

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ZEBULON NEFF, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

OAKHURST INDUSTRIES, INC., a
California Corporation; and Does 1
through 50, Inclusive,

Defendants.

Case No.: **21STCV21110**

**DECLARATION OF KYLE NORDREHAUG
IN SUPPORT OF MOTION TO APPROVE
PAGA SETTLEMENT**

Hearing Date: October 24, 2022

Hearing Time: 9:30 a.m.

Reservation ID: 605525466076

Judge: Hon. Monica Bachner

Dept.: 71

Action Filed: June 4, 2021

Trial Date: Not Set

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am the partner in the law firm of Blumenthal Nordrehaug Bhomwik De
3 Blouw LLP, attorneys for Plaintiff Zebulon Neff ("Plaintiff"). As such, I am fully familiar
4 with the facts, pleadings and history of this matter. I am submitting this declaration in
5 support of the Plaintiff's Motion to Approve PAGA Settlement in this matter. The following
6 facts are within my own personal knowledge, and if called as a witness, I could and would
7 testify competently to the matters stated herein.

8 2. A true and correct copy of the fully executed Settlement Agreement
9 ("Settlement Agreement") with Defendant Oakhurst Industries, Inc. ("Defendant") is
10 attached as Exhibit #1. A proposed order approving the PAGA settlement is submitted
11 herewith.

12 3. Plaintiff and Defendant agreed to mediate with Jeffrey Krivis. Prior to
13 the mediation, the Parties conducted significant investigation and discovery of the facts and
14 law. Defendant produced hundreds of documents relating to its policies, practices, and
15 procedures regarding paying non-exempt employees for all hours worked, overtime, meal
16 and rest period policies, payroll and operations policies, and more. Plaintiff was provided
17 with sufficient records and data to determine the number of Aggrieved Employees and the
18 number of workweeks in the PAGA Period. The Parties agree that the above-described
19 investigation and evaluation, as well as the information exchanged during the settlement
20 negotiations, are more than sufficient to assess the merits of the Parties' positions and to
21 compromise the issues on a fair and equitable basis. Plaintiff's theory of PAGA liability as
22 argued at mediation alleged that Defendant required the Aggrieved Employees to submit to a
23 COVID screening prior to clocking in for their shifts but failed to pay the proper minimum
24 wages for the time spent submitting to these COVID symptom screenings. Plaintiff also
25 alleged that Defendant's rounding policy systematically undercompensates the Aggrieved
26 Employees. Moreover, Plaintiff alleged that Defendant failed to provide Plaintiff and the
27 Aggrieved Employees with 30 minute uninterrupted meal breaks before the fifth hour

1 worked due to chronic understaffing and interruptions from supervisors requiring them to
2 come back to work. Plaintiff alleged that rest breaks were also interrupted on a regular basis
3 and that Defendant required rest breaks to be taken on the premises which restricted the
4 freedom of the Aggrieved Employees to leave the work premises if they chose to do so.
5 Additionally, Plaintiff alleged that Defendant failed to reimburse for cell phone expenses
6 because employees were required to use their personal cell phones for work-related matters
7 such as scheduling issues. On April 26, 2022, the Parties engaged in an all-day mediation
8 session before Mediator Krivis, a respected and experienced mediator knowledgeable of both
9 the wage and hour laws and representative claims at issue in this action. Through arms-
10 length negotiations with the assistance of the mediator, the Parties reached an agreement to
11 settle the PAGA claims in this action which led to the signing of a Memorandum of
12 Understanding memorializing the settlement.¹ The settlement was negotiated in light of all
13 known facts and circumstances and the uncertainty associated with litigation – including the
14 risk of Plaintiff not being able to maintain representative claims, the difficulty of proving
15 Plaintiff’s claims in a manageable trial, the merits of Defendant’s potential defenses, and the
16 significant delay and potential appellate issues inherent to litigation – and was reached after
17 extensive arm’s length negotiations, with the assistance of Mediator Krivis.

18 4. The claim before this court is the representative claim under PAGA on
19 behalf of the State of California for civil penalties pursuant to the PAGA. The parties have
20 agreed to settle this PAGA claim in its entirety after investigation and an arm’s length
21 mediation session. The PAGA settlement is subject to Court approval consistent with Labor
22 Code §2699(1)(2). (Settlement Agreement at §III ¶22(a)). The Settlement Agreement

23
24 ¹ In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
25 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
26 (“Individual Settlement”) (Settlement Agreement at §III ¶23(b)). The individual claims were not at
27 issue in this action and exist independent and apart from the PAGA claims at issue before the Court.
28 See *Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does
not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue
PAGA remedies” nor resolve the PAGA claims.).

1 negotiated by the Parties provides for a “Gross PAGA Settlement Amount” payment in the
2 amount of \$380,000 to resolve the Released PAGA Claims (hereinafter referred to as the
3 “PAGA Settlement”).² From this PAGA Settlement of \$380,000, there is a deduction of
4 attorneys’ fees in the amount of \$126,666 (which is one-third of the PAGA Settlement),
5 reimbursement of incurred costs in an amount not to exceed \$15,000, and Settlement
6 Administration Costs not to exceed \$6,000. (Settlement Agreement at §III ¶22(b)-(c)).³
7 After these deductions, the amount remaining is the “PAGA Payment”, which is estimated to
8 be \$232,334.00. Of the PAGA Payment amount, seventy-five percent (75%) will be paid to
9 the LWDA and the remaining twenty-five percent (25%) will be paid to the Aggrieved
10 Employees (Settlement Agreement at III ¶22(a)(1).) Aggrieved Employees” means all
11 individuals who were employed by Defendant in California and classified as non-exempt
12 employees during the PAGA Period. The PAGA Period is the time period from June 4, 2020
13 to April 26, 2022. (Settlement Agreement at §I ¶¶ 2, 10).) The Individual PAGA Payment
14 for each Aggrieved Employee shall be based on the number of pay periods each Aggrieved
15 Employee worked during the PAGA Period as a percentage of the total pay periods worked
16 by all Aggrieved Employees during the PAGA Period. (*Id.*) The PAGA Period is the time
17 period from June 4, 2020 to April 26, 2022. (Settlement Agreement at I ¶10). Defendant has
18 represented to PAGA Counsel the number of Aggrieved Employees and pay periods.
19 Defendant represents that there are approximately 638 Aggrieved Employees who
20 collectively worked 31,551 pay periods during the PAGA Period. (Settlement Agreement at

21
22 ² Within 15 days of the Effective Date of the Settlement the Defendant shall pay to
23 the Settlement Administrator \$190,000 as half of the Gross PAGA Settlement Amount and six
24 months thereafter Defendant shall pay the remaining half of the Gross PAGA Settlement Amount
(\$190,000). (Settlement Agreement at § III ¶20).

25 ³ In the event the Court approves less than One-Third of the Gross PAGA Settlement Amount in
26 Attorneys’ Fees or less than \$15,000 in Attorneys’ Expenses to PAGA Counsel, the unawarded
27 difference will be added to the PAGA Payment and not to PAGA Counsel or the Defendant, and will
28 not affect approval of the settlement. (Settlement Agreement at §III ¶22(b)). In the event the Court
approves less than \$6,000 to administer the settlement or if the actual cost to administer the
settlement is less than \$6,000, the difference will be added to the PAGA Payment. (*Id.* at ¶22(c)).

§ III ¶21). Upon entry of final judgment, the Released Parties shall be entitled to a release from the State of California and the Aggrieved Employees only for all “Released PAGA Claims”, which means all PAGA claims for civil penalties under California Labor Code §§ 2698 *et seq.*, predicated on the California Labor Code claims that are asserted in the LWDA Notice and operative complaint which includes, but is not limited to, PAGA claims for civil penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1198, 2802 and applicable Industrial Welfare Commission Wage Orders (the “Released PAGA Claims”)(Settlement Agreement at §III ¶23(a)). The Released PAGA Claims does not include underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability, and workers’ compensation, and claims outside of the PAGA Period. The Released PAGA Claims do not include any claims that cannot be released as a matter of law. (*Id.*) The Settlement Agreement expressly confirms that “In no event shall the release of the Released PAGA Claims in this Settlement Agreement release any individual claims of any individuals.” (*Id.*)

5. Attorneys’ fees equal to one-third of the Gross PAGA Settlement amount (\$126,666.00) and litigation expenses in an amount not to exceed \$15,000.00 will also be paid to PAGA Counsel as part of the settlement in accordance with California Labor Code § 2699(g)(1), as set forth in the Settlement Agreement.⁴ Lastly, payment to the Settlement Administrator in an amount not to exceed \$6,000 to perform the administrative duties to distribute the settlement money shall also be paid.

6. As experienced counsel, we believe that the PAGA Settlement is fair and reasonable and therefore should be approved in light of Defendant's potential defenses to the violations at issue, the risks and costs of continued litigation. Here, the Gross PAGA Settlement Amount of \$380,000 is significantly more and constitutes approximately \$12 per

⁴ As set forth below in paragraph 9, PAGA Counsel incurred costs in the current amount of \$12,392.14, which is less than the cost allocation⁵ in the Settlement Agreement.

1 pay period. This PAGA Settlement amount compares favorably to the estimated amount of
2 PAGA penalties. With the assistance of an expert, Plaintiff calculated that the maximum
3 amount of statutory PAGA civil penalties was potentially \$3,155,100 based on 31,551 pay
4 periods applicable to the Aggrieved Employees during the PAGA Period.⁵ Importantly,
5 however, these calculations were performed at the maximum statutory rate for the penalties,
6 when in fact, it is likely that any penalties awarded would be at a lower rate. California
7 Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum
8 civil penalty if based on the facts and circumstances to do otherwise would result in an award
9 that is "unjust, arbitrary and oppressive or confiscatory." In *Carrington v. Starbucks Corp.*,
10 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only
11 provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties
12 awarded could be significantly less than Plaintiff's calculation even where Plaintiff prevailed
13 on the PAGA claim. If the amount of \$5 per pay period from *Carrington v. Starbucks* is
14 used, the potential recovery of civil penalties would be only \$157,755, which is far less than
15 what this settlement provides.

16 7. Here, Plaintiff would need to prove that each Aggrieved Employee suffered a
17 violation for each period the employee worked in relation to meal or rest period violations,
18 failure to pay minimum or overtime wages, failure to provide accurate itemized wage
19 statements, failure to pay wages when due and failure to reimburse employees for required
20 expenses. Defendant maintains that Plaintiff and the Aggrieved Employees were properly
21 compensated, and that they did not violate the Labor Code. Accordingly, Defendant disputes
22 and denies Plaintiff's allegations and claims asserted in the complaint which are resolved by
23 the Settlement Agreement. Defendant asserted additional defenses to the PAGA claim, not
24 only as to liability but also as to the amount of the penalties. Defendant could argue that no

25 ⁵ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
26 The valuation of \$3,155,100 is the civil penalty amount without stacking. If stacking is permitted,
27 then the valuation increases with each additional penalty added to each pay period. Plaintiff,
28 however, is not aware of any PAGA award which permitted stacking and in the cases cited herein,
only one penalty per pay period was assessed.

penalties prior to the PAGA notification should be awarded because the violations were not intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA claims and the potential that some or all of the PAGA penalties sought may not be awarded. Given Defendant's potential defenses to the violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and reasonable. Defendant has similarly concluded that it is desirable that the action is settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid further expense, inconvenience and distraction of further legal proceedings, as well as the uncertainty of litigation. Defendant has determined that it is desirable and beneficial to put to rest the claims in this action and Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate. PAGA Counsel have significant experience litigating wage and hour claims including claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements that courts have approved. The PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of a private mediator, Jeff Krivis. As set forth in the accompanying proof of service, the LWDA has been provided notice of this motion and the PAGA settlement. The decision of the LWDA to accept the PAGA Settlement and not oppose the motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-only settlement does not release the individual claims of absent employees, and the LWDA is a sophisticated government entity that is more than able to look out for its own rights.

8. PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the amount of \$126,666 representing one-third of the \$380,000 Gross PAGA Settlement Amount. The payment of attorneys' fees and costs to Plaintiff's Counsel under the Settlement Agreement is supported by several factors. First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a recovery of \$380,000, and this result

1 justifies the requested fees equal to one third of this recovery. This percentage is within the
2 standard contingent recovery percentage of one-third, and this percentage is what was
3 expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480,
4 504, (2016). Second, the fee award is justified by the work performed and contributions to
5 the case. As detailed below, the fee award represents PAGA Counsel's current lodestar of
6 \$86,296.25 with a reasonable multiplier of less than 1.5, with significant additional work to
7 be performed to complete the approval and settlement process, such that multiplier will
8 ultimately be less than 1.2. Third, the consideration of the enhancement factors justify the
9 enhancement of the lodestar. Courts multiply the lodestar by a factor to account for the risk
10 of non-payment, delay in payment, the quality of work, and the novelty and difficulty of the
11 issues involved. As detailed in the accompanying billing statements, true and correct copies
12 of which are attached hereto as Exhibits #2 and 3, the current lodestar for my firm in this
13 matter as of October 3, 2022 is \$86,296.25 for more than 146 hours of work prosecuting the
14 claims being resolved by this Settlement.⁶ This time does not include time incurred after the
15 billing was finalized and the time spent managing the completion of the settlement, which I
16 estimate will add \$205,000 to \$30,000 in additional lodestar.

17 9. The award of litigation expenses is based upon the actual expenses incurred by
18 Plaintiff and PAGA Counsel, which currently are \$12,392.14. Under the Settlement
19 Agreement, PAGA Counsel will be recovering litigation expenses in the total amount of
20 \$12,392.14, which is less than the \$15,000 allocation for costs in the Settlement Agreement,
21 so the difference of \$2,607.86 will be added to the PAGA Payment amount. The litigation
22 expenses incurred by my firm in the amount of \$12,392.14 were all reasonably necessary to
23 the litigation, and are detailed in Exhibits #2 and 3 attached hereto.

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27 ⁶ Blumenthal Nordrehaug Bhowmik De Blouw LLP switched billing programs in June 2022,
28 so Exhibit #2 consists of two billing statements, the first from Tussman covers work from
inception to June 2022, and the second from Clio covers work from June 2022 to the present.

Experience and Qualifications

10. I have represented hundreds of thousands of employees in hundreds of legal matters, including PAGA lawsuits and hundreds of employment class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP's practice is devoted almost entirely to the prosecution of wage and hour class action and PAGA action matters. The attorneys at Blumenthal Nordrehaug Bhowmik De Blouw LLP have been appointed lead counsel in hundreds of contested motions for class certification including many consolidated wage and hour matters.

(a) Blumenthal Nordrehaug Bhowmik De Blouw LLP was responsible for handling the briefing and argument that resulted in the landmark ruling of *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425 (9th Cir. 2015). There, Blumenthal Nordrehaug Bhowmik De Blouw LLP overcame opposition by Littler Mendelson and amici Curiae briefs submitted by Mayer Brown LLP to persuade the Ninth Circuit of the importance of the substantive rights of the State of California under the California Private Attorney General Act of 2004 ("PAGA"). Blumenthal Nordrehaug Bhowmik De Blouw LLP took the lead on this case where the ruling was the reaffirmation of the PAGA statute and the *Iskanian* rule. Blumenthal Nordrehaug Bhowmik De Blouw LLP also has recently engaged in noted appellate work on the subject of class actions in the California Court of Appeals resulting in the opinions handed down in *Securitas Sec. Services USA, Inc. v. Superior Court*, 234 Cal. App. 4th 1109, 184 Cal. Rptr. 3d 568 (2015) (class or representative action waiver in an employment-related arbitration agreement was unenforceable); *Altman v. Solarcity Corp.*, No. D067582, 2016 Cal. App. Unpub. LEXIS 3536 (Ct. App. May 13, 2016) (same). In 2015, Blumenthal Nordrehaug Bhowmik De Blouw LLP received an award from the Daily Journal for Top Appellate Reversal, and I received an award from the Daily Journal as Top Labor & Employment Attorney 2016.

(b) Blumenthal Nordrehaug Bhowmik De Blouw LLP has litigated hundreds of PAGA claims. In particular, in the last several years Blumenthal Nordrehaug

1 Bhowmik De Blouw LLP negotiated court-approved PAGA settlements with: (i) Mattress
2 Firm in the amount of \$3,750,000 (*Miller v. Mattress Firm*, Santa Clara County Superior
3 Court Case No. 17CV313148); (ii) CH Robinson in the amount of \$630,000 (*Poublon v.*
4 *C.H. Robinson*, U.S.D.C. Central District of California Case No. 12-06654); (iii) Accentcare
5 in the amount of \$500,000 (*Lanuza v. Accentcare*, San Francisco Superior Court Case No.
6 CGC-18-565521); (iv) Prime Healthcare in the amount of \$700,000 (*Ortega v. Prime*
7 *Healthcare Paradise Valley, LLC*, Superior Court of California for the County of San Diego,
8 Case No. 37-2014-00011240); (v) Planet Beauty in the amount of \$200,000 (*Sanchez v.*
9 *Beena Beauty Holding, Inc.*, Superior Court of California for the County of Los Angeles,
10 Case No. BC566065); (vi) Holman Automotive Group in the amount of \$580,000 (*Gabriel v.*
11 *KUNI SDI, LLC, et al.*, Superior Court of California for the County of San Diego, Case No.
12 37-2017-00025191); (vii) Aircraft Service International in the amount of \$1,100,000 (*Martin*
13 *v. Aircraft Service International, Inc., et al.*, Superior Court of California, County of San
14 Francisco Case No. CGC-18-566072); (viii) Easy Driving School in the amount of \$896,000
15 (*Thomas v. Easy Driving School*, Superior Court for the County of San Diego, Case No. 37-
16 2018-00047639); (ix) Café Rio in the amount of \$835,000 (*Quincho v. Café Rio*, Superior
17 Court for the County of San Bernardino, Case No. CIVDS2011822); (x) Altamed in the
18 amount of \$1,570,000 (*Meek v. Altamed Health Services*, Superior Court for the County of
19 Los Angeles, Case No. 20STCV47464); (xi) Lululemon in the amount of \$1,200,000
20 (*O'Donnell v. Lululemon USA, Inc.*, Superior Court for the County of Ventura, Case No. 56-
21 2020-00542441); and (xii) Yourmechanic in the amount of \$1,285,000 (*Provost v.*
22 *Yourmechanic, Inc.*, Superior Court for the County of San Diego, Case No. 37-2017-
23 00024056). Based upon our significant experience litigating claims for PAGA penalties, the
24 opinion of experience counsel is that this is an excellent settlement and the PAGA Payment
25 here is greater on a per pay period basis than similar settlements that my firm has previously
26 negotiated and which courts have approved.

27 (c) Then Chief Judge Irma Gonzales in a consolidated class action

1 representing hundreds of armed forces officers held that Blumenthal Nordrehaug Bhowmik
2 De Blouw LLP was "qualified counsel with extensive experience in class action litigation."
3 *McPhail v. First Command Fin. Planning, Inc.*, 247 F.R.D. 598, 611 (S.D. Cal. 2007).
4 Examples of other contested actions where class certification was granted Blumenthal
5 Nordrehaug Bhowmik De Blouw LLP was appointed lead class counsel in wage and hour
6 class actions in Federal Court include *Schulz v. Qualxserv, LLC*, 2012 U.S. Dist. LEXIS
7 58561 (S.D. Cal. 2012); *Dobrosky v. Arthur J. Gallagher Serv. Co., LLC*, No. EDCV 13-
8 0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); *Culley v.*
9 *Lincare Inc.*, No. 2:15-cv-00081-MCE-CMK, 2016 U.S. Dist. LEXIS 105704 (E.D. Cal.
10 Aug. 10, 2016); *Nelson v. Avon Prods.*, No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS
11 51104 (N.D. Cal. Apr. 17, 2015); *Orozco v. Illinois Tool Works*, U.S.D.C. Case No. 14-cv-
12 02113-MCE, 2016 U.S. Dist. LEXIS 158115 (E.D. Cal. February 17, 2017); *Metrow v.*
13 *Liberty Mutual*, U.S.D.C. Case No. EDCV 16-1133 JGB (C.D. Cal. May 1, 2017). Some
14 examples of heavily contested State Court wage and hour class actions where class
15 certification was obtained and BNBD was appointed lead class counsel include *Vakili v.*
16 *Dignity Health, et al.*, San Francisco Superior Court, Case No. CGC-18-569456 (December
17 16, 2021); *Armstrong v. Ruan Transport*, San Bernardino Superior Court, Case No.
18 CIVDS1605897 (August 11, 2020); *Spears v. Health Net of California*, Sacramento County
19 Superior Court, Case No. 34-2017-00210560 (Oct. 8, 2019); *El Pollo Loco Wage and Hour*
20 *Cases*, Orange County Superior Court, JCCP Case No. 4957 (July 30, 3018); *Torrento v.*
21 *Lucile Packard Children's Hospital*, Santa Clara County Superior Court Case No. 2016-1-
22 CV-291035 (July 17, 2018); *Salem v. Alliance*, San Bernadino Superior Court, Case No.
23 CIVRS1401129 (March 8, 2016); *Rivers v. Veolia*, Sonoma County Superior Court Case No.
24 SCV 255350 (March 9, 2016); *Mathies v. Union Bank*, San Francisco Superior Court Case
25 No. CGC-10-498077 (Sept. 11, 2013); *Jefferson v. Bottling Co, LLC*, Orange County
26 Superior Court Case No. 30-2009-00180102-CU-OE-CXC (Sept. 7, 2010); *Rangel v. Balboa*
27 *Ambulance Co.*, 37-2008-00095700-CU-BT-CTL (Fe. 11, 2010); *Tan v. CSAA*, Orange

1 County Superior Court, Case No. 30-2008-00231219 (Nov. 23, 2009).

2 (d) Over the course of the litigation, a number of attorneys in my firm have
3 worked on this matter. Their credentials are reflected in the Blumenthal Nordrehaug
4 Bhowmik De Blouw LLP firm resume, a true and correct copy of which is attached hereto as
5 Exhibit #4. Some of the major cases our firm has undertaken are also set forth in Exhibit #4.
6 The bulk of the attorneys involved in this matter at Blumenthal Nordrehaug Bhowmik De
7 Blouw LLP have had extensive representative and class litigation experience, much of it in
8 the area of consumer class actions, employment class actions, securities litigation, unfair
9 business practices and other complex litigation. The attorneys at my firm have extensive
10 experience in cases involving labor code violations and overtime claims. Class Counsel has
11 litigated similar wage and hour cases against other employers on behalf of employees,
12 including cases against See's Candies, Securitas, Okta, El Pollo Loco, Automobile
13 Association, Marriott, Total Renal, Solarcity, Penske, Universal Protection Services, Panda
14 Express, Redfin, Instacart, Verizon, Apple, Wells Fargo, Kaiser, Culinart, Space
15 Exploration, Time Warner, and California State Automobile Association. It is this level of
16 experience which enabled the firm to undertake the instant matter and to successfully combat
17 the resources of the defendants and their capable and experienced counsel. On account of
18 the concerted and dedicated effort this case required in order to properly handle and
19 prosecute, Class Counsel were precluded from taking other cases, and in fact, had to turn
20 away other potential fee generating cases.

21 12. The hourly rates for staff at Blumenthal Nordrehaug Bhowmik De Blouw LLP
22 are as follows: Partner Attorneys from \$695 to \$795, Associate Attorneys from \$325 to
23 \$550, Paralegals from \$250 to \$275. The rates charged by my firm are in line with the
24 prevailing rates of attorneys in the local legal community for similar work and, if this were a
25 commercial matter, these are the charges that would be made and presented to the client.
26 These hourly rates have been approved by Court's throughout California, including the
27 Courts in the Superior Court of California. In fact, on August 1, 2018, District Judge Andre

1 Birotte Jr. explicitly found that Class Counsel’s “rates generally appear reasonable and ‘in
2 line with those prevailing in the [relevant] community’—the Central District of California”.
3 Finally, the reasonableness of Class Counsel’s hourly rates is further confirmed by
4 comparing such rates with the rates of comparable counsel practicing complex and class
5 litigation as detailed in the National Law Journal Billing Survey. See e.g. *Zest IP Holdings,*
6 *LLC v. Implant Direct MFG., LLC*, 2014 U.S. Dist. LEXIS 167563 (S.D. Cal. 2014) (finding
7 that “Mayer Brown's \$775 average billing rate for partners” and “Mayer Brown's \$543
8 average associate billing rate” are reasonable rates when compared within 21 other firms
9 practicing in the Southern District of California.) This survey is useful to show that Class
10 Counsel’s rates are in line with the comparable rates of the defense counsel that opposes
11 these types of class claims, such as Mayer Brown noted above who is defense counsel in
12 cases currently being prosecuted by Class Counsel. In another example, Sheppard Mullin
13 Richter & Hampton, who is opposing counsel in many cases prosecuted by Class Counsel
14 (one of the most frequent opposing counsel), charges rates as high as \$875 for partners and
15 \$535 for associates. Similarly, Paul Hastings, another opposing counsel in these types of
16 cases, charges between \$900 and \$750 for partners and \$755 and \$335 for associates. Thus,
17 the rates charged by my firm for comparable work are less than these examples, and are
18 therefore undoubtedly reasonable.

19 13. LWDA - The PAGA Notice sent to the LWDA is attached hereto as Exhibit
20 #5. In addition, the LWDA is being served with this motion which includes the Settlement
21 Agreement, as verified in the proof of service attached hereto as Exhibit #7.

22 15. Settlement Administration – Phoenix was selected as the Settlement
23 Administrator based upon their estimate. A true and correct copy of the estimate from
24 Phoenix is attached hereto as Exhibit #6, and the estimate provides for Settlement
25 Administration Costs in the capped amount of \$5,000 for 650 aggrieved employees. I have
26 used Phoenix successfully as the administrator in more than twelve settlements in the last
27 several years and know them to be competent and experienced.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed this 3rd day of October, 2022, at San Diego,
3 California.

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5 /s/ Kyle Nordrehaug
6 Kyle Nordrehaug
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EXHIBIT #1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiff Zebulon Neff (“Plaintiff”) acting in his private attorney general capacity, and Defendant Oakhurst Industries, Inc. (hereinafter referred to as “Defendant”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the action entitled *Zebulon Neff v. Oakhurst Industries, Inc.*, pending in the Superior Court of California, County of Los Angeles, Case No. 21STCV21110.
2. “Aggrieved Employees” means all individuals who were employed by Defendant in California and classified as non-exempt employees during the PAGA Period.
3. “Aggrieved Employees List” means the spreadsheet containing the list of Aggrieved Employees with their social security numbers, last known addresses, and their dates of employment and/or pay periods worked as an Aggrieved Employee during the PAGA Period.
4. “Court” means the Superior Court of California, County of Los Angeles.
5. “Individual PAGA Payment” means the amount to be paid to each of the Aggrieved Employees out of 25% of the PAGA Payment under Labor Code section 2699 with such individual shares to be based on the number of pay periods during which an individual worked as an Aggrieved Employee during the PAGA Period divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. 100% of all PAGA penalties will be considered payment of penalties, and the Aggrieved Employees will be issued an IRS Form 1099 and will be responsible for payment of any and all taxes that are due as a result of their PAGA penalty settlement payments.
6. “LWDA” means the California Labor Workforce Development Agency.
7. “Gross PAGA Settlement Amount” means the total sum of \$380,000 for payment of the Administration Costs, Attorneys’ Fees, Attorneys’ Expenses and Costs, and the PAGA Payment. The Gross PAGA Settlement Amount shall be all-in with no reversion to Defendant.
8. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698 *et seq.*
9. “PAGA Payment” means the total amount remaining in the Gross PAGA Settlement Amount after payment of the Attorneys’ Fees, Attorneys’ Expenses and Costs, and Administration Costs. The PAGA Payment shall be allocated under Labor Code section 2699 with 75% of the Section 2699 payment going to the LWDA and 25% to the Aggrieved Employees.

10. “PAGA Period” means the time period from June 4, 2020 to April 26, 2022.
11. “Parties” means Plaintiff Zebulon Neff and Defendant Oakhurst Industries, Inc.
12. “PAGA Counsel” means the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
13. “Released Parties” means Defendant and any of its agents, officers, directors, employees, stockholders, members, parent corporations, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers, and assigns of the foregoing.
14. “Settlement Administrator” means Phoenix Class Action Administration Solutions .

II. RECITALS

15. PAGA Counsel mailed the necessary correspondence to the California Labor and Workforce Development Agency (“LWDA”) on March 11, 2021 on behalf of Plaintiff Zebulon Neff, requesting authorization from the LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged in the LWDA Notice. The 65-day notice period for the LWDA to notify of its intent to investigate expired on May 15, 2021.

16. On June 4, 2021, Plaintiff Neff filed a Representative Action Complaint against Defendant Oakhurst Industries, Inc. alleging a single cause of action for recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*] in the Superior Court of the State of California, County of Los Angeles (Case No. 21STCV21110).

17. On April 26, 2022, the Parties engaged in a mediation session before mediator Jeff Krivis. Through arms-length negotiations with the assistance of the mediator, the Parties reached an agreement to settle the Action which led to the signing of a Memorandum of Understanding.

18. As a result of the settlement, the Parties have agreed to fully and finally resolve the Released PAGA Claims alleged in the Action pursuant to this Settlement Agreement.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

19. Non-Admission. Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, the Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Settlement Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, by Defendant or any other Released Party. The Parties themselves agree not to introduce, use, or admit this Settlement Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding before any court that has as its purpose the interpretation, implementation, or enforcement of this Settlement Agreement or any orders or judgments of the Court entered in connection with the Settlement Agreement.

None of the documents produced or created by Defendant or any other Released Party, Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant or any other Released Party of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Settlement Agreement.

20. **Timing.** Within fifteen (15) days after the Effective Date of this settlement, Defendant shall pay to the Settlement Administrator \$190,000 as half of the Gross PAGA Settlement Amount, and provide the Aggrieved Employees List to the Settlement Administrator. Six (6) months thereafter, Defendant shall pay the remaining half of the Gross PAGA Settlement Amount (\$190,000). In the event Defendant defaults on any of the payments set forth above, after being given notice by PAGA Counsel and an opportunity to cure within fourteen (14) days, Defendant agrees that all payments still due and owing on the payments in the total amount of \$380,000, less any payments received, shall be accelerated and due immediately. The Effective Date is the date on which the PAGA Settlement is approved through entry of an Order and Judgment and either (i) the California Court of Appeal or California Supreme Court has rendered a final decision or order affirming the Order and Judgment, or (ii) sixty-one (61) calendar days have passed since notice of entry of the Order and Judgment has been given to the Parties and no timely appeal or request for review has been made.

21. **PAGA Demographics.** Defendant has represented that there are approximately 638 Aggrieved Employees who collectively worked 31,551 pay periods during the PAGA Period. Defendant will provide a declaration verifying the financial distress Defendant claimed

requiring the delay in payment and the number of pay periods worked during the PAGA Period. The Gross PAGA Settlement Amount will increase proportionally with added workweeks if the number exceeds a 5% increase, by the amount of pay periods over the 5% increase.

22. Payments From the Gross PAGA Settlement Amount. The Parties agree to the following allocations to be paid from the Gross PAGA Settlement Amount:

a. PAGA Payment: The PAGA Payment is the total of the Gross PAGA Settlement Amount, less the payments for the Attorneys' Fees, Attorneys' Expenses and Costs, and Administration Costs, which shall be paid in full settlement of the Released PAGA Claims. Should the amount of the PAGA Payment increase or decrease, the amount to be distributed shall be adjusted according to the changes made by the Court. The PAGA Payment will be subject to Court approval consistent with Labor Code § 2699. Upon approval, the PAGA Payment shall be distributed as follows:

- (1) The PAGA Payment shall be paid as a Labor Code section 2699 civil penalty payment allocated pursuant to PAGA as follows: 75% of the PAGA Payment will be paid to the LWDA and 25% will be paid to the Aggrieved Employees as their Individual PAGA Payments. Each Individual PAGA Payment shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.
- (2) The penalty settlement payments set forth in section 4(a)(1) will be reported on IRS Form 1099s. The Parties acknowledge and agree that all payments under this Settlement Agreement as PAGA Payments are attributable as penalties. None are attributable as wages. Accordingly, the Parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA Payments under this Settlement Agreement.

b. Attorneys' Fees and Attorneys' Expenses: One-third of the Gross PAGA Settlement Amount, which is presently \$126,666.00, shall be paid to PAGA Counsel for payment of Attorneys' Fees, and up to \$15,000 shall be paid to PAGA Counsel for Attorneys' Expenses and Costs as set forth in the clients' billing statement (pursuant to Declarations by PAGA Counsel) in prosecuting the PAGA claims. Defendant shall not oppose Plaintiff's request for Attorneys' Fees and Attorneys' Expenses and Costs in these amounts. In the event that Court approval is required and a payment of less than One-third of the Gross PAGA Settlement Amount in Attorneys' Fees or \$15,000 in Attorneys' Expenses and Costs to PAGA Counsel is approved, the unawarded difference will be added to the PAGA Payment and not to PAGA Counsel or the Defendant, and will not affect approval of the settlement. PAGA Counsel agrees not to appeal any reduction in the award of Attorneys' Fees and/or Attorneys Expenses and Costs. This payment will be reported on IRS Form 1099 issued to PAGA Counsel. Except as set forth herein, each party shall bear their own costs and fees of the Action.

c. Administration Costs: A Settlement Administrator shall be selected after receipt of bids and shall be mutually agreed to by the Parties. Administration costs shall not exceed the estimate of the Settlement Administrator to administrate the settlement. Administration Costs shall include the cost of the Settlement Administrator selected by the Parties to administer the settlement in the amount of up to \$6,000. In the event that Court approval of these payments is required and a payment of less than \$6,000 is approved, or if the actual cost to administer the settlement is less than \$6,000, the difference will be added to the PAGA Payment.

d. Representative PAGA Release. In his capacity as a private attorney general "Aggrieved Employee" acting on behalf of the State of California and the Aggrieved Employees, and in consideration of the PAGA Payment and the payment to PAGA Counsel for Attorneys' Fees and Attorneys' Expenses and Costs, upon entry of the Judgment, the occurrence of the Effective Date and full funding, will release Defendant from any and all Released PAGA Claims.

23. Released PAGA Claims.

a. Upon entry of Judgment, the Effective Date and full funding, the Released Parties shall be entitled to a release from the State of California and the Aggrieved Employees for all "Released PAGA Claims". "Released PAGA Claims" means all PAGA claims for civil penalties under California Labor Code §§ 2698 *et seq.*, predicated on the California Labor Code claims that are asserted in the LWDA Notice and operative complaint which includes, but is not limited to, PAGA claims for civil penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1198, 2802 and applicable Industrial Welfare Commission Wage Orders. The Released PAGA Claims does not include underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability, and workers' compensation, and claims outside of the PAGA Period. The Released PAGA Claims do not include any claims that cannot be released as a matter of law. **In no event shall the release of the Released PAGA Claims in this Settlement Agreement release any individual claims of any individuals.**

b. In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle Plaintiff's individual claims pursuant to a separate confidential Individual Settlement Agreement. If the Court and/or the LWDA requires the Parties to submit the terms of Plaintiff's Individual Settlement Agreement to obtain approval of the PAGA settlement, the Parties agree that the terms of Plaintiff's Individual Settlement Agreement will only be submitted under seal or disclosed to the Court and/or LWDA in some other way to ensure that the Individual Settlement Amounts are not disclosed publicly.

24. Covenants and Representations by Plaintiff and PAGA Counsel.

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that he has read this Settlement Agreement, that he fully understands his rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

25. No Publicity. Neither Plaintiff nor PAGA Counsel shall issue a press release, hold a press conference, or otherwise publicize the settlement other than in documents submitted to the Court.

26. Court Approval of the PAGA Payment. Subject to Defendant's review and approval prior to filing, PAGA Counsel shall be responsible for preparing and filing a Motion for Approval of the PAGA Payment with the proposed Judgment ("Motion"). PAGA Counsel will provide Defendant's counsel with an opportunity for review and comments at least five business days before filing the Motion. The Motion shall also be served on the LWDA when filed with the Court. PAGA Counsel shall also submit this Motion with the Agreement to the LWDA at the time the Motion is filed, pursuant to Labor Code Section 2699(1)(2).

27. Court Approval of the PAGA Settlement. The Settlement Agreement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement Agreement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's questions or concerns. If after the Parties make at least three (3) good faith efforts, the Court does not approve this Settlement Agreement, or if appellate review is sought and on such review the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement are not approved or is materially modified or reversed or found to be invalid and the Parties in good faith do not believe that it would be possible to make non-material modifications that would address any concerns raised by the Court, then each of the Parties by and through Counsel shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

IV. ADMINISTRATION OF SETTLEMENT

28. After the execution of this Settlement Agreement, Plaintiff shall file the Motion and will submit the Motion and this Settlement Agreement on the LWDA consistent with Labor Code § 2699(1)(2).

29. Settlement Administrator will administer the settlement and shall be paid for Administration Costs, which are estimated to be up to \$6,000. Defendant will provide the necessary information about the Aggrieved Employees to the Settlement Administrator within fifteen (15) days of the approval of the PAGA settlement by the Court.

30. Within thirty (30) days after receipt of the Gross PAGA Settlement Amount from Defendant, the Settlement Administrator will issue to each Aggrieved Employee a check for their Individual PAGA Payment at their last known home address along with an explanatory letter

which will be mutually approved by the Parties. Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address, Social Security number, phone number, credit reporting and social media of the Aggrieved Employee involved and will then perform a re-mailing. If an Aggrieved Employees' check is not cashed within 120 days after its first mailing to the Aggrieved Employees the Settlement Administrator shall send the affected Aggrieved Employees notice informing them that unless their check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. All checks not cashed within 180 days of payment shall be paid to the State Controller Fund in the name(s) of the absent Aggrieved Employees, subject to Court approval and the Aggrieved Employees shall remain bound by the Settlement. The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099.

31. Within fifteen (15) days after receipt of the Gross PAGA Settlement Amount from Defendant, the Settlement Administrator will pay the Attorneys' Fees, the Attorneys' Expenses and Costs, the Administration Costs, and the portion of the PAGA Payment allocated to the LWDA from the Gross PAGA Settlement Amount.

32. The Settlement Administrator will provide an accounting under oath to the parties of the amounts paid out.

33. Defendant makes no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

34. Drafting. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

35. No Impact on Benefit Plans. Neither the Settlement Agreement nor any amounts paid to Plaintiff or any Aggrieved Employee under the Settlement Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plans, policy, or bonus program. Defendant retains the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and

bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

36. Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

37. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

38. Authority. Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind him to the terms and conditions of this Settlement Agreement.

39. Governing Law. This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Los Angeles County, California and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Los Angeles.

40. Complete Agreement. The Parties acknowledge and represent that this Settlement Agreement contains the entire understanding between them with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between them, written and oral, with respect to the subject matter hereof. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto or their successors-in-interest.

41. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the settlement of the Action as provided herein; or (ii) the settlement of the Action does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

42. Judgment and Continued Jurisdiction. After approval of this settlement, the Parties agree that the Court shall retain continuing jurisdiction over this case under CCP Section 664.6 to ensure the continuing implementation of the provisions of this settlement and that the time within which to bring this action to trial under CCP Section 583.310 shall be extended from the date of the signing of this Agreement by all Parties until the entry of the final order and judgment or if not entered the date this Agreement shall no longer be of any force or effect. In the event that the Court does not approve the Settlement, or if the final order and judgment is

reversed on appeal, then there shall be no Effective Date and this Agreement shall become null and void.

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

44. Execution in Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, this Agreement may be executed in one or more counterparts by facsimile, electronic signature, 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. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

45. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

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

47. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

48. Severability. If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

49. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms

and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

50. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

51. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement and receive approval from the Court.

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

53. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant or an admission or concession regarding the validity of the claims in the Action. Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation or lack of violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in any court that has as its purpose the interpretation, implementation, or enforcement of the Settlement Agreement or any orders or judgments of the Court entered into in connection therewith.

54. No Admission of Liability or Wrongdoing by Defendant. Defendant contends that all of its employees were compensated in compliance with the law, and that their conduct was not willful with respect to any alleged failure to pay any wages or penalties. Defendant has denied, and continues to deny, each of the claims and contentions alleged in the Action. Defendant has asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Neither this Settlement Agreement, nor any action taken to carry out the terms of this Settlement Agreement, shall ever be construed as, offered, admitted, received or deemed to be evidence in any civil, criminal, administrative, or other proceeding against Defendant or any of the Released Parties, or may be used as an admission, concession, or indication by or against Defendant of any fault, wrongdoing, or liability whatsoever.

55. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of the Settlement Agreement, Plaintiff and Defendant, inclusive, hereby waive any and all rights to appeal in connection with any issue in the Judgment, including, but not limited to, all rights to any post-judgment proceeding and/or appellate proceeding, such as a motion to vacate or set-aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment will become final and non-appealable at the time it is entered.

56. Stay of Litigation. The Parties agree that the continuing litigation of the Action shall be stayed and that the time within which to bring this action to trial under CCP Section 583.310 shall be extended from the date of the signing of this Settlement Agreement by all Parties until the entry of the final approval order and judgment or if not entered the date this Agreement shall no longer be of any force or effect.

57. Confidentiality. Plaintiff and PAGA Counsel agree not to disclose the terms of this settlement except in court papers or if required by the legal process (including submissions to the Court for purposes of obtaining approval of the settlement or submissions to the LWDA in order to comply with the requirements of PAGA), Neither the Parties nor their counsel Parties shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

58. Court Filings. The Parties agree not to object to any Court filings consistent with and/or effectuating this Agreement.

59. Disputes. Any dispute between the Parties as to the remaining terms of the Settlement Agreement shall be presented to the mediator, Jeff Krivis, for resolution.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained in this Settlement Agreement and hereby execute it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: Jul 19, 2022


Zebulon Neff (Jul 19, 2022 15:00 PDT)
ZEBULON NEFF

DEFENDANT:

Dated: 9-22-22

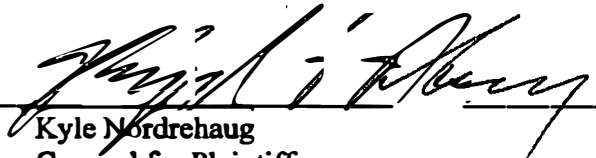
OAKHURST INDUSTRIES, INC.

By: 

APPROVED AS TO FORM AND CONTENT:

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Dated: 9/8/22

By: 
Kyle Nordrehaug
Counsel for Plaintiff

LITTLER MENDELSON P.C.

Dated: 9/27/2022

By: 
Alan S. Levins
Counsel for Defendant

EXHIBIT #2

BLUMENTHAL NORDREHAUG

BHOWMIK DE BLOUW LLP
2255 CALLE CLARA
LA JOLLA, CA 92037
(858) 551-1223

OCTOBER 3, 2022

ZEBULON NEFF

RE: FREUND BAKING CO.
FILE NUMBER: CA2196.001

ATTORNEY FEES

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
02/15/21	ND	REVIEW AND ANALYZE ARBITRATION AGREEMENT. LEGAL RESEARCH REGARDING ENFORCEABILITY. CALL WITH CLIENT TO DISCUSS FACTS SURROUNDING THE SIGNING OF THE AGREEMENT.	3.40	695	2,363.00
02/17/21	ND	REVIEW EMAILS AND DOCS FROM CLIENT REGARDING UNSAFE WORKING CONDITIONS AND PAGA CLAIMS. RESEARCH REGARDING THE SAME.	3.20	695	2,224.00
02/25/21	ND	REVIEW AND ANALYZE INTAKE NOTES. LEGAL RESEARCH REGARDING RELATED LITIGATION AGAINST DEFENDANT IN STATE AND FEDERAL COURTS. REVIEW DEFENDANT'S BUSINESS OPERATIONS IN CA. CONFERENCE WITH CLIENT.	3.00	695	2,085.00
02/26/21	ND	REVIEW EMPLOYMENT FILE FOR LEGAL CLAIMS. CONFERENCE WITH CLIENT. LEGAL RESEARCH REGARDING 226(A) VIOLATIONS. ANALYZE ALL PAY STUBS FOR REGULAR RATE VIOLATIONS.	4.00	695	2,780.00
02/27/21	ND	DRAFT ORIGINAL COMPLAINT.	4.50	695	3,127.50
03/01/21	ND	DRAFT COMPLAINT. LEGAL RESEARCH REGARDING OFF THE CLOCK COVID TEMPERATURE CHECKS. ANALYZE MEAL AND REST	4.50	695	3,127.50

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
		BREAK CLAIMS AND REVISE ALLEGATIONS. CALL WITH CLIENT TO DISCUSS.			
03/04/21	ND	ANALYZE PAGA PERIOD AND POTENTIAL PENALTIES. DRAFT CASE NOTES MEMO FOR INTEROFFICE USE.	2.00	695	1,390.00
03/11/21	ND	REVIEW COMPLAINT AND CASE FILE. DRAFT PAGA NOTICE.	1.90	695	1,320.50
05/17/21	SB	REVISE COMPLAINT FOR FILING	2.40	325	780.00
05/18/21	SB	REVIEW COMPLAINT FOR FILING, ANALYZE, ADVISE ND	2.80	325	910.00
06/03/21	RE	REVIEW & ANALYZE EMPLOYMENT FILE DOCUMENTS	2.30	475	1,092.50
06/04/21	RE	REVIEW CASE NOTES/DAMAGE ANALYSIS	0.70	475	332.50
06/04/21	RE	REVIEW/EDIT PAGA ONLY COMPLAINT; FINALIZE FOR SAME DAY FILING	2.20	475	1,045.00
06/04/21	RE	DRAFT SUMMONS, CIVIL COVER SHEET AND ADDENDUM/STATEMENT OF LOCATION RE PAGA ONLY ACTION	0.70	475	332.50
06/04/21	RE	REVIEW & FINALIZE PAGA ONLY COMPLAINT PACKAGE; FILE IN LA SUP. CT.	0.70	475	332.50
06/08/21	RE	REVIEW COURT RETURNED DOCUMENTS; MEMO TO FIRM RE INITIAL CMC AND DEPARTMENT/JUDICIAL ASSIGNMENT	0.60	475	285.00
06/08/21	RE	UPLOAD PAGA ONLY COMPLAINT TO LWDA WEBSITE; SAVE CONFIRMATION FOR FUTURE VERIFICATION OF NOTICE TO LWDA	0.40	475	190.00
06/15/21	RE	PREPARE INITIAL DOCUMENTS FOR SERVICE OF PROCESS; IDENTIFY REGISTERED AGENT; SEND OUT FOR SERVICE VIA KNOX	0.80	475	380.00

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
07/07/21	RE	FILE PROOF OF SERVICE OF SUMMONS; MEMO RE WRITTEN DISCOVERY COMMENCEMENT DATE	0.50	475	237.50
08/03/21	CJ	EVALUATE CASE STATUS IN LIGHT OF CASE TRANSFER TO VR, COMMUNICATE SAME TO VR	0.50	475	237.50
08/04/21	CJ	EVALUATE STATUS OF CASE AND CLAIMS, REVIEW CASE NOTES, EVALUATE STATUS OF DISCOVERY STAY, REQUEST KH PREPARE INITIAL ROUND OF DISCOVERY	0.75	475	356.25
08/09/21	KH	DRAFT INITIAL DISCOVERY PROPOUNDED TO DEFENDANT IN PAGA ACTION: FORM INTERROGATORIES, SET ONE; SPECIAL INTERROGATORIES, SET ONE; REQUEST FOR PRODUCTION, SET ONE; REQUEST FOR ADMISSIONS, SET ONE; PMK DEPOSITION NOTICE; BELAIRE WEST NOTICE.	1.60	250	400.00
08/23/21	CJ	EVALUATE CASE STATUS IN PREPARATION FOR CALL WITH DEFENDANT TO MEET AND CONFER, EVALUATE CRC AND COURT REQUIREMENTS, DETERMINE IF CASE IS RIPE FOR MEDIATION	0.75	475	356.25
08/23/21	CJ	CONDUCT MEET ADN CONFER CALL WITH DEFENDANT RE CMC AND MEDIATION	0.50	475	237.50
08/31/21	CJ	ANALYZE COMPLAINT AND CASE NOTES, DETERMINE WHEN CMC STATEMENT TO BE FILED, ANALYZE STATUS OF CASE AND CLAIMS, INCLUDING PRIOR CORRESPONDENCE WITH DEF	1.00	475	475.00
08/31/21	CJ	PREPARE CMC STATEMENT	0.50	475	237.50
09/01/21	KH	REVIEW/REVISE CASE MANAGEMENT STATEMENT; FINALIZE AND PREPARE INITIAL PROOF OF SERVICE; PREPARE FOR SUBMISSION TO COURT WITH MAIL SERVICE ON DEFENDANT;	0.60	250	150.00

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
		DRAFT CORRESPONDENCE TO DEFENSE COUNSEL CONFIRMING E-SERVICE ADDRESSES WITH COURTESY COPY OF PLAINTIFF'S CM STATEMENT.			
09/16/21	CJ	PREPARE FOR CMC BY EVALUATING CASE FILE, STATUS OF WHITEHER MEDIATION HAS BEEN SET, DETERMINE WHEN TRIAL DATES MAY BE SET IN LIGHT OF POTENTIAL MEDIATION	1.00	475	475.00
09/16/21	CJ	APPEAR AT CMC, DOWNLOAD DEPT. 71 GUIDELINES RE TRIAL, MEMORIALIZE CMC SUBJECTS COVERED TO FIRM	1.00	475	475.00
01/31/22	PM	REVIEW CLIENT DOCUMENTS AND ANALYZE ARB AGREEMENT.	0.50	550	275.00
02/16/22	CJ	PREPARE FOR AND CONDUCT MEET AND CONFER CALL WITH DEFENSE COUNSEL RE DATA AND DOCUMENTS NEEDED FOR MEDIATION	1.00	475	475.00
02/17/22	CJ	EVALUATE TIME CARDS AND DETERMINE BEST DATA TO REQUEST FROM DEF	0.50	475	237.50
02/28/22	PM	REVIEW DEF CORRESPONDENCES; ADVISE CJ RE NEXT STEPS.	0.50	550	275.00
03/04/22	CJ	ANALYZE STATUS OF DISCOVERY FOR MEDIATION, DETERMINE TIMING FOR TIME RECORDS AND STRATEGIZE HOW TO ADDRESS SAMPLING	0.50	475	237.50
03/07/22	CJ	PREPARE FOR AND CONDUCT T/C WITH OPC RE MEDIATION DATA AND DOCUMENTS, MEMORIALIZE SAME TO PARTNERS	1.00	475	475.00
03/10/22	CJ	EVALUATE DEF'S POSITION RE MEDIATION OF ALL AES VERSUS SOME AES (DEF CLAIMS ARE NOT AT ISSUE), ADVISE PM AND AJB, RESEARCH CASE LAW, CRAFT CORRESPONDENCE RE ALL AES	1.00	475	475.00

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
		NEEDED, CITE TO HUFF, DETERMINE IF FURTHER CALL NEEDED HERE			
03/11/22	CJ	CONTINUE EVALAUTION OF TIME CARDS ISSUE AND CONDUCT T/C WITH DEF RE SCOPE OF MEDAITION AND SAMPLING OT TIME CARDS, ADVISE PM AND AJB	1.00	475	475.00
03/16/22	CJ	CONDUCT T/C WITH OPC RE MEDIATION DATA AND DOCS, ADVISE AJB	0.75	475	356.25
04/01/22	ND	REVIEW AND ANALYZE DATA FOR MEDIATION PURPOSES. ANALYZE CASE FILE AND COURT DOCKET. CALL WITH CLIENT TO DISCUSS CLAIMS AND FACTS FOR MEDIATION BRIEF.	4.50	695	3,127.50
04/02/22	ND	REVIEW PAYSTUBS FOR REGULAR RATE AND 226(A) CLAIMS. LEGAL RESEARCH REGARDING THE SAME.	3.80	695	2,641.00
04/03/22	ND	DRAFT MEDIATION BRIEF. ANALYZE FACTS AND LAW.	5.00	695	3,475.00
04/04/22	ND	ANALYZE TIME PUNCH DATA. LEGAL RESEARCH REGARDING DONOHUE DECISION AND OTHER MEAL BREAK CASES.	3.10	695	2,154.50
04/06/22	ND	REVIEW AND REVISE MEDIATION BRIEF. ANALYZE EXHIBITS THERETO.	3.90	695	2,710.50
04/15/22	ND	REVIEW PREVIOUS PAGA SETTLEMENTS WITH SIMILAR CLAIMS AND PAY PERIODS FOR MEDIATION VALUATION.	2.80	695	1,946.00
04/16/22	ND	ANALYZE RELATED LITIGATION AND OVERLAP WITH CURRENT CASE. REVIEW AND ANALYZE EXPERT PENALTY REPORT AND NOTES AND ASSUMPTIONS. PREPARE FOR MEDIATION.	4.10	695	2,849.50
04/19/22	RE	REVIEW & ADVISE AJ RE MEDIATION BRIEF DRAFT; PULL EXHIBITS; FORWARD TO AJ TO REVIEW &	2.20	475	1,045.00

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
		FINALIZE			
04/22/22	SB	SPEAK WITH CLIENT IN ADVANCE OF MEDIATION, ANALYZE CLAIMS, ADVISE AJB	2.80	325	910.00
04/25/22	SB	PREPARE FOR MEDIATION, REVIEW MEDIATION BRIEF, ADVISE AJB	2.80	325	910.00
04/26/22	AJB	PREP AND APPEAR FOR MEDIATION.	10.00	725	7,250.00
04/26/22	SB	ATTEND MEDIATION	8.00	325	2,600.00
04/28/22	ND	REVIEW MOU TERMS. CONFERENCE WITH CLIENT TO DISCUSS. EMAIL CLIENT TERMS AND EXPLANATIONS OF MOU. FOLLOW UP FOR SIGNATURE.	1.20	695	834.00
04/29/22	NBB	REVIEW MOU, ANALYZE FOR SETTLEMENT ISSUES. ADVISE RE.	2.00	795	1,590.00
05/11/22	CJ	RESEARCH STATUS OF CASE, PRIOR ORDERS ADN CASE NOTES, DETERMINE WHETHER SETTLEMENT WAS REAHED AT MEDIATION, DRAFT CMC ST ADN SENT FOR FINALIZATION AND SERVICE	1.00	475	475.00
05/12/22	KH	REVIEW DRAFT CASE MANAGEMENT STATEMENT; TRANSFER TO REVISED FORM; FINALIZE WITH UPDATED SERVICE LIST; PREPARE FOR SUBMISSION TO COURT AND E-SERVICE ON ALL COUNSEL.	0.60	250	150.00
05/16/22	RE	REVIEW MOU; DRAFT LONG FORM PAGA SETTLEMENT AGREEMENT	4.50	475	2,137.50
05/16/22	RE	DRAFT INDIVIDUAL SETTLEMENT AGREEMENT RE ZEBULON NEFF	2.50	475	1,187.50
05/17/22	NBB	REVIEW PAGA AGREEMENT, ANALYZE.	2.00	795	1,590.00
05/24/22 17	KN	REVIEW & REVISE DRAFT AGREEMENT; EMAIL DEF	2.50	750	1,875.00
05/27/22	CJ	PREPARE FOR AND APPEAR AT CMC,	1.50	475	712.50

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
		MEMORIALIZE SAME TO FIRM			
07/19/22	ND	REVIEW SETTLEMENT AGREEMENT FOR CONFORMITY WITH MOU. SEND TO CLIENT FRO APPROVAL AND SIGNATURE. EXPLAIN SETTLEMENT APPROVAL PROCESS.	1.10	695	764.50
		<u>TOTAL BILLED HOURS</u>			
		A.J.BHOWMIK	10.00 hr @ 725.00	\$	7,250.00
		CHARLOTTE JAMES	14.25 hr @ 475.00	\$	6,768.75
		KARLA HORNE	2.80 hr @ 250.00	\$	700.00
		KYLE NORDREHAUG	2.50 hr @ 750.00	\$	1,875.00
		NORMAN BLUMENTHAL	4.00 hr @ 795.00	\$	3,180.00
		NICK DEBLOUW	56.00 hr @ 695.00	\$	38,920.00
		PIYA MUKHERJEE	1.00 hr @ 550.00	\$	550.00
		RICO EHMANN	18.10 hr @ 475.00	\$	8,597.50
		SCOTT BLUMENTHAL	18.80 hr @ 325.00	\$	6,110.00
		TOTAL PROFESSIONAL SERVICES	127.45		<u>\$ 73,951.25</u>
		COSTS ADVANCED			
03/11/21		PAGA FILING FEE			75.00
06/03/21		MESSENGER - KNOX			138.55
06/08/21		ONELEGAL FILING FEE			464.51
07/08/21		ONELEGAL/FILING FEE			39.38
07/08/21		ONELEGAL/FILING FEE			16.68
09/01/21		ONELEGAL FILING FEE			16.68
10/06/21		MEDIATION FEES - KRIVIS - FIRST MEDIATION.			9,000.00
04/28/22		BERGER CONSULTING GROUP			2,562.50
05/12/22		ONE LEGAL FILING FEE			<u>17.19</u>
		TOTAL COSTS ADVANCED			<u>\$ 12,330.49</u>
		TOTAL CURRENT CHARGES			<u>\$ 86,281.74</u>

EXHIBIT #3

Activities Export

10/03/2022
2:55 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
07/06/2022	 Unbilled	Begin draft of Motion to Approve PAGA Settlement	CA2196 Oakhurst Industries (Freund Baking)	Ricardo Ehmann	2.00h	\$475.00	-	\$950.00
07/06/2022	 Unbilled	Review agreement, analyze re settlement issues. Outline PAGA app motion.	CA2196 Oakhurst Industries (Freund Baking)	Norm Blumenthal	2.50h	\$795.00	-	\$1,987.50
07/07/2022	 Unbilled	Draft Motion to Approve PAGA settlement (cont)	CA2196 Oakhurst Industries (Freund Baking)	Ricardo Ehmann	2.00h	\$475.00	-	\$950.00
07/07/2022	 Unbilled	Review and Revise Agreement; email Defendant; memo to RE	CA2196 Oakhurst Industries (Freund Baking)	Kyle Nordrehaug	2.50h	\$750.00	-	\$1,875.00
07/13/2022	 Unbilled	Draft proposed order re motion to approve PAGA settlement	CA2196 Oakhurst Industries (Freund Baking)	Ricardo Ehmann	0.70h	\$475.00	-	\$332.50
07/13/2022	 Unbilled	Finish draft of motion to approve PAGA settlement; update tables/ cites; create clean and redline for partner review; forward to KN/NB for review	CA2196 Oakhurst Industries (Freund Baking)	Ricardo Ehmann	2.50h	\$475.00	-	\$1,187.50
07/19/2022	 Unbilled	Review and revise Agreement for final; email Def; memo to staff	CA2196 Oakhurst Industries (Freund Baking)	Kyle Nordrehaug	1.00h	\$750.00	-	\$750.00
09/12/2022	 Unbilled	Review and revise motion for PAGA approval; work on issues re motion and exhibits; email	CA2196 Oakhurst Industries (Freund Baking)	Kyle Nordrehaug	2.75h	\$750.00	-	\$2,062.50
					18.95h		\$0.00 0.00h	\$12,345.00 18.95h

Activities Export

10/03/2022
2:55 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
		Defendant						
		● Unbilled						
09/26/2022	🕒	Review and revise motion for PAGA approval; email Def re signatures	CA2196 Oakhurst Industries (Freund Baking)	Kyle Nordrehaug	1.00h	\$750.00	-	\$750.00
		● Unbilled						
10/03/2022	🕒	Draft declaration; review and revise motion for final	CA2196 Oakhurst Industries (Freund Baking)	Kyle Nordrehaug	2.00h	\$750.00	-	\$1,500.00
		● Unbilled						
					18.95h		\$0.00 0.00h	\$12,345.00 18.95h

Activities Export

10/03/2022
2:54 PM

Date	Type	Description	Matter	User	Qty	Rate (\$)	Non-billable (\$)	Billable (\$)
10/03/2022	\$	Filing fee - motion	CA2196	Kyle	1.00	\$61.65	-	\$61.65
	●	Unbilled	Oakhurst Industries (Freund Baking)	Nordrehaug				
							\$0.00 0.00h	\$61.65 0.00h

EXHIBIT #4

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

Fax: (858) 551-1232

FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

Victoria Rivapalacio

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

Ricardo Ehmann

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

Jeffrey S. Herman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

Educated: University of Michigan (B.A. 2008); California Western School of Law (J.D. 2011)

Charlotte James

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

Christine Levu

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

Andrew Ronan

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

CLASS ACTION & REPRESENTATIVE CASES

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Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior County, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

EXHIBIT #5

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WRITERS EXT:

1004

March 11, 2021

CA2196

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Oakhurst Industries, Inc.
Certified Mail #70203160000068263428
Jonathan Freund
2050 Tubeway Ave.
Commerce, CA 90040

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Oakhurst Industries, Inc. in California and classified as non-exempt employees during the time period of March 11, 2020 until a date as determined by the Court. Our offices represent Plaintiff Zebulon Neff (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Oakhurst Industries, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a Warehouse Associate from July of 2019 to July of 2020 and classified as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10)

minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 was paid online to the LWDA. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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2 Kyle R. Nordrehaug (State Bar #205975)

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6 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 ZEBULON NEFF, on behalf of the State
11 of California, as a private attorney
general,

12 Plaintiff,

13 vs.

14 OAKHURST INDUSTRIES, INC., a
15 California Corporation; and Does 1 through
50, Inclusive;

16 Defendants.

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 246, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

1 Plaintiff Zebulon Neff (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Oakhurst Industries, Inc.
8 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit individuals to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Oakhurst Industries, Inc. (“DEFENDANT”) is a Corporation that at
24 all relevant times mentioned herein conducted and continues to conduct substantial and regular
25 business throughout California.

26 5. DEFENDANT was founded in 1981. The Company's line of business includes the
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1 manufacturing of fresh and frozen bread, bread-type rolls, cakes, pies, and other perishable
2 bakery products.

3 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
4 employee entitled to overtime pay and meal and rest periods from July of 2019 to July of 2020.
5 PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-
6 exempt employee entitled to be paid minimum and overtime wages and provided meal and rest
7 periods.

8 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to
11 himself and all individuals who are or previously were employed by DEFENDANT in
12 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
13 during the time period of March 4, 2020 until a date as determined by the Court (the "PAGA
14 PERIOD").

15 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
16 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
17 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
18 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 246,
19 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
20 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
21 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
22 within the meaning of Labor Code § 2699, *et seq.*

23 9. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
25 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
26 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
27 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
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1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

5 10. The agents, servants and/or employees of the Defendants and each of them acting
6 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
7 agent, servant and/or employee of the Defendants, and personally participated in the conduct
8 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
9 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
10 all Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED
11 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
12 agents, servants and/or employees.

13 14 **THE CONDUCT**

15 11. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
16 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
17 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
19 time worked, meaning the time during which an employee was subject to the control of an
20 employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required these employees to work off the clock without paying them for all the
22 time they were under DEFENDANT's control. DEFENDANT, as a matter of established
23 company policy and procedure, administered a uniform practice of rounding the actual time
24 worked and recorded by PLAINTIFF and AGGRIEVED EMPLOYEES, always to the benefit
25 of DEFENDANT, so that during the course of their employment, PLAINTIFF and
26 AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been paid
27 for actual recorded time rather than "rounded" time. DEFENDANT's policy and practice not
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1 to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced
2 by DEFENDANT's business records. Additionally, DEFENDANT required PLAINTIFF to
3 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF was from time to time interrupted by work assignments. As a result, PLAINTIFF
5 and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation
6 by working without their time being accurately recorded and without compensation at the
7 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
8 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
9 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

10 12. State and federal law provides that employees must be paid overtime at one-and-
11 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
12 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
13 employee's performance.

14 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
15 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
16 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
17 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
18 hourly basis with incentive compensation when the employees met the various performance
19 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
20 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
21 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
22 of calculating overtime pay. Management and supervisors described the incentive program to
23 potential and new employees as part of the compensation package. As a matter of law, the
24 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
25 be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
26 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
27 DEFENDANT.

1 14. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
3 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
5 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
6 compensation as required by California law which allowed DEFENDANT to illegally profit and
7 gain an unfair advantage over competitors who complied with the law. To the extent equitable
8 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
9 PAGA PERIOD should be adjusted accordingly.

10 15. As a result of their rigorous work schedules, PLAINTIFF and other
11 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
12 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
14 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
15 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
16 off-duty meal period from time to time in which these employees were required by
17 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
18 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
19 accordance with DEFENDANT's corporate policy and practice.

20 16. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were from time to time also required to work in excess of four (4) hours without being provided
22 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
23 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
24 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
25 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
26 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
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1 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
2 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
3 managers. Additionally, the applicable California Wage Order requires employers to provide
4 employees with off-duty rest periods, which the California Supreme Court defined as time
5 during which an employee is relieved from all work related duties and free from employer
6 control. In so doing, the Court held that the requirement under California law that employers
7 authorize and permit all employees to take rest period means that employers must relieve
8 employees of all duties and relinquish control over how employees spend their time which
9 includes control over the locations where employees may take their rest period. Employers
10 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
11 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
12 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
13 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
14 not leave the work premises during their rest period.

15 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
16 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
17 and other non-exempt employees earned non-discretionary remuneration, including but not
18 limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular
19 rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
20 EMPLOYEES their base rates of pay.

21 18. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
22 employment are due and payable twice during each calendar month, on days designated in
23 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
24 requires employers to pay employees all wages owed within seven (7) days of the close of the
25 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
26 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
27 payroll period.

1 20. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
2 to collect or receive from an employee any part of wages theretofore paid by said employer to
3 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
4 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
5 PLAINTIFF and AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions
6 from compensation payable to PLAINTIFF and AGGRIEVED EMPLOYEES, and thereby
7 failed to pay these employees all wages due at each applicable pay period and upon termination.

8 21. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
9 employees with an accurate itemized wage statement in writing showing, among other things,
10 gross wages earned and all applicable hourly rates in effect during the pay period and the
11 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
12 failed to provide to PLAINTIFF and the AGGRIEVED EMPLOYEES wage statements that
13 identify the correct gross and net wages earned, the applicable number of hours worked and
14 rates of pay. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES were paid on an
15 hourly basis. As such, the wage statements should reflect all applicable hourly rates during the
16 pay period and the total hours worked, and the applicable pay period in which the wages were
17 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
18 provided to PLAINTIFF and other AGGRIEVED EMPLOYEES failed to identify such
19 information. More specifically, the wage statements failed to identify the accurate total hours
20 worked each pay period. When the hours shown on the wage statements were added up, they
21 did not equal the actual total hours worked during the pay period. Aside, from the violations
22 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF and other
23 AGGRIEVED EMPLOYEES an itemized wage statement that lists all the requirements under
24 California Labor Code 226 *et seq.*

25 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
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1 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
2 2802, employers are required to indemnify employees for all expenses incurred in the course
3 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
4 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
5 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
6 directions of the employer, even though unlawful, unless the employee, at the time of obeying
7 the directions, believed them to be unlawful."

8 23. In the course of their employment PLAINTIFF and other AGGRIEVED
9 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
10 cellular phones as a result of and in furtherance of their job duties as employees for
11 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
12 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
13 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
14 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
15 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
16 for the benefit of DEFENDANT.

17 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
18 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
19 to accurately calculate and record the correct overtime rate for the overtime worked by
20 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
21 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
22 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
23 calculate and/or pay all required overtime compensation for work performed by the
24 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
25 promulgated thereunder as herein alleged.

26 25. All of the conduct and violations alleged herein occurred during the PAGA
27 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
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1 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
2 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
3 AJDAR 12157 (Certified for Publication 12/19/18).

4
5 **JURISDICTION AND VENUE**

6 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure, Section 410.10.

8 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
10 maintained offices and facilities in this County and/or conducts substantial business in this
11 County, and (ii) committed the wrongful conduct herein alleged in this County against
12 PLAINTIFF and the AGGRIEVED EMPLOYEES.

13 **FIRST CAUSE OF ACTION**

14 **For Violation of the Private Attorneys General Act**

15 **[Cal. Lab. Code §§ 2698, *et seq.*]**

16 **(By PLAINTIFF and Against All Defendants)**

17 28. PLAINTIFF realleges and incorporates by this reference, as though fully set
18 forth herein, the prior paragraphs of this Complaint.

19 29. PAGA is a mechanism by which the State of California itself can enforce state
20 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
21 the state's labor law enforcement agencies. An action to recover civil penalties under
22 PAGA is fundamentally a law enforcement action designed to protect the public and not to
23 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
24 but to create a means of "deputizing" citizens as private attorneys general to enforce the
25 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
26 public interest to allow aggrieved employees, acting as private attorneys general to recover
27 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
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1 claims cannot be subject to arbitration.

2 30. PLAINTIFF, and such persons that may be added from time to time who
3 satisfy the requirements and exhaust the administrative procedures under the Private
4 Attorney General Act, brings this Representative Action on behalf of the State of California
5 with respect to himself and all individuals who are or previously were employed by
6 DEFENDANT in California and who were classified as non exempt employees
7 (“AGGRIEVED EMPLOYEES”) during the time period of March 4, 2020 until a date as
8 determined by the Court (the "PAGA PERIOD").

9 31. On March 4, 2021, PLAINTIFF gave written notice by electronic mail to the
10 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
11 employer of the specific provisions of this code alleged to have been violated as required by
12 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
13 herein. The statutory waiting period for PLAINTIFF to add these allegations to the
14 Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
15 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
16 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

17 32. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
19 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
20 properly record and provide legally required meal and rest periods, (c) failed to pay
21 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
22 reimburse employees for required expenses, and (f) failed to provide wages when due, all in
23 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
24 *et seq.*, 210, 221, 226(a), 226.7, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
25 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
26 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
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1 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
2 Labor Code Private Attorney General Act of 2004 as the representative of the State of
3 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15 Dated: March 11, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
16 LLP

17
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19 By: _____
20 Norman B. Blumenthal
21 Attorneys for Plaintiff
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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EXHIBIT 1

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EXHIBIT #6



CASE ASSUMPTIONS

Class Members	650
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	650
Subtotal Admin Only	\$5,000.00

Not-to-Exceed Total \$5,000.00

For 650 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

July 7, 2022

Case: Oakhurst PAGA Administration

Phoenix Contact: Jodey Lawrence
Contact Number: 949.566.1455
Email: Jodey@phoenixclassaction.com

Requesting Attorney: Kyle Nordrehaug
Firm: BNBD
Contact Number: (858) 367-9913
Email: kyle@bamlawca.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.
Estimate is based on 650 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	1	\$100.00
Programming Database & Setup	\$100.00	1	\$100.00
Toll Free Setup*	\$48.70	1	\$48.70
Call Center & Long Distance	\$2.00	65	\$130.00
NCOA	\$0.25	650	\$162.50
Total			\$541.20

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	1	\$125.00
Data Merge & Duplication Scrub	\$0.25	650	\$162.50
Notice and Check Packet	\$1.50	650	\$975.00
Estimated Postage (up to 1 oz.)*	\$0.58	650	\$377.00
Total			\$1,639.50

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	2	\$100.00
Skip Tracing Undeliverables	\$1.50	98	\$146.25
Remail Notice Packets	\$1.50	98	\$146.25
Estimated Postage	\$0.58	98	\$56.55
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$549.05

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	1	\$125.00
Case Manager	\$125.00	1	\$125.00
Total			\$250.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	1	\$125.00
Disbursement Review	\$125.00	1	\$125.00
Programming Manager	\$125.00	1	\$125.00
QSF Bank Account & EIN	\$50.00	1	\$50.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Total			\$675.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	2	\$250.00
Remail Undeliverable Checks (Postage Included)	\$1.50	124	\$185.25
Case Associate	\$50.00	1	\$50.00
Reconcile Uncashed Checks	\$85.00	1	\$85.00
Conclusion Reports	\$75.00	1	\$75.00
Case Manager Conclusion	\$75.00	1	\$75.00
Final Reporting & Declarations	\$125.00	1	\$125.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$350.00	1	\$350.00
Check to Cy-Pres	\$150.00	0	Included
Uncashed Checks to the State of California Controllers Office	\$150.00	1	\$150.00
Estimated <u>7</u> Total Class Members			
Total			\$1,345.25

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$5,000.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT #7

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ZEBULON NEFF, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

OAKHURST INDUSTRIES, INC., a
California Corporation; and Does 1 through
50, Inclusive,

Defendants.

Case No. 21STCV21110

PROOF OF SERVICE

Hearing Date: October 24, 2022

Hearing Time: 9:30 a.m.

Reservation ID: 605525466076

Judge: Hon. Monica Bachner

Dept.: 71

Action Filed: June 4, 2021

Trial Date: Not Set

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Kyle Nordrehaug am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On October 3, 2022, I served the document(s) described as:

1. **NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT; and, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
2. **DECLARATION OF KYLE NORDREHAUG IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT**
3. **[PROPOSED] ORDER APPROVING PAGA SETTLEMENT AND JUDGMENT**

X (BY ELECTRONIC SERVICE): I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

Alan S. Levins, Esq.
Robert Geiger, Esq.
LITTLER MENDELSON P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104

Attorneys for Defendant
Oakhurst Industries, Inc.

Emails: alevins@littler.com; RGeiger@littler.com
T: 415.433.1940; F: 415.399.8490

X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the LWDA.

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

Executed on October 3, 2022, at San Diego, California.


Kyle Nordrehaug