Ct. App. May 8, 2018) (affirming judgement for employees after bench trial);
- m. *Kim v. Reins International California*, Case No. S246911. Oral argument was held before the California Supreme Court on January 6, 2020 and a decision was published in March 2020.

123. Unlike plaintiffs' firms, which bear the risk of loss on contingency cases, defense firms are able to bill their clients for time spent on a case. As verified by a survey conducted by the National Law Journal nearly a decade ago, six California firms provided their hourly billing rates and of the six firms, five regularly charged in excess of \$500 for their partners. In fact, four of these firms charged as high as \$600, \$620, \$650 and up to \$850 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County, and San Diego County. This survey is attached hereto as Exhibit 2.

124. While plaintiffs' firms strive to take on cases that are meritorious (for ethical as well as monetary reasons), as this Court knows, many of these cases hinge on the decision of class certification. Recently, there has been a renewed effort by defense counsel and/or their clients to challenge these cases and to push back, especially on certification motions. In addition, many novel legal issues have gone up on appeal, which has complicated the landscape for settlement.

PAGA COUNSEL'S HOURS AND HOURLY RATES ARE REASONABLE

125. A lodestar cross-check confirms that the percentage requested is reasonable. PAGA Counsel have an aggregate lodestar in the amount of \$216,282.50 which represents 284.10 hours of attorney work on this litigation from its inception through the date of this filing of

1 Plaintiff's instant Motion.

2 126. PAGA Counsel is asking for a lodestar multiplier of 1.39.

3 127. This case dealt with difficult legal and factual questions. Significantly, the risk
4 attendant to the underlying claims in this matter was great considering Defendant's defenses as
5 discussed in detail above. Were this case to proceed, Defendant would have a strong incentive to
6 litigate tenaciously. There are genuine issues in dispute.

7 128. PAGA Counsel believes that it was able to obtain close to the full value for this
8 case.

9 129. PAGA Counsel are skilled wage and hour practitioners with decades of experience
10 who diligently prepared and litigated this matter.

11 130. To achieve the ultimate result in this case, my firm had to incur substantial risk
12 and expense, and were precluded from taking other fee generating employment for 284.10 hours
13 of attorney time.

14 131. This matter had been handled purely on a contingency fee basis and my firm has
15 advanced many thousands of dollars in costs while deferring all payment of fees, with no
16 guarantee that any of the fees incurred or costs advanced would ever be recovered and diverting
17 significant firm resources to prosecution of this matter.

18 132. PAGA Counsel believe this is an exceptional result that has been well received by
19 the Aggrieved Employees.

20 133. The requested hourly rates in this case range from \$475.00 per hour to \$1,100.00.

21 134. PAGA Counsel's hourly rates are fully supported by their experience and
22 reputation in handling complex employment litigation, including wage and hour class actions.

23 135. Mr. Kingsley is a 28-year attorney with expertise in wage and hour class action
24 lawsuits.

25 136. He has litigated several hundred such cases, including at the appellate level at the
26 U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court of
27 Appeal.

28 137. He is also a prolific speaker at various seminars on employment law and has

1 contributed to legal publications on employment topics.

2 138. In light of the impending increase of experienced lawyers in specialized practice,
3 I believe that the hourly rates charged by my firm are fair and reasonable and are comparable to
4 or less than those charged by my colleagues in California and the national market for prosecuting
5 or defending class actions.

6 139. My office billed for the following three attorneys for work performed on this case:
7 Eric Kingsley, Shannen Garrett, and me.

8 140. I am a partner at Kingsley & Kingsley, APC. I received my Bachelor of Arts
9 degree, *cum laude*, from the University of California San Diego and received my law degree from
10 UCLA School of Law in 2008, where I was active in the Women's Law Journal and community-
11 based legal clinics. I have been practicing since 2008 and am billed at \$800 per hour.

12 141. Shannen Garrett is a former associate attorney of Kingsley & Kingsley, APC. She
13 received her law degree from Loyola Law School and was admitted to practice in October 2017.
14 She left the firm in 2022 and was billed at \$475 per hour.

15 142. The qualifications of Co-Counsel Cohelan Khoury & Singer are discussed in the
16 concurrently filed Declaration of Michael D. Singer.

17 143. An article in the Wall Street Journal on February 9, 2016 titled *Legal Hours Cross*
18 *New Mark: \$1,500 an Hour* states that "a review of filings over the past three months in about two
19 dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an
20 hour, with top rates at several large law firms exceeding \$1,400." The article also explains that
21 "despite low inflation and weak demand for legal services, rates at large corporate law firms have
22 risen by 3% to 4% a year since the economic downturn." Finally, the article notes that "the average
23 highest rate paid for law-firm partners was \$875 an hour in 2015." This article is attached hereto as
24 Exhibit 3.

25 144. PAGA Counsel's charged rate are commensurate with the prevailing market rates in
26 County for attorneys of comparable experience and skill handling complex litigation.

27 145. PAGA Counsel's rates in calculating the lodestar are the same rates charged to non-
28 contingent hourly clients and thus necessarily reflect the current market value of counsel's legal

services.

146. PAGA Counsel made all reasonable attempts to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing rates.

147. Finally, PAGA Counsel's rates are in line with the adjusted Laffey Matrix, which is a fee scale that courts often consult in determining the reasonableness of hourly rates. Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr. Kingsley, is \$1,057, a reasonable rate for an attorney with 16 years of experience, such as Ms. Szamet is \$878, and a reasonable rate for an attorney with 4-7 years of experience, such as Ms. Garrett, is \$538. A true and correct copy of the 2023-2024 Adjusted Laffey Matrix is attached hereto as Exhibit 4.

148. Kingsley & Kingsley, APC attorneys' fees in the present case are broken down as follows:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTALS</u>
Eric B. Kingsley	18.6	\$1,100.00	\$20,460.00
Kelsey M. Szamet	128.2	\$800.00	\$102,560.00
Shannen Garrett	3.8	\$475.00	\$1,805.00
KINGSLEY TOTAL ATTORNEYS' FEES	150.6		\$124,825.00²

<u>ATTORNEY/PARALEGAL</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTALS</u>
Timothy D. Cohelan	1.7	\$950.00	\$1,615.00
Isam C. Khoury	23.5	\$925.00	\$21,737.50
Michael D. Singer	7.5	\$995.00	\$7,462.50
Marta Manus	36.7	\$700.00	\$25,690.00
J. Jason Hill	44.5	\$700.00	\$31,150.00
Amber Worden (Paralegal)	14.9	\$200.00	\$2,980.00

² The Total Attorneys' Fees does not include PAGA Counsel anticipated 10-15 hours of future time to handle the final approval hearing in May and to oversee the administration process.

Matthew Atlas (Paralegal)	4.7	\$175.00	\$822.50
COHELAN KHOURY & SINGER'S TOTAL ATTORNEYS' FEES	133.5		\$91,457.50

149. The aggregate lodestar is set forth below:

<u>ATTORNEY</u>	<u>HOURS</u>		<u>TOTALS</u>
Kingsley & Kingsley, APC	150.6		\$124,85.00
COHELAN KHOURY & SINGER	133.5		\$91,457.50
TOTAL ATTORNEYS' FEES	284.10		\$216,282.50

150. In conjunction with Cohelan Khoury & Singer, Kingsley & Kingsley, APC has spent significant time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. intake and interviewing Plaintiffs and witnesses and flushing out facts and issues;
- b. researching employer and related causes of action;
- c. researching other pending and former matters against Defendant;
- d. fact development and investigating Defendant's ownership structure
- e. researching and analyzing relevant claims under B&P 17200;
- f. investigation and discussion regarding job functions, duties, compensation, policies, and procedures, etc.;
- g. regular meetings and or communicating with the Plaintiffs;
- h. regular meetings and or communicating with Co-Counsel;
- i. drafting pleadings (Complaints, Motion for Preliminary Approval, various documents related to Preliminary Approval, Motion for Final Approval, various documents related to Final approval, etc.);
- j. researching private right of action and various impact on class actions;
- k. interviewing and obtaining declarations from aggrieved employees
- l. preparing for and attending mediation;

- m. discussing issues related to damage model calculations;
- n. preparing and analyzing damage models;
- o. negotiating the terms of the settlement;
- p. reviewing and making changes to the Settlement Agreement;
- q. drafting and editing all documents for Preliminary and Final Approval;
- r. monitoring Notice and settlement administration procedures;
- s. coordinating and overseeing all aspects of the administration of the Settlement (review documentation, approve form and content, etc.); and multiple communications with defense counsel.

151. Based on the aggregate lodestar, PAGA Counsel is requesting a multiplier of 1.39.

152. I believe the request for attorneys' fees in the amount of \$300,000.00 is fair and reasonable given the complexity and novelty of the issues involved, the vigorous defense, and the exceptional results obtained. As explained above, PAGA Counsel's diligent litigation efforts and experience led to an outstanding settlement.

FACTORS THAT SUPPORT THE APPROVAL OF A MULTIPLIER

153. This case dealt with difficult legal and factual questions. Significantly, the risk attendant to the underlying claims in this matter was great considering Defendant's defenses as discussed in detail above. Were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. There are genuine issues in dispute.

154. PAGA Counsel believe that they were able to obtain close to the full value for this case.

155. PAGA Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter.

156. To achieve the ultimate result in this case, our firms had to incur substantial risk and expense, and were precluded from taking other fee generating employment for 284 hours of attorney time.

157. This matter had been handled purely on a contingency fee basis and my firm has advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee

1 that any of the fees incurred or costs advanced would ever be recovered, and diverting significant
2 firm resources to prosecution of this matter.

3 158. PAGA Counsel believe that this is an exceptional result that has been well received
4 by the aggrieved employees.

5 **THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
6 **COSTS**

7 159. In addition to their request for fees, PAGA Counsel further request reimbursement
8 of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
9 litigation, in the amount of \$22,000.00.

10 160. To date, PAGA Counsel has incurred \$18,477.32 in costs, with Kingsley & Kingsley,
11 APC's costs totaling \$9,310.98, and Cohelan Khoury & Singer's costs totaling \$9,166.34.

12 161. PAGA Counsel anticipates incurring an additional \$600.00 in costs to file and serve
13 this motion.

14 162. As such, counsel is requesting a cost reimbursement of \$19,077.32.

15 163. All of the requested costs are reasonable in amount and were necessarily incurred by
16 PAGA Counsel in prosecuting this litigation.

17 164. All of these costs have been incurred in the course of this litigation, and all costs
18 advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of
19 filing the present motion.

20 165. Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses
21 advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court
22 should approve the request for reimbursement in the amount of \$19,077.32.

23 **THE PLAINTIFFS' ENHANCEMENT SHOULD BE APPROVED**

24 166. The Settlement calls for an enhancement payment of \$5,000.00 each to the named
25 Plaintiffs, Stephen Clegg and Michael Emmens, to be paid from the Gross Settlement Amount.

26 167. The time spent by STEPHEN CLEGG and MICHAEL EMMENS includes
27 identifying competent counsel, providing information to PAGA Counsel regarding Plaintiffs'
28 relevant employment experiences, compiling documents, meeting with PAGA Counsel frequently

1 to discuss the status of the case and the theories of liability, reviewing settlement documents, and
2 making themselves available for the two full days of mediations in this case.

3 168. PAGA Counsel considers this to be a fair and reasonable enhancement.

4 169. The enhancement takes into consideration the time, effort, risks, and expense
5 incurred by Plaintiffs in coming forward to litigate this matter on behalf of the Aggrieved Employees.

6 **PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**

7 **AGENCY**

8 170. As indicated on the Proof of Service, Plaintiff's accompanying Motion for Approval
9 of Representative Action Settlement ("Motion") was uploaded to the Labor and Workforce
10 Development Agency's ("LWDA") website on the date this Motion was filed. Proof of submission
11 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
12 receipt is attached hereto as Exhibit "6".

13 **EXHIBITS**

14 171. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed PAGA
15 Settlement Agreement.

16 172. Attached hereto as Exhibit "2" is a true and correct copy of the ALM Research 2007
17 NLJ Billing Survey.

18 173. Attached hereto as Exhibit "3" is a true and correct copy of Wall Street Journal on
19 February 9, 2016 titled *Legal Hours Cross New Mark: \$1,500 an Hour*.

20 174. Attached hereto as Exhibit "4" is a true and correct copy of the 2023-2024 Adjusted
21 Laffey Matrix.

22 175. Attached hereto as Exhibit "5" is a true and correct copy of the Kingsley &
23 Kingsley, APC's costs ledger reflecting costs incurred in this matter.

24 176. Attached hereto as Exhibit "6" is a true and correct copy of the proof of submission
25 to the LWDA as referenced in paragraph 170 above.

26 ///

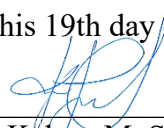
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I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

This declaration was executed this 19th day of April, 2024, in Altadena, California.



Kelsey M. Szamet

EXHIBIT "1"

PAGA SETTLEMENT AGREEMENT

This Private Attorneys General Act (“PAGA”) Settlement Agreement (“Agreement” or “Settlement Agreement”) is made by and between Plaintiffs Stephen Clegg and Michael Emmens (“Plaintiffs”) and Defendant Bob’s Discount Furniture, LLC (“Bob’s”). The Agreement refers to Plaintiffs and Bob’s collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiffs’ PAGA lawsuit alleging wage and hour violations against Bob’s captioned Stephen Clegg, et al v. Bob’s Discount Furniture, LLC initiated on April 22, 2021 and pending in Superior Court of the State of California, County of Los Angeles, case number 21STCV15281.
- 1.2 “Administrator” means ILYM Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Aggrieved Employee(s)” means all current and former non-exempt employees who worked for Bob’s in California at any time during the Expense Reimbursement PAGA Period or the PAGA Period.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Bob’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number and number of PAGA Pay Periods.
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces and direct contact by the Administrator with Aggrieved Employees.
- 1.7 “Court” means the Superior Court of California, County of Los Angeles.
- 1.8 “Defense Counsel” means Kelli M. Dreger and Kathy Le of Jackson Lewis P.C.
- 1.9 “Effective Date” means the date by when all of the following have occurred: (a) the Settlement Agreement has been executed by all Parties, Plaintiffs’ counsel and Defense Counsel; (b) the Court enters a Judgment on its Order Approving the PAGA Settlement; (c) the Judgment is final; and (d) sixty-five (65) calendar days have passed since the Court has entered a final order and Judgment approving the Settlement Agreement. Provided that there are no interveners, the Judgment is final as of the day the Court enters Judgment. If there are interveners and they object or otherwise delay enforcement of the Settlement

Agreement, the Judgment is final as of the deadline to appeal the Judgment has passed.

- 1.10 “Expense Reimbursement PAGA Period” means the period from January 12, 2020 to December 17, 2023 (note: Bob’s reimburses expenses monthly, and so expense reimbursement pay period are calculated every fourth week).
- 1.11 “Gross Settlement Amount” means \$ 900,000.00 which is the total amount Bob’s agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiffs’ Service Payments, and the Administration Expenses Payment.
- 1.12 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the Expense Reimbursement PAGA Period or the PAGA Period.
- 1.13 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.14 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.15 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.16 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiffs’ Service Payments, and the Administration Expenses Payment. The remaining Net Settlement Amount is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.17 “PAGA Counsel” or “Plaintiffs’ counsel” mean Michael D. Singer, Isam Khoury, and Marta Manus of Cohelan Khoury and Singer and Kelsey M. Szamet and Eric Kingsley of Kingsley and Kingsley, APLC, the attorneys representing the Plaintiffs in the Action.
- 1.18 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.19 “PAGA Pay Periods” means the greater number of pay periods during which an Aggrieved Employee worked for Bob’s for at least one day during the Expense Reimbursement PAGA Period or the PAGA Period. For example, if an Aggrieved Employee worked for at least one day during 20 pay periods during the Expense Reimbursement Pay Period, and the same employee worked for at least one day during 80 pay periods during the PAGA Period, the number of PAGA Pay Periods credited to that Aggrieved Employee is 80 (and not 100 or 20).
- 1.20 “PAGA Period” means the period from July 23, 2020 to December 17, 2023.

- 1.21 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698. et seq.).
- 1.22 “PAGA Notice” means Plaintiff Stephen Clegg’s January 12, 2021 letter to Bob’s and the LWDA, Plaintiff Michael Emmens’ February 8, 2021 letter to Bob’s and the LWDA, and Plaintiff Michael Emmens’ October 5, 2023 and October 24, 2023 Amended PAGA letters to Bob’s and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.23 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$139,825) and 75% to LWDA (\$419,475) in settlement of PAGA claims.
- 1.24 “Plaintiffs” means Stephen Clegg and Michael Emmens, the named plaintiffs in the Action.
- 1.25 “Plaintiffs’ Service Payments” means the Five Thousand Dollars (\$5,000) to each Plaintiff, to be paid from the Gross Settlement Amount, as an enhancement for Plaintiffs’ service as the PAGA representatives and in exchange for a general release, as set forth below, in addition to any payment they may otherwise receive as an Aggrieved Employee.
- 1.26 “Approval Order” means the proposed Court Order Granting Approval of this PAGA Settlement.
- 1.27 “Released PAGA Claims” means the claims being released by the Plaintiffs and PAGA Counsel and as described in Paragraph 5 below.
- 1.28 “Released Parties” means Bob’s its past and present officers, directors, shareholders, managers, members, employees, agents, principals, spouses, heirs, representatives, accountants, insurers, auditors, consultants, and Defendant’s successors, assigns and predecessors in interest, subsidiaries, affiliates, parents and attorneys as follows.
- 1.29 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.30 “Bob’s” means named Defendant Bob’s Discount Furniture, LLC.

2. RECITALS.

- 2.1 On April 22, 2021, Plaintiffs commenced this Action by filing a Complaint alleging causes of action against Bob’s for: 1) violation of California Labor Code sections 2800, 2802, 2804; 2) violation of California’s unfair competition law (“UCL”) Business and Professions Code section 17200, et seq.; 3) PAGA penalties for failure to reimburse expenses; 4) PAGA penalties for failure to provide meal periods or pay in lieu thereof; 5) PAGA penalties for failure to provide paid sick leave; and 6) PAGA penalties for failure to provide accurate itemized wage statements. The Complaint is the operative complaint in the Action (the “Operative Complaint”). Bob’s denies the allegations in the Operative

Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs gave timely written notice to Bob's and the LWDA by sending the PAGA Notice.

2.3 On or about May 8, 2020, the parties in *Clarence Williams v. Bob's Discount Furniture, LLC, et al.*, case number 19STCV03679, reached a settlement that was approved, which released PAGA claims from November 29, 2017, up through and including July 22, 2020, effectively shortening the period of liability for all the claims at issue by way of this Action except for the expense reimbursement claim.

2.4 On August 2, 2022 the Parties participated in a mediation presided over by mediator Kelly A. Knight, Esq. The Parties did not reach a settlement at this mediation. On October 18, 2023, the Parties participated in a second mediation presided over by mediator Kevin D. Barnes, which led to this Agreement to settle the Action.

2.5 Prior to mediation, Plaintiffs obtained, through informal discovery, the total number of pay periods and the number of Aggrieved Employees during the Expense Reimbursement PAGA Period and the PAGA Period, and timekeeping and payroll data for Aggrieved Employees indicating, among other things, time punch records for meal and rest breaks.

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

3. MONETARY TERMS.

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Bob's promises to pay \$ 900,000.00 and no more as the Gross Settlement Amount. Bob's has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4. of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Bob's.

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

3.2.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33%, equal to \$300,000 and PAGA Counsel Litigation Expenses Payment of not more than \$22,000. Bob's will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released

Parties shall have no liability to PAGA Counsel or any other Plaintiffs' counsel arising from any claim to any portion of any PAGA Counsel Fees Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Bob's harmless and indemnifies Bob's, from any dispute or controversy regarding any division or sharing of any of these payments.

3.2.2 To the Administrator: An Administration Expenses Payment not to exceed \$8,700 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$ \$8,700, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$559,300 to be paid from the Gross Settlement Amount, with 75% (\$419,475) allocated to the LWDA PAGA Payment and 25% (\$139,825) allocated to the Individual PAGA Payments.

3.2.3.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$139,825) by the total number of PAGA Period pay periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee PAGA Period Pay Periods. Based on a review of its electronic time and pay data up through August 31, 2023, and an aggrieved employee list as of July 18, 2023, with estimations extrapolated through the date of the second mediation (October 18, 2023), Bob's estimates there were 2,360 Aggrieved Employees who worked a total of 95,481 PAGA pay periods.

4.2 Aggrieved Employee Expense Reimbursement PAGA Period Pay Periods. Based on a review of its electronic time and pay data up through August 31, 2023, an aggrieved employee list as of July 18, 2023, with estimations extrapolated through the date of the second mediation (October 18, 2023), and given that Bob's reimburses its non-exempt employees monthly, Bob's estimates there were 28,589 pay periods during the Expense Reimbursement PAGA pay periods.

4.3 Aggrieved Employee Data. Within 30 days of the Effective Date, Bob's will deliver the

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

4.4 Funding of Gross Settlement Amount. Bob's shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

4.5 Payments from the Gross Settlement Amount. Within 14 days after Bob's funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, and the Plaintiffs' Service Payments. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

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

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

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

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

5. RELEASES OF CLAIMS. Effective on the date when Bob's fully funds the entire Gross Settlement Amount, Plaintiffs, Aggrieved Employees, and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the Expense Reimbursement PAGA Period and the PAGA Period, including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time or based on occurrences outside the Expense Reimbursement PAGA Period and the PAGA Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 Release by Aggrieved Employees.

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice including but not limited to claims under Labor Code sections 200, 201-203, 221, 223, 246, 248.5, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802-2804, and 2698 et seq.

5.3 Release by PAGA Counsel.

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for Plaintiff's attorneys' fees and costs incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

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

6.1 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code section 2699, subdivision (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to: its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial and amended notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Lab. Code, §2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiffs and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 45 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

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

8. PAY PERIOD ESTIMATES and ESCALATOR CLAUSE

Based on a review of its electronic time and pay data up through August 31, 2023, and an aggrieved employee list as of July 18, 2023, with estimations extrapolated through the date of the second mediation (October 18, 2023), Bob’s estimates there were 95,481 PAGA pay periods collectively worked by Aggrieved Employees and 28,589 pay periods during the Expense Reimbursement PAGA pay periods. If it is determined that the total number of Pay Periods collectively worked by the Aggrieved Employees is more than 10% greater than the 95,481 PAGA pay periods in the PAGA Period or more than 10% greater than the 28,589 pay periods during the Expense Reimbursement PAGA Period, then Defendant agrees to increase the GSA on a proportional basis to the extent the threshold is exceeded (e.g. if the total number of pay periods in the PAGA Period was actually 11% more than 95,481, the GSA will increase by one percent (1%)). In the alternative, Defendant may elect to shorten the PAGA Period or the Expense Reimbursement PAGA Period, as applicable, in order to stay within the 10% cushion.

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

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and

appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Bob's that any of the allegations in the Operative Complaint or PAGA Notice have merit or that Bob's has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Bob's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If for any reason the Court does not approve this Settlement, Bob's reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Bob's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Bob's, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.

- 10.6 No Tax Advice. Neither Plaintiffs, PAGA Counsel, Bob's nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Evidence Code section 1152, and all copies and summaries of Bob's employee timekeeping and pay data provided to PAGA Counsel by Bob's in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Bob's unless, prior to the Administrator's payment of all Settlement Funds, Bob's makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employee Data.

- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Marta Manus Amber Worden Matthew Atlas Michael Singer COHELAN KHOURY & SINGER 605 C Street, Suite 200 San Diego, CA 92101 Tel. 619-595-3001 Fax 619-595-3000 mmanus@ckslaw.com	Kelsey M. Szamet Eric Kingsley Kingsley & Kingsley, A Professional Law Corporation 16133 Ventura Boulevard Suite 1200 Encino, California 91436 Tel: (818) 990-8300 Fax: (818) 990-2903 kelsey@kingsleykingsley.com
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To Bob's:

Kathy Le
Kelli Dreger
Jackson Lewis P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Tel: (949) 885-1360
Fax: (949) 885-1380
kathy.le@jacksonlewis.com
kelli.dreger@jacksonlewis.com

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

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

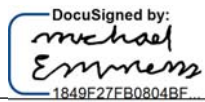


For Plaintiff Stephen Clegg
1/29/2024

(date)

For Bob's Discount Furniture, LLC

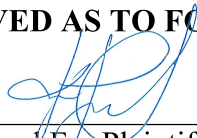
(date)



For Plaintiff Michael Emmens
January 31, 2024

(date)

APPROVED AS TO FORM:



Counsel For Plaintiffs
January 31, 2024

(date)
4877-7352-2081, v. 2

Counsel For Bob's Discount Furniture, LLC

(date)

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

For Plaintiff Stephen Clegg

(date)



For Bob's Discount Furniture, LLC

1/30/24

(date)
by Carl Lukach, Chief Financial Officer

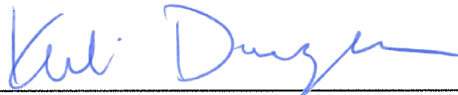
For Plaintiff Michael Emmens

(date)

APPROVED AS TO FORM:

Counsel For Plaintiffs

(date)
4877-7352-2081, v. 2



Counsel For Bob's Discount Furniture, LLC
January 30, 2024

(date)

EXHIBIT "2"

	A	C	D	E	F	G	H	I	J	K	L
1											
2											
3											
4											
5											
6	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
7	Adams and Reese	\$500	\$225	\$255	\$165	\$198	\$305	\$278	\$197	\$300	\$275
8	Andrews Kurth	\$795	\$400	\$460	\$210						
9	Arent Fox	\$675	\$395	\$440	\$240						
10	Armstrong Teasdale	\$450	\$295	\$295	\$165						
11	Baker, Donelson, Bearman, Caldwell & Berkowitz	\$525	\$230	\$315	\$160	\$205	\$325	\$280	\$200	\$320	\$270
12	Barnes & Thornburg	\$485	\$265	\$295	\$180	\$225	\$350	\$302	\$220	\$355	\$310
13	Bass, Berry & Sims PLC	\$575	\$300	\$285	\$180						
14	Best Best & Krieger	\$495	\$290	\$350	\$160	\$203	\$275	\$212	\$235	\$390	\$265
15	Bond, Schoeneck & King	\$435	\$200	\$250	\$140	\$179	\$294	\$253	\$175	\$295	\$300
16	Bradley Arant Rose & White	\$520	\$240	\$280	\$180	\$211	\$335	\$258	\$205	\$330	\$260
17	Briggs and Morgan	\$500	\$250	\$325	\$195	\$233	\$391	\$344	\$230	\$395	\$350
18	Brinks Hofer Gilson & Lione	\$650	\$300	\$410	\$180	\$273	\$479	\$365	\$250	\$485	\$350
19	Broad and Cassel	\$450	\$250	\$310	\$165	\$232	\$361	\$294	\$225	\$360	\$275
20	Brownstein Hyatt Farber Schreck	\$675	\$260	\$270	\$170	\$219	\$373	\$308	\$218	\$390	\$325
21	Bryan Cave	\$695	\$320	\$495	\$165	\$295	\$493	\$394	\$295	\$490	\$375
22	Buchanan Ingersoll & Rooney	\$750	\$320	\$460	\$150						
23	Bullivant Houser Bailey	\$500	\$225	\$350	\$150	\$240	\$285	\$260	\$220	\$275	\$250
24	Burr & Forman	\$470	\$250	\$305	\$175	\$235	\$340				
25	Butzel Long	\$575	\$210	\$350	\$155						
26	Carlton Fields	\$600	\$280	\$375	\$190	\$243	\$406	\$312	\$245	\$405	\$300
27	Cooley Godward Kronish	\$875	\$470	\$555	\$250						
28	Covington & Burling	\$800	\$510	\$525	\$240						
29	Cozen O'Connor	\$750	\$230	\$530	\$155	\$283	\$420	\$350	\$280	\$425	\$340
30	Curtis, Mallet-Prevost, Colt & Mosle	\$735	\$635	\$560	\$280	\$361	\$666	\$396	\$360	\$685	\$480
31	Davis Wright Tremaine	\$695	\$300	\$390	\$170	\$257	\$430	\$375	\$250	\$423	\$375
32	Day Pitney	\$650	\$350	\$525	\$210	\$306	\$472	\$374	\$310	\$465	\$375
33	Dickinson Wright	\$530	\$260	\$275	\$170						
34	Dickstein Shapiro Morin & Oshinsky	\$825	\$425	\$440	\$225	\$336	\$552	\$438	\$360	\$550	\$425
35	Dinsmore & Shohl	\$475	\$235	\$285	\$155	\$199	\$342	\$275	\$190	\$340	\$250
36	Dorsey & Whitney	\$750	\$220	\$470	\$145	\$274	\$463	\$375	\$260	\$463	\$365
37	Duane Morris	\$705	\$315	\$465	\$150	\$310	\$475	\$416	\$305	\$470	\$415
38	Dykema Gossett	\$625	\$245	\$390	\$185	\$272	\$403				
39	Edwards Angell Palmer & Dodge	\$700	\$350	\$450	\$170	\$293	\$515	\$407	\$280	\$513	\$400
40	Epstein Becker & Green	\$675	\$280	\$440	\$155	\$290	\$471	\$380	\$280	\$475	\$395
41	Fenwick & West	\$775	\$500	\$500	\$245	\$360	\$590	\$395	\$370	\$600	\$410
42	Foley & Lardner	\$855			\$185	\$387	\$550	\$476	\$375	\$550	\$475
43	Ford & Harrison	\$560	\$325	\$395	\$210						
44	Fowler White Boggs Banker	\$500	\$230	\$325	\$150	\$217	\$345	\$303	\$210	\$340	\$300
45	Fox Rothschild	\$595	\$240	\$440	\$190						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
46											
47	Frost Brown Todd	\$455	\$225	\$255	\$145	\$180	\$303	\$256	\$170	\$295	\$255
48	Gardere Wynne Sewell	\$715	\$350	\$425	\$220	\$292	\$472	\$405	\$265	\$475	\$405
49	GrayRobinson, PA	\$500	\$175	\$250	\$250	\$198	\$319	\$224			
50	Greenberg Traurig, PA	\$850	\$300	\$505	\$175	\$311	\$490	\$407	\$310	\$500	\$415
51	Harris Beach	\$475	\$250	\$275	\$140						
52	Hiscock & Barclay LLP	\$375	\$220	\$250	\$160	\$185	\$278	\$245	\$180	\$280	\$250
53	Hodgson Russ	\$645	\$215	\$395	\$155	\$219	\$337	\$254	\$205	\$350	\$250
54	Hogan & Hartson	\$850	\$300	\$525	\$150	\$385	\$600	\$490	\$370	\$590	
55	Holland & Hart	\$585	\$275	\$345	\$165	\$269	\$388	\$335	\$275	\$385	\$335
56	Holme Roberts & Owen	\$635	\$285	\$420	\$195	\$284	\$412	\$353	\$265	\$410	\$345
57	Howard, Rice, Nemerovski, Canady, Falk & Rabkin	\$775	\$495	\$485	\$275						
58	Hughes Hubbard & Reed	\$825	\$595	\$560	\$240						
59	Husch & Eppenberger	\$425	\$190	\$260	\$130	\$179	\$297	\$248	\$175	\$295	\$245
60	Jackson Lewis	\$575	\$235	\$450	\$210						
61	Jenner & Block LLP	\$900	\$450	\$425	\$275	\$327	\$562		\$325	\$525	
62	Jones, Walker, Waechter, Poitevent, Carrere & Denegre	\$600	\$210	\$225	\$150						
63	Kelley Drye & Warren	\$800	\$400	\$500	\$255						
64	Knobbe, Martens, Olson & Bear	\$645	\$340	\$420	\$215						
65	Lane Powell Moss & Miller	\$515	\$300	\$300	\$205	\$255	\$370	\$345	\$255	\$370	\$345
66	Lathrop & Gage	\$450	\$225	\$300	\$140	\$185	\$300	\$215	\$185	\$300	\$260
67	Leonard, Street and Deinard	\$500	\$300	\$300	\$185						
68	Lewis, Rice & Fingersh	\$425	\$240	\$295	\$130						
69	Lindquist & Vennum	\$500	\$260	\$260	\$165						
70	Locke, Lord, Bissell & Liddell	\$900	\$375	\$390	\$190	\$281	\$488	\$399	\$280	\$490	\$425
71	Loeb & Loeb	\$875	\$425	\$500	\$240	\$384	\$606	\$505	\$400	\$600	\$500
72	Lord, Bissell & Brook	\$690	\$335	\$410	\$200	\$299	\$473	\$410	\$300	\$475	\$415
73	Lowenstein Sandler	\$725	\$380	\$395	\$205						
74	Luce, Forward, Hamilton & Scripps	\$725	\$325	\$450	\$220	\$281	\$465	\$381	\$280	\$475	\$395
75	Manatt, Phelps & Phillips	\$785	\$520	\$480	\$265	\$395	\$600	\$518	\$415	\$590	\$550
76	Marshall, Dennehey, Warner, Coleman & Goggin	\$400	\$135	\$300	\$120						
77	McCarter & English LLP	\$650	\$325	\$395	\$205						
78	McElroy Deutsch, Mulvaney & Carpenter	\$450	\$295	\$225	\$135	\$180	\$250	\$195	\$165	\$235	\$215
79	McKee Nelson	\$920	\$635	\$595	\$375	\$446	\$760	\$489	\$455	\$755	\$475
80	Michael Best & Friedrich	\$550	\$225	\$300	\$185	\$234	\$363	\$321	\$235	\$350	\$325
81	Miles & Stockbridge	\$535	\$315	\$405	\$205	\$260	\$397				
82	Miller & Martin	\$580	\$230	\$295	\$160	\$201	\$338	\$306	\$195	\$340	\$320
83	Miller, Canfield, Paddock and Stone, PLC	\$595	\$265	\$340	\$160	\$225	\$400	\$285	\$220	\$400	\$335
84	Montgomery, McCracken, Walker & Rhoads	\$575	\$320	\$320	\$195	\$260	\$419	\$360			
85	Moore & Van Allen	\$765	\$265	\$330	\$175						
86	Morgan, Lewis & Bockius	\$850	\$375	\$575	\$200						
87	Morris, Manning & Martin	\$625	\$350	\$400	\$180	\$285	\$436	\$380	\$310	\$395	\$440
88	Nexsen Pruet Jacobs & Pollard	\$420	\$220	\$250	\$150						
89	Ogletree, Deakins, Nash, Smoak & Stewart	\$575	\$270	\$360	\$200	\$256	\$348	\$312			
90	Patton Boggs	\$920	\$320	\$520	\$205	\$375	\$536	\$456	\$385	\$525	\$455
91	Pepper Hamilton	\$750	\$335	\$425	\$200						
92	Perkins Coie	\$805	\$205	\$500	\$145						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
93											
94	Phelps Dunbar	\$450	\$170	\$205	\$130	\$174	\$243	\$184	\$175		
95	Phillips Lytle	\$435	\$245	\$300	\$140	\$205	\$309	\$223	\$205	\$300	\$215
96	Polsinelli Shalton Welte Suelthaus	\$600	\$250	\$250	\$175						
97	Quarles & Brady	\$575	\$260	\$335	\$185	\$233	\$377	\$319	\$235	\$375	\$325
98	Reed Smith	\$825	\$350	\$510	\$200	\$374	\$558	\$395	\$350	\$525	\$385
99	Robinson & Cole	\$575	\$340	\$325	\$200	\$295	\$424	\$328	\$280	\$420	\$330
100	Roetzel & Andress	\$460	\$210	\$275	\$110	\$198	\$302	\$264	\$200	\$300	\$260
101	Rutan & Tucker	\$600	\$335	\$350	\$210						
102	Saul Ewing	\$750	\$315	\$485	\$180	\$273	\$426	\$357	\$255	\$415	\$365
103	Schnader Harrison Segal & Lewis	\$750	\$240	\$385	\$175						
104	Schulte Roth & Zabel	\$850	\$650	\$585	\$235	\$435	\$724		\$440	\$745	
105	Sheppard, Mullin, Richter & Hampton	\$795	\$425	\$550	\$260						
106	Shughart Thomson & Kilroy	\$475	\$235	\$225	\$160						
107	Shumaker, Loop & Kendrick	\$465	\$200	\$360	\$180	\$221	\$311	\$289	\$220	\$305	\$300
108	Sills Cummis Epstein & Gross	\$650	\$350	\$375	\$195						
109	Smith, Gambrell & Russell	\$575	\$250	\$345	\$175						
110	Snell & Wilmer	\$675	\$275	\$390	\$170	\$248	\$390				
111	Steptoe & Johnson PLLC	\$325	\$200	\$250	\$170						
112	Stinson Morrison Hecker	\$600	\$230	\$250	\$175	\$207	\$333	\$295	\$225	\$365	\$285
113	Stoel Rives	\$500	\$275	\$350	\$160	\$231	\$379	\$324	\$230	\$375	\$330
114	Strasburger & Price	\$560	\$225	\$395	\$200	\$234	\$367	\$326	\$223	\$363	\$322
115	Sullivan & Worcester	\$700	\$415	\$420	\$245	\$309	\$550	\$438	\$290	\$540	\$440
116	Sutherland Asbill & Brennan	\$715	\$375	\$415	\$215	\$292	\$511	\$335	\$280	\$500	\$305
117	Thacher Proffitt & Wood	\$785	\$525	\$495	\$275	\$353	\$674	\$428	\$365	\$700	\$395
118	Thompson & Knight	\$730	\$370	\$370	\$205	\$295	\$496	\$415	\$310	\$485	\$400
119	Thompson Coburn	\$580	\$265	\$370	\$170						
120	Ulmer & Berne	\$470	\$240	\$290	\$165	\$212	\$343	\$280			
121	Vedder, Price, Kaufman & Kammholz	\$650	\$335	\$410	\$205	\$281	\$430	\$372	\$370	\$425	\$365
122	Wiggin and Dana	\$590	\$295	\$350	\$195						
123	Williams Mullen	\$600	\$300	\$425	\$205						
124	Wilmer Cutler Pickering Hale and Dorr	\$1,000	\$475	\$495	\$215						
125	Winstead Sechrest & Minick	\$620	\$345	\$360	\$180						
126	Winston & Strawn	\$845	\$400	\$590	\$200	\$365	\$608	\$455	\$395	\$640	\$523
127	Womble Carlyle Sandridge & Rice	\$575	\$290	\$370	\$195	\$268	\$426	\$355	\$265	\$425	\$360

EXHIBIT "3"

THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>

BUSINESS | LAW

Legal Fees Cross New Mark: \$1,500 an Hour

Billing rates for partners at elite corporate law firms keep rising, despite low inflation, weak demand



Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at the mounting hourly fees of law partners at elite corporate law firms. Above, the U.S. Bankruptcy Court in New York. *PHOTO: BRENDAN MCDERMID/REUTERS*

By **SARA RANDAZZO** and **JACQUELINE PALANK**

Updated Feb. 9, 2016 10:11 a.m. ET

The day of the \$1,500-an-hour lawyer has arrived.

Partners at some of the nation's top law firms are approaching—and, in a few cases, surpassing—that watershed billing rate, making the \$1,000-an-hour legal fees that once seemed so steep look quaint by comparison.

Despite low inflation and weak demand for legal services, rates at large corporate law firms have risen by 3% to 4% a year since the economic downturn, according to Citi Private Bank's Law Firm Group.

“We just raise them every year,” said John Altorelli, a finance lawyer at DLA Piper LLP in New York, who says the firm has set his rate at more than \$1,500 an hour. Mr. Altorelli, who filed for personal bankruptcy in 2014 to halt a legal battle with the estate of his former law firm, Dewey & LeBoeuf LLP, cracked the \$1,000-an-hour mark a decade ago. His fees have risen steadily ever since.

To soften the blow to clients, Mr. Altorelli does more than half his work on some kind of fixed-fee basis. “Using hourly rates is really anachronistic, but we still do it,” he said.

Raising rates ensures that law firms keep up with the competition and helps them wrest more money from clients, who routinely demand discounts for all but the most sensitive work.

“If you think of the rules of supply and demand, how in the world can they keep raising their rates?” said Jeff Carr, a former general counsel of oil-and-gas services and equipment company FMC Technologies who for years has been an outspoken opponent of hourly legal rates.

The rate creep has boosted law firms’ revenue at a time when many of them are under pressure from lower-cost legal-service providers and corporate clients that are keeping more legal work in-house. Revenue at law firms rose 4% last year, according to Wells Fargo Private Bank’s Legal Specialty Group, though demand rose just 0.5%.

“Lots of law firms will charge whatever the market can bear,” said the head of one of the nation’s 200 largest law firms.

Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at mounting fees. These court filings show the rates of partners specializing in corporate restructuring, as well as those with specialties like tax, litigation and corporate law.

A review of filings over the past three months in about two dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400.

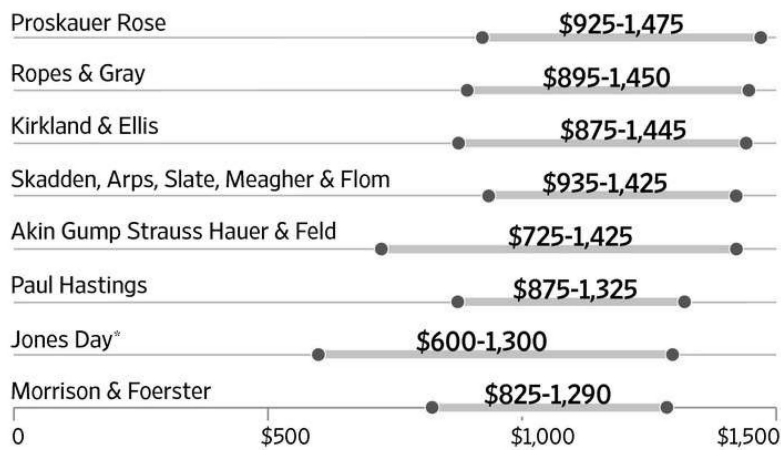
Proskauer Rose LLP’s hourly partner billing rate has climbed as high as \$1,475, while Ropes & Gray LLP’s tops out at \$1,450, court papers show.

Kirkland & Ellis LLP’s top hourly billing rate is now \$1,445. And rates at two firms—Akin Gump Strauss Hauer & Feld LLP and Skadden, Arps, Slate, Meagher & Flom LLP—peak at \$1,425 an hour.

Representatives of the law firms declined to comment.

Top Billers

Hourly rates of partners at top U.S. law firms now approach \$1,500.



*Includes partners and of counsel

Source: Bankruptcy court filings

THE WALL STREET JOURNAL.

Martin Bienenstock, who leads Proskauer's restructuring practice, called the \$1,225 an hour he billed clients last year "a market rate similar to my peers at other firms," and said he charges the same rate for nonbankruptcy work.

"The clients have kept coming back and growing during my 38-year career," he

said in an email, adding that clients generally prefer dealing directly with senior lawyers versus younger associates with lower rates.

In disclosing their firmwide rate increases, many firms tell the courts it is a standard way of keeping pace with "economic and other conditions." These include rising fixed costs, such as real estate and salaries.

In theory, a law-firm partner's pay rises and falls with the success of the firm. But, as competition for top talent increases, many firms feel the need to guarantee salaries or ensure a partner's pay doesn't fall, even in down years.

Still, only elite lawyers can charge \$1,400 an hour or more. Such rates are found almost exclusively in New York and other major markets, and only in the least price-sensitive fields like mergers and acquisitions, restructuring, tax, antitrust and high-stakes litigation and appeals.

For lawyers at the very top of those fields, hourly rates can hit \$1,800 or even \$1,950.

"You have a very few people at the very top where price is almost no object," said legal consultant Bruce MacEwen, who likens it to the way celebrities, sports stars and best-selling authors are paid. "It is a talent market."

Most lawyers in the U.S. fall well below those high marks. In a survey of in-house legal departments by BTI Consulting Group, the average highest rate paid for

law-firm partners was \$875 an hour in 2015, up more than 27% from three years earlier. Of the respondents, 38% had paid more than \$1,000 an hour for a lawyer, and the highest rate those in the survey paid was \$1,600 an hour.

For many firms, the stated rate is simply a starting point in discussions with corporate law departments. As a result, said legal consultant Ward Bower of Altman Weil, “sophisticated” law firms tend to implement annual rate increases to offset clients’ requests for discounts.

Such discounts are becoming more commonplace. A decade ago, law firms could typically get clients to pay around 92% of their stated rates, according to Thomson Reuters Peer Monitor. Last year, that fell to less than 83%.

Smaller companies can get squeezed the most on fees, because they don’t send enough work to any one law firm to get the best deals.

Companies with \$4 billion or more in annual revenue were twice as likely as those with less than \$100 million in revenue to use some form of alternative fee, according to a survey from industry trade group the Association of Corporate Counsel.

Some industry watchers view the raise-and-discount approach with skepticism.

“If clients are pushing back on rates, the answer isn’t to raise them” and then ask for a discount, Mr. MacEwen said. “The answer is to provide better total value.”

Write to Sara Randazzo at sara.randazzo@wsj.com and Jacqueline Palank at jacqueline.palank@wsj.com

EXHIBIT "4"

LAFFEY MATRIX

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

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

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

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

EXHIBIT "5"

Bob's Discount Furniture, LLC adv. Emmens, Michael

Michael Emmens • •

Historic Cost**\$9,310.98****Research Cost****\$5,650.00***Created: 10/27/2023 at 8:09 AM***Trialworks TaskCode**

costs

Date Incurred

10/26/2023

Payee

Berger Consulting

DescriptionBerger Consulting INV9945 bobs furniture paid
10.26.23**Docs**

Berger Consulting INV9945 bobs furnitur... ▼

Photocopying Cost**\$0.60***Created: 10/24/2023 at 2:52 PM***Trialworks TaskCode**

Copies

Date Incurred

10/24/2023

Payee

PaperCut

Description

2nd Amd LWDA Letter

Postage Cost**\$8.53***Created: 10/24/2023 at 2:52 PM***Trialworks TaskCode**

Postage Cost

Date Incurred

10/24/2023

Description

Second Amd LWDA Ltr

*Created: 10/5/2023 at 5:57 PM***\$0.20****Trialworks TaskCode**

Copies

Payee

Paper Cut

Date Incurred

10/5/2023

Notes

Copy of Amended PAGA Letter to mail to Def

Postage Cost**\$8.53***Created: 10/5/2023 at 5:57 PM***Trialworks TaskCode**

Postage Cost

Notes

Amended PAGA Letter to Def via cert mailing

Date Incurred

10/5/2023

Court Cost**\$15.00***Created: 9/9/2022 at 11:51 AM***Trialworks TaskCode**

costs

Description

VCourt

Date Incurred

9/6/2022

Notes

HD: 9/7/22

Payee

VCourt

Filing Fee

\$42.47*Created: 9/27/2022 at 2:57 PM***Trialworks TaskCode**

filing fee

Date Incurred

8/31/2022

Payee

One Legal

Description

OLINV#04338368 Bob's 8.31.22

Docs

OLINV#04338368 Bobs 8.31.22.pdf



Filing Fee

\$20.28*Created: 9/27/2022 at 11:27 AM***Trialworks TaskCode**

filing fee

Date Incurred

8/30/2022

Payee

One Legal

Description

OLINV#04333741 Bob's 8.30.22

Docs

OLINV#04333741 Bobs 8.30.22.pdf



Court Cost

\$15.00*Created: 6/1/2022 at 11:59 AM***Trialworks TaskCode**

costs

Date Incurred

5/25/2022

Payee

VCourt

Description

VCourt

Notes

HD: 6/1/22

Filing Fee

\$42.72*Created: 5/26/2022 at 10:51 AM***Trialworks TaskCode**

filing fee

Date Incurred

5/13/2022

Payee

One Legal

Description

OLINV#04074520 Bob's 5.13.22

Docs

OLINV#04074520 Bobs 5.13.22.pdf



Filing Fee

\$21.31*Created: 5/13/2022 at 4:29 PM***Trialworks TaskCode**

filing fee

Date Incurred

5/13/2022

Payee

One Legal

Description

OLINV#04072063 BD 5.13.22

Docs

OLINV#04072063 BD 5.13.22.pdf



Filing Fee

\$42.72*Created: 4/21/2022 at 12:38 PM***Trialworks TaskCode**

filing fee

Date Incurred

4/19/2022

Payee

One Legal

Description

OLINV#04013013 Bob's 4.19.22

Docs

OLINV#04013013 Bobs 4.19.22.pdf



Filing Fee

\$25.43*Created: 4/21/2022 at 12:32 PM***Trialworks TaskCode**

filing fee

Date Incurred

4/19/2022

Payee

One Legal

Description

OLINV#04011258 Bob's 4.19.22

Docs

OLINV#04011258 Bobs 4.19.22.pdf



Court Cost

\$2.00*Created: 4/12/2022 at 11:31 AM***Trialworks TaskCode**

costs

Date Incurred

4/12/2022

Payee

LASC-online

Description

LASC-Online receipt re Bob's 4.12.22

Docs

LASC-Online receipt re Bobs 4.12.22.pdf



Mediation Cost

\$3,125.00*Created: 2/23/2022 at 9:13 AM***Trialworks TaskCode**

costs

Date Incurred

2/23/2022

Payee

Judicate West

DescriptionJudicate West INV#554502 Bob's Discount paid
2.23.22**Docs**

Judicate West INV#554502 Bobs Discou...



Postage Cost

\$5.80*Created: 2/10/2022 at 12:17 PM***Trialworks TaskCode**

Postage Cost

Payee

DocuSign

Date Incurred

2/10/2022

Filing Fee

\$24.91*Created: 11/18/2021 at 11:32 AM***Trialworks TaskCode**

Filing Fee

Description

OLINV#03628235 B 10.28.21

Date Incurred

10/28/2021

Docs

OLINV#03628235 B 10.28.21.pdf ▼

Payee

One Legal

Filing Fee

\$39.38*Created: 11/18/2021 at 11:24 AM***Trialworks TaskCode**

Filing Fee

Description

OLINV#03627899 B 10.27.21

Date Incurred

10/27/2021

Docs

OLINV#03627899 B 10.27.21.pdf ▼

Payee

One Legal

Research Cost

\$17.22*Created: 10/22/2021 at 1:23 PM***Trialworks TaskCode**

Research

Payee

Thomson Reuters

Date Incurred

10/22/2021

Description

billing period of 8/1/21-8/31/21

Filing Fee

\$40.15*Created: 10/14/2021 at 10:57 AM***Trialworks TaskCode**

Filing Fee

Description

OLINV#03584058 Bob's 10.6.21

Date Incurred

10/6/2021

Docs

OLINV#03584058 Bobs 10.6.21.pdf ▾

Payee

One Legal

Filing Fee

\$24.91*Created: 10/14/2021 at 9:52 AM***Trialworks TaskCode**

Filing Fee

Description

OLINV#03582031 Bob's 10.6.21

Date Incurred

10/6/2021

Docs

OLINV#03582031 Bobs 10.6.21.pdf ▾

Payee

One Legal

Postage Cost

\$11.04

*Created: 9/30/2021 at 12:08 PM***Trialworks TaskCode**

Postage Cost

Date Incurred

9/22/2021

Created: 9/27/2021 at 11:13 AM

\$19.60

Trialworks TaskCode

Copies

Payee

Paper Cut

Date Incurred

9/22/2021

Photocopying Cost

\$4.90

*Created: 9/23/2021 at 12:25 PM***Trialworks TaskCode**

copies

Payee

copies

Date Incurred

9/22/2021

Description

copies

Postage Cost

\$7.40

*Created: 2/23/2021 at 8:31 AM***Trialworks TaskCode**

postage

Payee

postage

Date Incurred

2/22/2021

Filing Fee

\$75.00*Created: 2/8/2021 at 10:05 AM***Trialworks TaskCode**

LWDA Filing fee

Date Incurred

2/8/2021

Payee

LWDA

Description

State of California - Department of Industrial
Relations Customer Receipt _ Purchase
Confirmation Bob's Furniture

Docs

State of California - Department of Indus... ▼

Postage Cost

\$13.92*Created: 4/1/2021 at 2:47 PM***Trialworks TaskCode**

April Postage

Postage Cost

\$6.96

**(Proof of Submission to Labor and
Workforce Development Agency)**

EXHIBIT "6"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On April 19, 2024, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

<i>Counsel for Defendant</i>	<i>Counsel for Plaintiffs</i>
Kathy E. Le, Esq. Kelli Dreger, Esq. JACKSON LEWIS P.C. 200 Spectrum Center Drive, Suite 500 Irvine, CA 92618 Kathy.Le@jacksonlewis.com Kelli.Dreger@jacksonlewis.com	Brad Nakase, Esq. Jared Peterson, Esq. NAKASE LAW FIRM, INC. 2221 Camino Del Rio South, Suite 300 San Diego, CA 92108 brad@NakaseLawFirm.com jared@NakaseLawfirm.com COHELAN KHOURY & SINGER Michael D. Singer msinger@ckslaw.com Marta Manus mmanus@ckslaw.com 605 C Street, Suite 200 San Diego, California 92101

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing (“EF”) System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

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

Executed on April 19, 2024, at Woodland Hills, California.



Michelle Tanzer