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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

AHMAD ZUBAIR HUSSAINI, individually
and on behalf of all other similarly situated
employees,

Plaintiff,

vs.

INTEGRATED RESOURCES, INC., a
California Corporation; SIEMENS
MOBILITY, INC., a Delaware Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00297152

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 25*

CLASS ACTION

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. 2662354

Date: November 4, 2022

Time: 9:00 a.m.

Dept.: 25

Filed: March 23, 2021

FAC Filed: May 12, 2021

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Ahmad Zubair Hussaini (“Plaintiff”) herein. I am
4 making this declaration on behalf of the named Plaintiff, the putative class members, and in support of
5 Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”). A true
6 and correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendants Integrated Resources, Inc., and Siemens Mobility, Inc., (“Defendants”) 1) Failure to
10 Pay Overtime Wages 2) Failure to Pay Minimum Wages 3) Meal Period Violations 4) Rest Period
11 Violations 5) Wage Statement Violations 6) Waiting Time Penalties 7) Failure to Reimburse Expenses
12 8) Unfair Competition 9) Private Attorneys General Act. Plaintiff also alleged liability for civil
13 penalties under the Private Attorneys General Act (“PAGA”). These claims were based on allegations
14 that Defendants violated California law by 1) failing to properly record and pay for all hours worked
15 due to rounding and requiring off-the-clock work, 2) failing to authorize and permit timely meal
16 periods and/or a second meal period and third rest period, 3) failing to reimburse for use of cell phone
17 required to track employees time, 4) failing to reimburse travel expenses required as part of the
18 employees position, and 5) failing to pay daily overtime. The PAGA, waiting time penalty, wage
19 statement violation, and unfair competition claims also derive from these violations.

20 3. Plaintiff is the only named representative in this matter. From our initial investigations
21 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
22 class action. We began our investigations on these claims in September 2020. After numerous
23 discussions and review of the documents, we filed the action on or about March 23, 2021. Plaintiff
24 exhausted administrative remedies through the Labor and Workforce Development Agency (“LWDA”)
25 prior to amending the Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on
26 March 4, 2021, setting forth the facts and theories of liability. A true and correct copy of the notice
27 filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent
28 to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time.

1 There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's
2 notice for more than 65 days. As such, Plaintiff became authorized to commence a civil action under
3 the PAGA and filed a First Amended Complaint on May 12, 2021. A true and correct copy of
4 Plaintiff's operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was
5 uploaded to the LWDA on June 21, 2021, after we received an endorsed copy back from Court.

6 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

7 5. Defendants are represented in this matter by Constangy, Brooks, Smith & Prophete, LLP
8 and Baker & Hostetler LLP. From the beginning, Defendants have contested the merits of this case, the
9 suitability of the case for class action or representative treatment, the manageability of the case at trial,
10 and Plaintiff's ability to prove a violation in each pay period for each employee among other defenses
11 and contentions they made challenging the propriety of this action. Defendants further contended, even
12 assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely
13 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
14 attempts to comply with California Labor Code obligations by Defendants. Notwithstanding its
15 agreement to settle this matter, Defendants believe the practices Plaintiff is contending are unlawful
16 either do not exist or, to the extent they do exist, fully comply with all state and federal employment
17 laws with respect to Plaintiff and Class Members. Also, Defendants have contended that this matter is
18 not appropriate for class certification outside of this proposed class settlement.

19 6. Based on the expected testimony from Plaintiff and Class Members, a review of
20 Defendants' policies and procedures and other documents relating to the alleged claims, information on
21 the number of Class Members, Class Members' dates of employment, and a representative sample of
22 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
23 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
24 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
25 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
26 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
27 potential class certification issues as well as the uncertainty of class certification, the difficulties of
28 complex litigation, and the lengthy process of establishing specific damages and various possible delays

1 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
2 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
3 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
4 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I
5 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
6 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

7 7. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along
8 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for
9 such claims. The parties engaged in informal discovery and exchange of documents, including a
10 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
11 for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all
12 aspects of the asserted claims, including certification issues, merits issues, damages, the scope and
13 configuration of Class Members, the content and implementation of the wage and hour policies at issue,
14 issues relating to manageability concerns at trial, among other relevant areas. From this production we
15 were able to determine information critical to a reliable damages analysis such as the average hourly
16 rate, average daily hours worked, average number of workweeks and pay periods that had potential
17 violations based on the asserted claims, the frequency with which violations occurred in a given week
18 and/or pay period, and the number of former employees. This information allowed my office to assess
19 both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this
20 litigation including providing factual information relating to Plaintiff's and Class Members' employment
21 conditions, providing a substantial number of documents, and answering questions regarding
22 Defendants' factual contentions in this matter. This was important because it directly related to our
23 ability to maintain this case as a class action and our ability to obtain a favorable settlement for the class.

24 8. Throughout this litigation our office had numerous communications with Defendants'
25 Counsel discussing our respective positions. The parties engaged in mediation on April 7, 2022, using
26 an experienced mediator, Glenn E. Lerman. It was only after approximately two (2) years of extensive
27 investigation and arm's length negotiations that the parties were able to reach a settlement. The Parties
28 were not able to settle the matter at mediation and continued to negotiate and review further data

1 regarding Class Members. After further discussions facilitated by Mr. Lerman, the Parties accepted a
2 mediator's proposal to resolve the claims approximately four (4) months after mediation. The
3 negotiations were at all times contentious and adversarial, though still professional in nature.

4 9. The parties reviewed and analyzed substantial amounts of data regarding the class
5 claims. Based on our analysis and review of all relevant documents and Class Member information, I
6 have determined that the maximum likely damages for the asserted class claims is approximately
7 \$10,531,655, which includes civil penalties under the PAGA. The maximum likely exposure for
8 PAGA penalties is approximately \$4,193,350 based on the counts alleged to the LWDA and the class
9 data. Based on our research, we did not find any prior Labor Commissioner or court decisions that
10 stated Defendants' practices and/or policies were improper. As such, a "subsequent violation" may not
11 be found for penalty calculation purposes and the exposure analysis here is based on an "initial
12 violation" valuation being adopted by any fact finder if this matter went to trial. Additionally, there
13 were a number of documents and factual issues where it is likely that a "good faith dispute" may be
14 found such that liquidated damages on unpaid minimum wages and waiting time penalties may not be
15 awarded. *See* Cal. Code Regs., tit. 8, § 13520; Cal. Lab. Code § 1194.2(b). Because Plaintiff could
16 win on the underlying violation, but still lose these additional remedies based on a good faith dispute,
17 amounts associated with any waiting time penalties claims and liquidated damages on unpaid minimum
18 wages were excluded from the valuation analysis.

19 10. I believe the PAGA penalties in this case may be reduced due to the fact that the
20 penalties would be in addition to amounts owed for substantive violations and much of the penalties are
21 based on violations due to technical non-compliance with the Labor Code. Furthermore, Defendants
22 produced a substantial number of documents that a Court may find demonstrates a good faith attempt at
23 compliance that merits the reduction of civil penalties. Courts regularly cut civil penalties on PAGA
24 claims where statutory penalties for the same violations are assessed as well. Courts are statutorily
25 authorized to use discretion to reduce penalties and the range of discretion used varies substantially.
26 *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
27 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
28 Thus, civil penalties may be cut to approximately \$754,803.00 (82% reduction) or lower given the

1 derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on
2 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
3 would be approximately \$7,093,108.00. Taking this into account, Plaintiff's \$395,000 gross recovery
4 under the Agreement represents approximately 5.6% of the maximum likely value in this matter. After
5 deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs,
6 any Enhancement Payment to the Class Representative, estimated Settlement Administrator Costs, and
7 the 75% portion of the PAGA Payment to the LWDA, the net recovery under the Agreement represents
8 approximately 3% of the maximum likely value in this matter. Based on the data provided and
9 reviewed mediation and the negotiations that following during the approximately four (4) months
10 thereafter, the number of Class Members is at the time of mediation was approximately 1,051 and the
11 estimated number of Aggrieved Employees was 263. The average net payment to Class Members will
12 be approximately \$196.72. I believe the Agreement represents a reasonable compromise of claims
13 based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now
14 and ensure Class Members receive some compensation, rather than proceed to further litigation and
15 potentially recover nothing, was a motivating factor in reaching this Agreement.

16 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office
17 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
18 settlement or judgment should we recover a monetary amount. We took a risk that we would not
19 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
20 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
21 make sure employees are able to find affordable representation in order to ensure that employers are
22 complying with all their legal obligations towards employees and paying employees all their hard-
23 earned wages.

24 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
25 practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I
26 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
27 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
28 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the

University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In September 2018, I was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment Arbitration in California." In July 2020, I was a panel speaker for the Association of Defense Counsel of Northern California & Nevada presentation of "Class Actions and PAGA Claims." My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);

- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);

- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);

- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

14. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

15. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the

1 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
2 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
3 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
4 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
5 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
6 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
7 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
8 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
9 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
10 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
11 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
12 as a Super Lawyer from 2014 to present.

13 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
14 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
15 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
16 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
17 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
18 Federal Courts, including up to certification, settlement, preliminary and final approval, and
19 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
20 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
21 include the following:

- 22 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 23 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 24 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 25 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 26 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 27 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 28 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);

- 1 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 2 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 3 Sup. Ct.);
- 4 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 5 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 6 Ct.);
- 7 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 8 Ct.);
- 9 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 10 Sup. Ct.);
- 11 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 12 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 13 Ct.);
- 14 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 15 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 16 00209613 (Sac. Sup. Ct.);
- 17 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 18 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 19 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 20 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 21 (San Joaquin Sup. Ct.);
- 22 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 23 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 24 Sup. Ct.);
- 25 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 26 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 27 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
- 28 Sup. Ct.);

- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);

- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

17. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

18. In connection with any final approval hearing, I will be seeking attorneys' fees and costs, an Enhancement Payment to the Class Representative, and Settlement Administrator Costs as set forth in the Agreement. I will be requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law supporting the requested amounts will be set forth in the final approval motion, including information for the Court to perform a lodestar cross check of the requested attorney's fees, quantify the amount of time spent by Plaintiff on this case and any further risks and/or burdens incurred as a result of acting as Class Representative, and an updated declaration in support of actual litigation costs. The expected costs through final approval are not expected to exceed \$15,000. Attached as Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion and the expected costs incurred through the final approval and fairness hearing. Any difference in the awarded fees and costs, Class Representative Enhancement Payment, and Settlement Administrator Costs and the amounts allocated for each under the Agreement will be added back to the Net Settlement Amount and distributed pro rata to Class Members.

19. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated maximum cost of administering the class settlement of approximately \$12,500. A true and correct copy of a cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. This is only an estimate, and final pricing may vary depending on the issues, if any, that arise during the administration

1 of the settlement. However, the difference between the actual, lesser costs and \$20,000, if any, will be
2 paid to the Qualified Class Members on a pro rata basis.

3 20. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
4 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
5 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
6 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
7 Exhibit G.

8 21. A true and correct copy of the proposed Notice of Settlement is being filed with this
9 Motion as Exhibit F.

10 22. At the conclusion of the check cashing period in any class settlement, there is always a
11 potential for uncashed checks and some provision must be made for what to do with those funds. For
12 any portion of the Gross Settlement Amount allocated to Qualified Class Members and/or Aggrieved
13 Employees that is not claimed by them by cashing their respective settlement checks within 180
14 calendar days of issuance, that remaining amount shall be donated equally, *i.e.*, 50/50 to Capital Pro
15 Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. See Exhibit A, at ¶ 5.6.
16 Designating a *cy pres* beneficiary is an authorized means of addressing this and I believe that Capital
17 Pro Bono, Inc., and the Center for Workers Rights are appropriate *cy pres* beneficiaries in this matter
18 because they clearly promote the law consistent with the objectives and purposes underlying the
19 lawsuit. I have volunteered for both organizations numerous times over the past several years, either
20 directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking
21 to also volunteer at advice clinics. I have also volunteered by sitting on Capital Pro Bono, Inc.'s
22 advisory committee. These organizations are non-profits that assist low-income workers throughout
23 California, giving free legal advice regarding employment law issues and representing employees with
24 wage claims before the California Labor Commissioner. I have witnessed firsthand the quality service
25 and attention these entities provide to individuals in need of employment law advice and representation
26 at the California Labor Commissioner. I do not receive any compensation, whether direct or indirect,
27 for my time spent volunteering for these entities or for designating them as *cy pres* beneficiaries.
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1 23. I have spoken with every other attorney at my firm to determine whether they have any
2 relationship with either of the proposed *cy pres* beneficiaries. Galen T. Shimoda has volunteered for
3 both organizations on and off over the past several years through either presenting wage and hour
4 seminars to law students who staff the free advice clinics or helping at the advice clinics themselves.
5 However, Mr. Shimoda has not performed any volunteer work with either organization since
6 approximately March 2020. Mr. Shimoda has never received payment or compensation of any kind in
7 connection with any work he's done with either of the proposed *cy pres* beneficiaries.

8 24. Brittany V. Berzin has never done any work, volunteer or otherwise, with Capital Pro
9 Bono, Inc. During law school, Ms. Berzin was a student volunteer for the Center for Workers Rights
10 for two summers. Since graduating law school, she has volunteered for the Center for Workers Rights
11 approximately one to two times per year, assisting in the advice clinic and currently sits on the Board of
12 Directors. Ms. Berzin has never received payment or compensation of any kind in connection with any
13 work she's done with the Center for Workers Rights. Renald Konini has never done any work,
14 volunteer or otherwise, with Capital Pro Bono, Inc., or the Center for Workers Rights.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed this 11th day of October 2022 in Elk Grove, California.

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Justin P. Rodriguez