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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

ARNOLD SAURIN and AJAYZEAU
BROWN, individually, and on behalf of other
members of the general public similarly situated
and on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiffs

vs.

VALLEY PRESBYTERIAN HOSPITAL, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 21STCV22597

Honorable William F. Highberger
Department SSC10

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF OPPOSITION TO
OBJECTION TO SETTLEMENT FILED
BY CLASS MEMBER MOHAMMED
TEKFAOUI**

Date: March 11, 2024
Time: 11:00 a.m.
Department: SSC10

Complaint Filed: June 15, 2021
FAC Filed: August 30, 2023
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwazian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC. Lawyers *for* Justice, PC represents Plaintiffs Arnold Saurin and Ajayzeau Brown (together, “Plaintiffs”) and the Class in the above-captioned action. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and, if called as a witness, I could and would competently testify as follows.

**PRIOR HISTORY WITH OBJECTOR’S COUNSEL PAUL K. HAINES AND
HIS BUSINESS AFFILIATE ADRIAN R. BACON, AND
THE ALLEGATIONS OF MISCONDUCT**

2. I have worked with Paul K. Haines, an attorney who also practices as a plaintiffs-side wage-and-hour class action attorney, on several occasions because his firm and Lawyers *for* Justice, PC have had overlapping cases. For example, Mr. Haines often cites to the outcome in *David Alvarado, et al. v. J. G. Boswell Company*, Los Angeles County Superior Court Case No. 19STCV19033, which involved a class action and Private Attorneys General Act (“PAGA”) settlement approved by Honorable Daniel J. Buckley. The referenced action was commenced by Lawyers *for* Justice, PC on June 3, 2019, and approximately six (6) months later Mr. Haines top-filed the case *Rafael Lemus v. J. G. Boswell Company*, Los Angeles Superior Court Case No. 19STCV45667. By top-filing and working with my firm, Mr. Haines received \$446,250 in attorneys’ fees for 42.90 hours of work (i.e., approximately \$10,402 per hour) averred in the Declaration of Fletcher W. Schmidt in Support of Plaintiffs’ Motion for Final Approval filed on November 8, 2021 in *David Alvarado, et al. v. J. G. Boswell Company*, Los Angeles County Superior Court Case No. 19STCV19033.

3. Mr. Haines has advocated for reporting attorneys to the State Bar as a strategy and has represented to me, as well as others (e.g., when presenting at a conference), that he has reported multiple attorneys to the State Bar in the past.

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1 4. Prior to the Objection to Settlement Filed by Class Member Mohammed Tekfaoui
2 filed on January 5, 2024 in the above-captioned action (“Objection to Settlement”), Mr. Haines
3 has filed voluminous papers asserting virtually the same allegations on multiple prior occasions,
4 in multiple unrelated cases, including, *inter alia*:

5 a. Plaintiff Brittany Legaspi’s Motion for Appointment of Lead Counsel and
6 Declaration of Paul K. Haines in Support of Plaintiff Brittany Legaspi’s
7 Motion for Appointment of Lead Counsel filed on April 28, 2022 in
8 *Legaspi v. Mercedes Diaz Homes, Inc., et al.*, Los Angeles County
9 Superior Court Case No. 20STCV45683;

10 b. Objection of Yesenia Romero [Successor-in-Interest to Ana Romero] to
11 Class Action Settlement and Declaration of Paul K. Haines in Support of
12 Objection of Yesenia Romero [Successor-in-Interest to Ana Romero] to
13 Class Action Settlement filed on September 26, 2022 in *Flores, et al. v.*
14 *Biscomerica Corp.*, San Bernardino County Superior Court Case No.
15 CIVDS1930814;

16 c. Plaintiff Aaron Hallum and Plaintiff Amy Ramos’ Joint Opposition to
17 Plaintiff Nicole Salazar’s Motion to Consolidate Cases and Declaration of
18 Paul K. Haines in Support of Plaintiff Aaron Hallum and Plaintiff Amy
19 Ramos’ Joint Opposition to Plaintiff Nicole Salazar’s Motion to
20 Consolidate Cases filed on February 8, 2023 in *Salazar v. FCA US LLC*,
21 San Bernardino County Superior Court Case No. CIVSB2124160; and

22 d. Proposed Intervenor/Plaintiff Joaquin Morales’s Notice of Motion and
23 Motion to Intervene and Declaration of Paul K. Haines in Support of
24 Proposed Intervenor/Plaintiff Joaquin Morales’s Motion to Intervene filed
25 on November 21, 2023 in *McCullough v. Wright Tree Service, Inc., et al.*,
26 Case No. 2:23-cv-01927-MCE-DMC (E.D. Cal.).

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1 5. Mr. Haines began his serial filings, which attack me, after attorneys at Lawyers
2 *for Justice, PC*, under my supervision, made it clear to Mr. Haines and also one of his business
3 affiliates, Adrian R. Bacon, that it appeared they were engaging in or proposing to engage in
4 unethical or otherwise questionable conduct. Mr. Bacon is the person who is now collaborating
5 with Mr. Haines to raise complaints about me, and for the reasons discussed in Paragraph 9
6 herein, I believe Mr. Haines is a business affiliate of Mr. Bacon. Mr. Haines and his business
7 affiliates have a history and track record of bad faith conduct and tactics aimed at attacking me
8 and Lawyers *for Justice, PC*, on their own and/or in concert with each other, as a strategy to
9 obtain leverage in lead counsel and attorney fee disputes.

10 6. Much of the information discussed in this declaration has not previously been
11 fleshed out in filings responding to the allegations of misconduct by Mr. Haines, and thus,
12 arguably, have not been considered by previous trial courts that have considered Mr. Haines'
13 allegations (as discussed further below). The information is being gathered and provided now, to
14 this Court, because the information provides crucial context about why Mr. Haines harbors an
15 animus toward Lawyers *for Justice, PC* and myself and his motive for raising allegations of
16 misconduct by Lawyers *for Justice, PC* and myself repeatedly in various cases.

17 7. In *Flores v. Windsor Fashions, Inc.* one of Mr. Haines' business affiliates, Adrian
18 R. Bacon of the Law Offices of Todd M. Friedman, P.C., colluded with defense counsel and
19 entered into a reverse auctioned settlement. A summary of what happened in *Flores v. Windsor*
20 *Fashions*, and efforts that had to be undertaken to hold Mr. Bacon accountable for his conduct,
21 **from approximately 2018 to 2020**, is provided below:

- 22 a. Lawyers *for Justice, PC*'s case on behalf of Plaintiff Lizbeth Flores,
23 *Flores v. Windsor Fashions, Inc.*, San Bernardino County Superior Court
24 Case No. CIVDS1610178, was commenced in 2016; extensive formal
25 discovery was performed in the matter (e.g., Lawyers *for Justice, PC*
26 deposed Defendant's person most knowledgeable, defended plaintiff's
27 deposition, and took the deposition of 3 non-party witnesses), and
28 extensive motion practice took place in the matter and another case

1 commenced in Alameda County Superior Court against the same
2 employer by additional plaintiffs represented by Lawyers for Justice, PC
3 (specifically, discovery motion practice and motion practice regarding
4 compelling arbitration, summary judgment, striking the complaint, and
5 staying claims; Lawyers for Justice, PC successfully opposed the motion
6 for summary judgment and motion to compel arbitration in *Flores v.*
7 *Windsor Fashions, Inc.*). Lawyers for Justice, PC attended a mediation in
8 November 2017 with Mediator David Rotman which did not result in
9 settlement; and litigation continued. In the meantime, seventeen (17)
10 months after the *Flores v. Windsor Fashions, Inc.* case was commenced,
11 Mr. Bacon's firm commenced *Bonilla v. Windsor Fashion, LLC*, San
12 Bernardino County Superior Court Case No. CIVDS1723088 ("*Bonilla*
13 *Action*"), a copy-cat, overlapping case against Defendant. Within
14 approximately five (5) months of filing the *Bonilla Action*, having done
15 little to no investigation, litigation, or discovery, Mr. Bacon reached a
16 settlement for \$975,000 of new money and \$106,350 in credits to
17 defendant (for a total of \$1,081,350). For example, when seeking
18 approval of his settlement, **Mr. Bacon admitted that he had not looked**
19 **at nearly three (3) years of data when valuing the claims.**

- 20 b. Lawyers for Justice, PC had to call-out Mr. Bacon's conduct and engage
21 in contested motion practice to intervene into Mr. Bacon's case and
22 protect the class. Lawyers for Justice, PC, on behalf of its client, had to
23 object to Mr. Bacon's settlement which was for half the value Lawyers for
24 Justice, PC was able to eventually recover at the mediation in January
25 2019, at which Robert A. Parris was a consulting expert.
- 26 c. Lawyers for Justice, PC was successful in objecting to Mr. Bacon's
27 settlement; when denying Mr. Bacon's Motion for Preliminary Approval
28 and granting the Motion to Intervene (into Mr. Bacon's case) filed by

1 Lawyers *for* Justice, PC, San Bernardino Superior Court Judge Bryan
2 **F. Foster found that: Mr. Bacon “did not obtain all the necessary data**
3 **to properly evaluate a fair, reasonable, and adequate settlement** on
4 behalf of themselves, the class members and the State of California”;
5 **there was “inadequate data to properly determine the actual size of**
6 **the proposed class”, and the amount of the proposed settlement**
7 **reached by Mr. Bacon was “unfair, unreasonable, and inadequate and**
8 **[did] not protect nor reflect proper recover[y] on behalf of the**
9 **absentee class members or the State of California.”** This is set forth in
10 the Ruling of the Court on the Motion to Intervene and Motion for
11 Preliminary Approval, entered on June 28, 2018, in *Bonilla v. Windsor*
12 *Fashion, LLC*, San Bernardino County Superior Court Case No.
13 CIVDS1723088.

14 d. Eventually, there was a second mediation that was a global mediation
15 between all parties’ counsel and defendant, which took place in January
16 2019 with mediator David Rotman. Lawyers *for* Justice, PC retained Mr.
17 Parris as a consulting expert for this mediation, and through its efforts,
18 doubled the settlement recovery by obtaining a settlement of \$1.95
19 million.

20 e. Lawyers *for* Justice, PC’s efforts to address bad faith conduct by Mr.
21 Bacon did not stop there. Even after the global settlement was reached
22 and preliminary approval was granted, there were problems. Mr. Bacon
23 colluded with defense counsel when defendant attempted to negotiate a
24 modification to the settlement that was unfavorable to the class and
25 refused to conduct a due diligence inquiry into the financial circumstances
26 of the defendant; he took a position to protect defendant from having to
27 disclose problems with data that it had compiled and provided to the
28 parties (which may have justified an increase in the total settlement

amount) and financial information (which would have allowed a determination of whether a payment plan was appropriate), and even went as far as to move the court for an order providing that if the total settlement amount had to be increased, then the increase should not be funded by defendant but instead should be funded by reducing Lawyers for Justice, PC's attorneys' fees.

f. Ultimately, the swift action of Lawyers for Justice, PC in *Flores v. Windsor Fashions* prevented Mr. Bacon's original settlement and protected the class.

g. After Lawyers for Justice, PC alleged that Mr. Bacon failed to perform due diligence in *Flores v. Windsor Fashions, Inc.* (namely, relating to assessment of value of claims, analysis of data, and assessment of the defendant's financial circumstances, etc.), he and Mr. Haines began to allege that I and Lawyers for Justice, PC were engaging in "misconduct" by using consulting experts for their professional opinions and assessment regarding assessment of value of claims, analysis of data, and assessment of defendants' financial circumstances, etc. This is just one example demonstrating why the Court should give no value to Mr. Haines' allegations set forth in the Objection to Settlement in the above-captioned matter and those asserted by him and his business affiliates in filings in various other cases; their accusations are not credible and lack merit.

8. In early 2020, Lawyers for Justice, PC reached a global settlement on a matter pending in federal court, where Mr. Haines had top-filed an overlapping case. Mr. Haines took lead on implementation of the settlement. In the course of working with his firm regarding that settlement, an attorney at Lawyers for Justice, PC voiced concerns to Mr. Haines and the group of plaintiffs' attorneys, that multiple procedural steps that Mr. Haines was proposing to take in order to implement the settlement appeared to be forum shopping for the purpose of obtaining a larger amount of attorneys' fees and/or appeared inconsistent with the due process requirements

1 for a class action settlement. Thereafter, Mr. Haines began to accuse Lawyers for Justice, PC of
2 having engaged in forum shopping in *Olivas, et al. v. VCI Construction, LLC*, which is discussed
3 in Paragraph 35 herein.

4 9. A summary of what happened in the *MDH Matter* both in terms of Mr. Haines'
5 conduct as well as an explanation of why I have reason to believe that Mr. Bacon is an affiliate
6 of Mr. Haines, follows:

7 a. Mr. Haines' firm filed *Brittney Legaspi v. Mercedes Diaz Homes, Inc., et*
8 *al.*, Los Angeles County Superior Court Case No. 20STCV45683 on
9 November 30, 2020, which was consolidated on January 20, 2022 with a
10 case filed by Lawyers for Justice, PC on July 29, 2021 entitled *Tania*
11 *Marroquin v. MDH, Inc., et al.*, Los Angeles County Superior Court, Case
12 No. 21NWCV00493 and another case filed by another plaintiff's firm on
13 May 28, 2021 entitled *Isabella Mauries v. Mercedes Diaz Homes, Inc.*,
14 Los Angeles County Superior Court Case No. 21STCV20211
15 (collectively, "*MDH Matter*").

16 b. Although the cases in the *MDH Matter* were consolidated and applicable
17 case law (e.g., regarding fiduciary duties and good faith dealing) required
18 Mr. Haines and his client to work with other plaintiffs and their counsel,
19 Mr. Haines refused to cooperate in the prosecution of the cases with other
20 plaintiffs' counsel (including Lawyers for Justice, PC), prevented them
21 from participating in the mediation and settlement negotiations, and
22 reaching a settlement, to put himself in a position to maximize any
23 attorneys' fees recovery for his firm. In furtherance of this, Mr. Haines
24 strategically filed a Motion for Appointment of Lead Counsel and
25 Declaration of Paul K. Haines in Support of Plaintiff Brittany Legaspi's
26 Motion for Appointment of Lead Counsel filed on April 28, 2022 in the
27 *MDH Matter*, asserting virtually identical allegations as those raised in the
28 Objection to Settlement (i.e., accusing me and Lawyers for Justice, PC of

misconduct), to distract from his own conduct and handling in the *MDH Matter*.

- c. E-mails received by Lawyers *for* Justice, PC in connection with the *MDH Matter* confirm Mr. Haines' business affiliation and working relationship with Mr. Bacon and his firm (the Law Offices of Todd M. Friedman, P.C.). Specifically, on May 11, 2022, administrative staff at Lawyers *for* Justice, PC served opposition papers to Mr. Haines' Motion for Appointment of Lead Counsel; the e-mail from Lawyers *for* Justice, PC was sent only to the Haines Law Group, Jackson Lewis, PC (counsel for defendants), and Sherman & Sherman, APC (counsel for another plaintiff), with several individuals at Lawyers *for* Justice, PC Cc:ed, and no one at Mr. Bacon's firm was sent the e-mail. However, on May 12, 2022, administrative staff at Mr. Bacon's firm (who were not on the list of e-mail recipients to begin with) responded to the e-mail, purporting to provide information about an upcoming hearing in the matter, and Mr. Bacon and his colleague Todd Friedman, Esq. were Cc:ed (although their firm had, thus far, never been contacted by Lawyers *for* Justice, PC about the *MDH Matter*). On May 12, 2022, an attorney at Lawyers *for* Justice, PC responded to the e-mail from Mr. Bacon's firm, requesting clarification regarding the purported upcoming hearing. On May 12, 2022, administrative staff at Mr. Bacon's firm advised that the hearing information she had provided pertained to an entirely different and unrelated case involving a different employer. On May 13, 2022, an attorney at Lawyers *for* Justice, PC responded to the e-mail from Mr. Bacon's firm, requesting an explanation as to how Mr. Bacon's firm came to receive Lawyers *for* Justice, PC's e-mail regarding the *MDH Matter*, but no response was received from Mr. Bacon's firm.

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1 10. In the *Salazar v. FCA US LLC*, San Bernardino County Superior Court Case No.
2 CIVSB2124160, Mr. Haines raised the same or similar allegations to those set forth in the
3 Objection to Settlement, in an effort to distract from and aid in defending his bad faith conduct—
4 he engaged in a concerted effort to prevent fair settlement and mediation efforts. Specifically:
5 Mr. Haines engaged in a typical defense tactic of raising questions and making attacks on my
6 conduct and adequacy, to interfere with and prevent the consolidation of Lawyers *for* Justice,
7 PC’s case on behalf of its client, with his firm’s case. A summary of what happened in *Salazar v*
8 *FCA USA LLC* is set forth below:

- 9 a. There were five (5) separate but overlapping lawsuits pending against
10 defendant FCA US, LLC, brought on behalf of putative class members
11 and aggrieved employees.
- 12 b. Lawyers *for* Justice, PC filed two (2) of the cases, which represented the
13 third-filed and fifth-filed cases. Meanwhile, Mr. Haines filed the fourth
14 case and he was the last to come to the picture out of the approximately
15 three (3) different plaintiffs’ firms litigating cases against FCA.
- 16 c. Honorable Judge David S. Cohn of the San Bernardino County Superior
17 Court had strongly encouraged the parties in all five (5) cases to attend a
18 global mediation, and raised question about why the cases were not
19 already consolidated.
- 20 d. Mr. Haines himself took steps to consolidate his late-filed case with the
21 first-filed case, and then Mr. Haines shut the door behind him or pulled up
22 the ladder, so to speak. He pioneered an effort to block the consolidation
23 of Lawyers *for* Justice, PC’s cases and excluded Lawyers *for* Justice, PC
24 from mediation and settlement efforts.
- 25 e. Mr. Haines prevented a global mediation even though the Court
26 encouraged a global mediation and Defendant was open to it, so that he
27 could engage in siloed mediation and settlement efforts, to reverse-bid and
28 broker a lower value settlement, all of which was motivated by Mr.

Haines' desire for attorneys' fees.

f. In fact, this was not the only time he did this to Lawyers for Justice, PC – he also did it in another matter (*Legaspi v. Mercedes Diaz Homes, Inc., et al.*, which is also discussed herein), and of course, made the same baseless accusation against Lawyers for Justice, PC to try to distract from and defend his conduct.

g. It is Mr. Haines's modus operandi to attack the conduct and character of his colleagues in the plaintiffs bar, and in *Salazar v FCA USA LLC*, he explicitly attempted to leverage the threat of California State Bar complaints and judicial complaints in order to gain an advantage. This is why the Court should give no value to Mr. Haines' allegations set forth in the Objection to Settlement; they are not credible and lack merit.

11. As a result of Mr. Haines' filings and allegations in *Flores v. Biscomerica Corp.* (on behalf of a deceased class member) and *Salazar v. FCA USA LLC* (where Mr. Haines top-filed, excluded Lawyers for Justice, PC from settlement negotiations, and settled-out the case), on or about February 7, 2023, Honorable David S. Cohn of the San Bernardino County Superior Court set multiple Orders to Show Cause to take place on March 20, 2023, to inquire into the allegations raised by Mr. Haines regarding Lawyers for Justice, PC's use of experts such as Robert A. Parris as consulting experts for mediation and seeking reimbursement of such consult expert costs as a part of case costs, in the following matters and held a hearing: *Fuentes, et al., v. Communications Test Design, Inc.*, San Bernardino Superior Court, Case Number CIVDS1802427, *Gallegos, et al., v. Pneudraulics, Inc.*, San Bernardino Superior Court Case Number CIVDS1721082, *Minor v. HSNI, LLC*, San Bernardino Superior Court Case Number CIVDS1910946, *Reed v. Quadramed Affinity Corporation*, San Bernardino Superior Court Case Number CIVDS1804388, and *Flores, et al., v. Windsor Fashions, Inc.*, San Bernardino Superior Court Case Number CIVDS1610178. Honorable Judge Cohn received briefing and held a hearing on March 20, 2023. A true and correct copy of the March 20, 2023 Hearing Transcript in *Fuentes, et al., v. Communications Test Design, Inc.*, San Bernardino Superior Court, Case

Number CIVDS1802427 is attached hereto as “**EXHIBIT 1.**” On March 24, 2023, Honorable Judge Cohn entered the Ruling on Submitted Matter: Orders to Show Cause (OSCs). A true and correct copy of the March 24, 2023 Ruling on Submitted Matter: Orders to Show Cause (OSCs) in *Fuentes, et al., v. Communications Test Design, Inc.*, San Bernardino Superior Court, Case Number CIVDS1802427 (“March 24, 2023 Ruling on Submitted Matter”) is attached hereto as “**EXHIBIT 2.**” By way of the March 24, 2023 Ruling on Submitted Matter, Honorable Judge Cohn determined that the work performed by the experts in question in the matters was, in the Court’s view, legal work, and therefore the expenses for those individuals’ services should not have been reimbursed as case costs and instead should have been compensated from the court-awarded attorney’s fees. It is important to note that, in the end, Honorable Judge Cohn did not order any action to be taken and found that undersigned counsel is qualified to serve as counsel and has not engaged in any intentional wrongdoing. Also, Honorable Judge Cohn’s March 24, 2023 Ruling on Submitted Matter confirmed the following:

- a. The “court is unable to conclude based upon the limited record before it that Mr. Aiwarzian acted intentionally in mischaracterizing the work performed by Mr. Parris[.]” (March 24, 2023 Ruling on Submitted Matter, 4).
- b. The experts in question “have considerable expertise[.]” (March 24, 2023 Ruling on Submitted Matter, 4).
- c. Undersigned counsel is qualified “to serve as class counsel[.]” Specifically, “the court has found repeatedly that he is qualified and the court has no reason to disavow the finding now.” (March 24, 2023 Ruling on Submitted Matter, 3).

12. On or about February 28, 2023, an Order to Show Cause was set by Honorable Joseph T. Ortiz of the San Bernardino County Superior Court to take place on July 13, 2023 in *Myers, et al. v. Nationwide Guard Services Inc.*, San Bernardino County Superior Court Case No. CIVDS1907100 to inquire into the allegations raised by Paul K. Haines regarding Lawyers for Justice, PC’s use of experts such as Robert A. Parris as consulting experts for mediation and

1 seeking reimbursement of such consult expert costs as a part of case costs. Honorable Judge
2 Ortiz received briefing and held a hearing on July 13, 2023, and thereafter the Honorable Judge
3 Ortiz ruled that the “Settlement will stay as previously ruled.” A true and correct copy of the
4 July 13, 2023 Hearing Transcript in *Myers, et al. v. Nationwide Guard Services Inc.*, San
5 Bernardino County Superior Court Case No. CIVDS1907100 is attached hereto as
6 “**EXHIBIT 3.**” A true and correct copy of the Minute Order entered on July 13, 2023 in *Myers,*
7 *et al. v. Nationwide Guard Services Inc.*, San Bernardino County Superior Court Case No.
8 CIVDS1907100 is attached hereto as “**EXHIBIT 4.**” Importantly, during the hearing Honorable
9 Judge Ortiz noted as follows:

- 10 a. “I find no evidence of intent to defraud.” July 13, 2023 Hearing
11 Transcript in *Harry Myers, et al. v. Nationwide Guard Services Inc.*, San
12 Bernardino County Superior Court Case No. CIVDS1907100, at 8:9-10).
- 13 b. “I think the allegation that has been floating, as brought by the third party,
14 is that this is really something different, but that this is somehow
15 contrivance to inflate attorney’s fees. But I don’t have any evidence of
16 that intent. That might be the end result, but I don’t have any evidence of
17 that intent. Further, as I’ve noted at the onset, you know, enhanced
18 attorney’s fees, even if incorrectly couched as costs, are within the Court’s
19 discretion to approve. Right? So it could have been -- you could have
20 ascribed them as attorney’s fees and simply asked for 35 percent, 40
21 percent, and Judge Cohn may have considered it.” *Id.* at 8:14-25.
- 22 c. “You understand the Court’s position. At this juncture I don’t think
23 there’s anything to be done. In any event, I don’t think the money at issue
24 is outside of the four corners of the Court’s prerogative. We’re talking
25 about \$5,000. Not to say that if there were a fraud that would be -- that
26 wouldn’t be considered and that wouldn’t be a problem. But I don’t have
27 any evidence of that here. And I do understand when we’re talking about
28 wage and hour, the attorney work, the specialty, can be construed as

different. And reasonable parties can think that it may be something different.” *Id.* at 43:26-44:10.

d. “I’ve kept my eye open for any hardened intent to defraud. I know that that’s the suspicion, but I have not seen hard evidence of that. With that, I think we’re done.” *Id.* at 46:18-20.

13. Although I disagree with the conclusion that consulting experts who have a license to practice law should be treated differently than consulting experts who do not, and the further conclusions therefrom that the expenses for the former are not reimbursable as costs while the expenses of the latter are, and the further conclusion therefrom that individuals who have a license to practice law must always perform work in the capacity of counsel for a party (which itself necessitates additional requirements for formally establishing that relationship and status), out of respect for the distinguished judges in the San Bernardino County Superior Court, since the March 24, 2023 Ruling on Submitted Matter, neither Lawyers *for* Justice, PC and I have retained consulting experts who are attorneys, and absent further guidance from any court or clarification in law, going forward, it is my intention that neither Lawyers *for* Justice, PC or I retain consulting experts who are attorneys. If in the future the firm or I were to determine that such consulting experts are absolutely necessary, and retain them, the firm and I will absorb 100% of the costs of those consulting attorney experts to avoid any appearance or claim of misallocation.

MEDIATION AND SETTLEMENT REACHED IN THE ABOVE-CAPTIONED ACTION

14. On May 6, 2022, I and Charles T. Sweeny, Esq. attended the full-day mediation conducted by Tripper Ortman, a well-respected mediator experience in mediating complex labor and employment matters. Although a settlement was not reached on that day, after the conclusion of the mediation, the parties engaged in extensive, continued settlement discussions and, with the aid of the mediator’s evaluation, ultimately reached a settlement.

15. Lawyers *for* Justice, PC did not use a consulting expert in the above-captioned action.

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USE OF CONSULTING EXPERTS AT MEDIATION IN OTHER CASES

16. Any time Robert A. Parris has been billed as an expert, he was utilized as an expert and his role was exclusively that of an expert, not a litigator. Each and every time Mr. Parris served as a consulting expert in other cases, he did not bill for or perform any work that would require a law license, and all legal work in the case was performed by attorneys who worked for or were contracted by counsel of record Lawyers *for* Justice, PC. Mr. Parris did not act as a lawyer for a client who is a party in the case, nor did he represent a client or provide a client with legal advice. He never entered an appearance, filed a notice of association, signed or drafted briefs, argued motions, took or defended depositions or performed any work that would require a law license, on behalf of the party on whose behalf he was engaged as a consulting expert. He also never entered into or executed any legal service engagement, contingency fee, or retainer agreement and never entered into or executed any attorney fee sharing agreement, with respect to the party on whose behalf he was engaged as a consulting expert.

17. All legal work was performed by attorneys who worked for Lawyers *for* Justice, PC in the cases in which the consulting experts were used for mediation. Attorneys at Lawyers *for* Justice, PC analyzed and assessed facts regarding merits, variability, community of interest, pattern and practice, and manageability, assessed damages and penalties, and evaluated and considered what was required for a viable trial plan as well as the defendant's defenses if the matter were to proceed through any threatened dispositive motions, class certification, and trial stages. In connection with mediation, the attorneys at Lawyers *for* Justice, PC who are counsel of record for the plaintiffs, performed the following work: reviewed and analyzed extensive information, data, and documents obtained from plaintiffs, defendant, and other sources, including, *inter alia*, interviews with and/or employment records of plaintiffs and putative class members, class time and pay data, and defendant's operations and employment practices, policies, and procedures documents, among other information and documents; developed damages and penalties valuation models with the assistance of the consulting expert; researched applicable law and drafted the mediation brief; prepared for and attended the mediation; prepared for and handled post-mediation meet-and-confer discussions and continued settlement

1 negotiations (if any); engaged in confirmatory discovery and reviewed and considered additional
2 information (if applicable) regarding issues materials to claims valuation and resolution that
3 came up at mediation; and memorialized the terms of settlement in an enforceable settlement
4 agreement and filed moving and supporting papers to obtain court approval of the settlement.

5 18. Mr. Parris was not serving as “co-counsel” in the cases in which he served as
6 consulting expert, and never received separate “co-counsel” fees. Mr. Parris has never served as
7 an expert nor has he been billed as an expert in any case where Lawyers *for* Justice, PC has had,
8 or has, a co-counseling relationship with either the Parris Law Firm or Robert A. Parris, PC.
9 Lawyers *for* Justice, PC has never sought reimbursement for Mr. Parris as a consulting expert in
10 a case where Lawyers *for* Justice, PC co-counseled with Mr. Parris in any capacity, either
11 through his current firm Robert A. Parris, PC or former firm Parris Law Firm.

12 19. In my experience, it is Mr. Parris’ practice when serving as a consulting expert at
13 mediation, to advise mediators that he is a consulting expert retained by a party in the case and
14 not a legal representative for any party in the case, and to be introduced to defense during joint
15 sessions as a consulting expert.

16 20. Attached hereto as “**EXHIBIT 5**” is a true and correct copy of the Declaration of
17 Robert A. Parris submitted in the action *Meyers, et al. v. Nationwide Guard Services*
18 *Incorporated*, San Bernardino Superior Court Case No. CIVDS1907100, which discusses, *inter*
19 *alia*, Mr. Parris’ background, credentials, experience, and qualifications.

20 21. Prior to the Orders to Show Cause referenced in Paragraphs 11-12 herein, several
21 courts had inquired about, reviewed, and approved Mr. Parris’ expert consulting fees as
22 appropriate litigation case costs and expenses. For example:

- 23 a. In or around October 2021, in *Barela v. Quail Park Retirement Village,*
24 *LLC*, Tulare County Superior Court, Case No. VCU282224, Honorable
25 David Mathias “require[d] additional information as to why plaintiff
26 and/or its counsel determined not to utilize an expert in its assessment of
27 damages in this case involving complex wage and hour claims of hundreds
28 of employees.” The court further commented that, “[i]f an expert was

utilized, and this information was simply not mentioned in the initial moving papers, the expert should be identified, along with their qualifications[.]” In response to this inquiry, Lawyers for Justice, PC filed a declaration from Robert A. Parris describing his services and credentials. The court did not comment further on his service as an expert and ultimately approved the settlement. A true and correct copy of the referenced declaration of Mr. Parris is attached hereto as “**EXHIBIT 6.**”

b. In or around July 2021, in *Zimmers v. Pinnacle Property Management Services, LLC*, Orange County Superior Court Case No. 30-2018-000995413, Honorable William D. Claster observed that “Counsel retained an expert to assist in claim valuation. Is this Robert Parris, the expert mentioned in the costs bill? Please provide a copy of the expert’s CV.” In response, I filed a declaration attaching the declaration of Robert A. Parris, detailing his services and credentials. The court had no further questions and, ultimately, approved the settlement. A true and correct copy of my referenced declaration is attached hereto as “**EXHIBIT 7.**”

c. In or around December 2021, in *DeBar, et al. v. Optima Tax Relief, LLC*, Orange County Superior Court Case No. 30-2018-00972771, Honorable William D. Claster requested further information about Mr. Parris’s credentials. In response, I filed a declaration attaching Robert A. Parris’s CV, and the court had no further questions and, ultimately, granted preliminary and final approval of the settlement. A true and correct copy of my referenced declaration of Mr. Aiwazian is attached hereto as “**EXHIBIT 8.**”

22. When acting in the capacity of an expert at mediation, Mr. Parris’s focus is providing assessment and opinion regarding important issues, including, *inter alia*, valuation (namely, damages and penalties), negotiation strategy and settlement scenarios, assessment of financial condition of the defendant(s) and structuring of any settlement recovery in light of that,

1 and industry practice, in part, based on results-based data and personal knowledge that he has
2 gathered regarding actual settlements reached or outcomes obtained by multiple firms practicing
3 in the area, and analysis of various metrics thereof (e.g., class size, pay periods count,
4 workweeks count, violation rates, industry, mediator, and the judge the case is assigned to). Mr.
5 Parris has developed proprietary tools based on his study of a vast number of wage and hour
6 cases and settlements across mediations, and utilizes this to perform his work as a consulting
7 expert. Specifically, Mr. Parris provides results-based facts and information regarding
8 distributive bargaining, based on proprietary information that he has gathered regarding actual,
9 previous settlements reached by multiple firms practicing in the area, and sorting said
10 information by various metrics (e.g., class size, pay periods count, workweeks count, violation
11 rates, industry, mediator, and the judge the case is assigned to).

12 23. The work that Mr. Parris has performed in our cases as a consulting expert is
13 distinct from work that could be performed and was performed by a lawyer at Lawyers *for*
14 Justice, PC. Mr. Parris possesses specialized knowledge, skill, experience, training, and
15 education relating to valuation (namely, damages and penalties), negotiation strategy and
16 settlement scenarios, assessment of financial condition of the defendant(s) and structuring of any
17 settlement recovery in light of that, and industry practice.

18 24. My firm and I, consistent with the fiduciary duties of plaintiffs' counsel to
19 achieve the best settlement for clients and absent class members/aggrieved employees, have
20 often retained consulting experts for mediations in wage and hour class actions and PAGA
21 actions. It is both important and common in my practice to use consulting experts in connection
22 with assessment and analyses of damages, ability to pay issues, and other issues (including and
23 not limited to those discussed herein), and to perform related analyses, to pass muster regarding
24 settlement discounts of a class adjudication by way of settlement.

25 25. Very few of the cases my firm handles, including and not limited to, the case in
26 question, reach the trial stage, or even the motion for class certification stage. As such, a
27 demand for expert designation is almost never served in the wage and hour putative class and
28 PAGA actions that my firm handles. These wage and hour putative class and PAGA actions

1 rarely reach the point where the parties have conducted advanced formal discovery. Moreover,
2 the vast majority of these actions settle at mediation or shortly thereafter by way of a mediator's
3 proposal issued at the mediation, which is then accepted by both sides. Commonly, these cases
4 settle without the parties engaging in any discovery whatsoever, including conducting written
5 discovery or taking depositions; only on extremely rare occasions do these types of cases reach
6 the stage where the parties would be required to designate experts, exchange expert reports of
7 designated experts, and/or produce designated experts for deposition. As such, given the reality
8 that many of the cases do not go to trial, mediation is our "trial" and opportunity to put forth our
9 best case to the mediator and the other side. In the mediation context, when necessary, the
10 consulting experts at mediation are assisting in assessing the potential recovery at trial and
11 challenging the other side's position regarding the amount of monetary exposure. The mediator
12 is acting in the role of both a judge who will assess manageability and suitability of the matter
13 for class-wide or representative adjudication and as a trier of fact or factfinder in so far as the
14 mediator will take a position regarding the likely amount of recovery on each claim at trial,
15 convince adversaries of this (which in turn impacts the formulation of demands), and issue a
16 mediator's proposal if the parties are not able to reach a resolution by exchanging demands.

17 26. Depending on the specific circumstances of a case, at mediation, the use of
18 experts is important to both plaintiffs and defendants. In some cases, employers often withhold
19 or intentionally save crucial information that requires adjustment of the computation of damages,
20 and do not disclose said information until mediation. This is why it is important to have
21 consulting experts involved, who are able to assist counsel at the mediation in real-time to adjust
22 the damages computation. Trial courts are expecting and requiring some exactitude, and
23 consulting experts assist class counsel to compute damages based on datapoints being revealed to
24 the parties on-the-spot at the mediation through the mediator or, for example, by the defendant's
25 own expert. Defendants frequently bring experts to mediation on the precise issues that are the
26 subject of the consulting expert work performed by the individuals in question. For plaintiffs,
27 experts may be used at mediation to provide knowledge and opinion on the reasonable settlement
28 value of each claim and the calculation of the amount of the potential recovery at trial. In the

1 past, Lawyers for Justice, PC regularly used consulting experts at mediation, including at times,
2 experts who are or were also practicing attorneys and are experts on the aforementioned subjects.
3 These consulting experts provide meaningful and important technical assistance that bolsters
4 negotiations for the maximum realistic settlement recovery for complex wage and hour matters.
5 The experts add independent credibility to the presentation of plaintiff's case and show a high
6 level of professionalism. I have relied on these experts to balance and overcome the defendant's
7 arguments and superior bargaining power when they bring an expert to mediation regarding,
8 *inter alia*, damages exposure and/or the employer's financial circumstances. The use of these
9 experts has absolutely helped maximize the results in the cases in which they were utilized.

10 27. When Mr. Parris has served as a consulting expert, he has done so for mediation
11 purposes only. He was not a "designated expert" within the meaning of California Code of Civil
12 Procedure section 2034.210 and therefore he was not required to provide an expert opinion or
13 expert report, testify in deposition, and/or testify at trial, deposition, or any court proceeding.
14 That is not to say that he would not be deemed competent or that he would be incapable of
15 performing these tasks—just that there was no cause for him to do so.

16 28. The services of the individuals in question, as consulting experts at mediation,
17 were necessary in the course of zealously advocating for my clients and to maximize the
18 potential outcome in cases. It was necessary to help achieve the best possible outcome at
19 mediation for the plaintiffs and the other class members/aggrieved employees. The consulting
20 experts put plaintiffs in a position to counterbalance defense leverage and maximize settlement
21 recoveries. Lawyers for Justice, PC has achieved successful results which have been reviewed
22 by courts and granted court approval, time and time again, by using individuals who are or were
23 licensed to practice law, as consulting experts. Courts have encouraged the use of such experts
24 and have positively commented on them at settlement approval hearings. Engaging a consulting
25 expert for mediation is not an unusual practice, and there is extensive case law confirming that
26 the highest court in this state as well as intermediate and trial courts have called-out lower courts
27 and/or counsel for parties for failing to consult and utilize experts regarding legal issues, legal
28 and damages theories, potential recovery and economic value of cases prior to reaching

1 settlement, to perform damages and related analyses, and to develop trial plans and liability and
2 damages estimates that rely on sampling. This case law is discussed in the accompanying
3 Opposition to Objection to Settlement Filed by Class Member Mohammed Tekfaoui.

4 29. Lawyers for Justice, PC never received or otherwise shared in any portion of the
5 expert compensation paid to the expert for serving as a consulting expert in a matter, nor has
6 Lawyers for Justice, PC ever shared any attorneys' fees with said persons and/or their firms in
7 cases where they were engaged to serve as a consulting expert. Nor have I ever "diverted"
8 settlement funds from class members to increase attorneys' fees.

9 30. My firm has paid and carried the expenses for retaining the services of consulting
10 experts, such as the individuals in question, in its cases. In the cases where no recovery is
11 obtained or where the recovery is insufficient to cover all costs incurred, the firm has eaten these
12 expert costs.

13 31. It is also well-established industry practice for employment class action attorneys
14 to retain and rely on consulting experts for mediation purposes. In fact, many industry
15 publications acknowledge that consulting experts can and should assist and provide opinion on
16 tasks performed by counsel, including and not limited to, regarding assessing the value of a case;
17 formulating claims, counterclaims, and defenses; discovery and depositions; reviewing
18 documents; challenging the other side's experts; developing and refining case strategy;
19 identifying, evaluating, and calculating damages; evaluating and responding to opposing claims
20 and theories; aiding the factfinder; identifying relevant data, what needs to be retained, and the
21 best way to analyze it; and statistical models and studies without risking the discovery of results.
22 Of note, are the following articles:

- 23 a. R. Adam Swick and Ryan Goldstein, *Practice Points: Expert Witnesses—*
24 *The Basics*, American Bar Association (Dec. 30, 2021),
25 [https://www.americanbar.org/groups/litigation/committees/trial-](https://www.americanbar.org/groups/litigation/committees/trial-practice/practice/2021/expert-witnesses-the-basics/)
26 [practice/practice/2021/expert-witnesses-the-basics/](https://www.americanbar.org/groups/litigation/committees/trial-practice/practice/2021/expert-witnesses-the-basics/). A true and correct
27 copy of this article is attached hereto as "**EXHIBIT 9.**"

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b. Jonathan Couchman, *Practice Points: Using a Consulting Expert's Assistance to Take Effective Depositions* (Mar. 13, 2017), <https://www.americanbar.org/groups/litigation/committees/expert-witnesses/practice/2017/using-a-consulting-experts-assistance-to-take-effective-depositions/>. A true and correct copy of this article is attached hereto as "EXHIBIT 10."

c. Christina L. Feege, James N. Boudreau, and Allan G. King, *Stealth Class Actions*, GC New York (Jan. 31, 2005), <https://www.littler.com/files/press/pdf/11456.pdf>. A true and correct copy of this article is attached hereto as "EXHIBIT 11."

**MR. HAINES' ALLEGATIONS THAT LAWYERS FOR JUSTICE, PC
ENGAGED IN FORUM SHOPPING, REVERSE AUCTION, AND SLOPPY WORK**

32. Neither I nor Lawyers for Justice, PC have executed a stipulation to add a claim to a case for the purpose of forum shopping and removal to federal court, including and not limited to, in *Olivas, et al. v. VCI Construction, LLC*. It is not true that anything done in *Olivas, et al. v. VCI Construction, LLC* was done due to the belief that a settlement would not be approved; ultimately, the settlement reached in that matter was approved as fair, adequate, and reasonable. To be clear, in *Olivas, et al. v. VCI Construction, LLC*, another law firm had filed the first case against the defendant and Lawyers for Justice, PC had filed the second case; there was a stipulation to add one or more claims to the case, which was entered into between other counsel for plaintiffs and defendant. Mr. Haines is misconstruing the intent regarding a stipulation entered into by individuals and firms other than myself and other than Lawyers for Justice, PC. Importantly, Mr. Haines began to accuse Lawyers for Justice, PC of having engaged in forum shopping in *Olivas, et al. v. VCI Construction, LLC* **after** Lawyers for Justice, PC commented that multiple procedural steps that Mr. Haines was proposing to take in order to implement a settlement appeared to be forum shopping for the purpose of obtaining a larger amount of attorneys' fees and/or appeared inconsistent with the due process requirements for a class action settlement (as discussed in Paragraph 8 herein).

33. With respect to *Garcia v. Group 1 Automotive, Inc.*, Mr. Haines is misconstruing the order in question and/or omitting relevant context. Specifically, he is misconstruing Orange County Superior Court Judge Timothy Claster's observations juxtaposing details provided by Defendant regarding the negotiation of the settlement, against a boilerplate statement filed by another plaintiff's firm that was co-counseling to represent the same plaintiff as Lawyers for Justice, PC. Neither I nor Lawyers for Justice, PC colluded with defense nor did we engage in any reverse auction, nor would we ever do such a thing. To the contrary, I led the effort and was successful in obtaining a \$2,000,000.00 settlement that was ultimately approved by the court as fair, adequate, and reasonable. The matter involved approximately five (5) plaintiffs' firms who did not have a global agreement to split attorneys' fees among all of them, and the firms were engaging in adversarial and contested court-filings on the subject. Nevertheless, Honorable Judge Claster determined that the settlement that was reached through my and Lawyers for Justice, PC's leadership was fair and adequate, and granted approval of the settlement.

34. With respect to *Zackaria v. Wal-Mart Stores, Inc.*, Mr. Haines is misconstruing the order in question and/or omitting relevant context. This matter involved a Motion for Class Certification that was filed by Lawyers for Justice, PC's co-counsel. The United States District Court for the Eastern District of California denied the motion for technical deficiencies regarding how evidence was being cited to and summarized in the papers (specifically, the lack of pincites, the inclusion of cover page bates number citation(s) when citing to deposition transcripts, not including parentheticals repeating or explaining the content of evidence cited to where the evidence had very small font that was hard to read, and not including sufficient identifications and explanations regarding the evidence being cited to). *Zakaria v. Wal-Mart Stores, Inc.*, Case No. 5:12-cv-01520 (C.D. Cal. Feb. 21, 2014), Doc. 77, 3:25-4:3, 4:10-18, 5:7-9. The motion was denied without prejudice, with instructions on preparing a renewed motion. Eventually, the parties submitted additional briefing and the renewed motion was decided on the merits (the court denied certification). *Id.*, 6:2-9:8.

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35. With respect to *Brown v. Royal Power Mgmt., Inc.*, Mr. Haines is misconstruing the order in question and/or omitting relevant context. This matter involved a determination that sufficient minimum contacts had not been demonstrated for the Northern District of California to have jurisdiction in lieu of the Central District of California; in reaching this determination the court noted that plaintiffs did not identify and provide enough detail to establish minimum contacts, namely, that they did not identify specific offices or real property, individuals who are agents, business licenses, or employees, and did not establish that corporations were alter egos of the defendant. *Brown v. Royal Power Mgmt., Inc.*, Case No. 3:11-cv-04822 (C.D. Cal. Feb. 1, 2012), Doc. 20, 4:4-11.

36. With respect to *Silva v. AvalonBay Communities, Inc.*, Mr. Haines is misconstruing the order in question and/or omitting relevant context. Specifically, he is relying on language in the court's order that is quoting the defendant's contention, in support of its request for sanctions under Federal Rule of Civil Procedure 11, that the complaint was cookie-cutter and that it strongly suggested that pre-filing investigation was not conducted – but the court did not make such a finding. *Silva v. AvalonBay Communities, Inc.*, Case No. 2:15-cv-04157 (E.D. Cal. Oct. 8, 2015), Doc. 48, 14. Instead, the court denied defendant's request for Rule 11 sanctions, finding that there was not sufficient showing that the standards established by the Rule had been violated. *Id.*

37. With respect to *Bicek v. C & S Wholesale Grocers, Inc.*, Mr. Haines is misconstruing the order in question and/or omitting relevant context. The court did not make a finding that I or Lawyers for Justice, PC intentionally and dilatorily stonewalled opposing counsel with respect to depositions of putative class members. The matter involved a discovery dispute in connection with coordinating the depositions of putative class members by defendants. *Bicek v. C & S Wholesale Grocers, Inc.*, Case No. 2:13-cv-0411-MCE (E.D. Cal. Oct. 17, 2013), Doc. 57, 1:18-23. Plaintiff's counsel insisted that defendants produce the personnel files of the deponents before the depositions, asserting that deponents had the right to review their personnel files to prepare for deposition prior to being deposed, delayed in responding regarding availability for depositions because defense counsel delayed in advising that it would produce

1 the personnel files, and plaintiff's counsel asserted objections regarding the availability of
2 prospective deponents. *Id.*, 4:9-5:16, 8:22-24. The court observed that there were at least 5
3 different attorneys and two law firms representing plaintiff, that it was not provided any
4 authority for the proposition that plaintiff's counsel was entitled to receive the personnel files of
5 the deponent prior to their deposition or that such receipt was a prerequisite for scheduling the
6 depositions, and that plaintiff's counsel had no substantial justification for opposing the
7 deposition going forward based on the deponents' purported rights to review their personnel files
8 and prepare for depositions. *Id.*, 3:13-15, 12:9-11, and 12:13-15. The court also observed that
9 defendants' counsel could have communicated and clarified at an earlier stage that they were
10 willing to provide the personnel files subject to the protective order. *Id.*, 12:1-5.

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

13 Executed this 15th day of February 2024, at Glendale, California.

14 
15 Edwin Aiwanian
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EXHIBIT 1

In the Matter Of:

RUTH FUENTES vs COMMUNICATIONS TEST DESIGN, INC.

CIVDS1802427

HEARING

March 20, 2023



SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT S26

HONORABLE DAVID COHN, JUDGE

RUTH FUENTES, individually, and
on behalf of other members of
the general public similarly
situated,

Plaintiff,

-vs-

COMMUNICATIONS TEST DESIGN,
INC., an unknown business
entity, and DOES 1 through 100,
inclusive,

Defendants.

)
)
)
)
) Superior Court
Case No. CIVDS1802427

) And related cases

)
) CIVDS1720182
) CIVDS1910946
) CIVDS1804388
) CIVDS1610178
)
)
)

CERTIFIED COPY

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

MONDAY, MARCH 20, 2023

APPEARANCES:

FOR THE PLAINTIFFS:

LAWYERS FOR JUSTICE, PC
BY: EDWIN AIWAZIAN, ESQ.

FOR DEFENDANT COMMUNICATIONS
COMMUNICATIONS TEST DESIGN:

LITTLER MENDELSON, P.C.
BY: JAMES E. HART, ESQ.

REPORTED BY:

REGINA B. VEGA
REPORTER PRO TEMPORE
C.S.R. NO. 12612

1 SAN BERNARDINO, CALIFORNIA; MONDAY, MARCH 20, 2023

2 MORNING SESSION

3 DEPARTMENT NO. S26

HONORABLE DAVID COHN, JUDGE

4 APPEARANCES:

5 (EDWIN AIWAZIAN, Attorney at Law,
6 representing the Plaintiffs; also
7 present, Robert A. Parris, Attorney at
8 Law; ADRIAN BACON, Attorney at Law;
9 PAUL HAINES, Attorney at Law;
10 JAMES E. HART, Attorney at Law, for
11 Defendants Communications Test design,
12 Inc.; BAILEY BIFOSS, Attorney at Law.)
13 (Regina B. Vega, Pro Tempore Reporter,
14 C.S.R. No. 12612.)
15

16 THE COURT: So we have five matters: the Fuentes
17 matter, the Gallegos matter, the Minor matter, the Reed matter
18 and the Flores matter.

19 Let's get appearances of lawyers in the courtroom.

20 Mr. Aiwazian, good morning, sir. Your appearance.

21 MR. AIWAZIAN: Good morning, your Honor. Edwin
22 Aiwazian on behalf of Plaintiffs.

23 THE COURT: In all of the cases?

24 MR. AIWAZIAN: Yes, your Honor.

25 THE COURT: Okay.

26 MR. PARRIS: Good morning, your Honor. I'm Robert

1 Parris as an expert consultant declarant.

2 THE COURT: Good morning, Mr. Parris. Thank you for
3 coming to court today. I don't believe we've met previously.
4 At least I don't recognize you.

5 MR. PARRIS: I know you by reputation, and it's nice
6 to meet you, your Honor.

7 THE COURT: Nice to meet you.
8 And you, sir?

9 MR. BACON: Your Honor, this is Adrian Bacon on
10 behalf of the class in the Windsor matter and on behalf of
11 Plaintiff Diane Bonilla and Maurice Cervantes. And I'm just
12 here in case your Honor has any questions for me.

13 THE COURT: Okay. Good morning, Mr. Bacon.

14 MR. HAINES: Good morning, your Honor. Paul Haines
15 here. As you know, I filed a declaration initiating all of
16 this. I'm here to answer any questions the Court may have
17 should it have any of me.

18 THE COURT: Okay. Good morning, Mr. Haines.

19 MR. HART: Good morning, your Honor. Jim Hart from
20 the Fuentes CTD matter. I'm not planning on appearing. Just
21 observing and available if you have any questions.

22 THE COURT: Okay. All right. Good morning,
23 Mr. Hart.

24 All right. Is there anyone on Zoom or on CourtCall?

25 Everybody in person. It's nice to have lawyers in
26 the courtroom again.

1 MS. BIFOSS: Your Honor?

2 THE COURT: Yes.

3 MS. BIFOSS: Sorry, just -- apparently it's just me,
4 your Honor. Bailey Bifoss of Seyfarth Shaw. I'm appearing on
5 the Minor matter for defendants.

6 THE COURT: And I'm sorry, I didn't get your name.

7 MS. BIFOSS: That's all right. Bailey Bifoss.

8 THE COURT: Can you spell your last name, please?

9 MS. BIFOSS: I sure can. It's B, as in boy, i-f, as
10 in Frank, o-s-s.

11 THE COURT: Okay. Thank you.

12 All right. I'm not entirely satisfied with my
13 tentative ruling. I'd like to supplement it with a few oral
14 comments.

15 First of all, a few words about Mr. Parris, and I
16 think it was Mr. Ozzello from CounselOne, whoever that was, who
17 did some work. There is no evidence that either of these
18 gentlemen did anything wrong whatsoever. They were retained to
19 perform services. We'll talk about what those services were.
20 But that's an issue for later. They were retained to perform
21 services. They performed those services. It appears that they
22 performed those services very well. They billed for those
23 services. And they were paid for those services.

24 So if that's not clear from my tentative ruling, I
25 want that to be clear. There isn't any evidence that these
26 lawyers were involved in a conspiracy with Mr. Aiwasian to

1 defraud the Court or to defraud class members. They performed
2 services. They billed for them and they were paid.

3 The issue is, well, should they have been paid out of
4 the fee award that the counsel made -- or excuse me, that the
5 Court made in each of these cases, or should they have been
6 paid as they were -- as the fees were presented to the Court as
7 an item of costs. So I hope that is clear.

8 Counsel may disagree with this, but my view is that
9 if the services performed by these lawyers was legal in nature,
10 either exclusively -- or I think even predominantly, they
11 should have been paid for the time they spent doing the work
12 that they did -- apparently did very well -- they should have
13 been paid out of the fee award that the Court issued in each of
14 those cases rather than having it billed as a separate item of
15 costs.

16 Okay. Mr. Haines. It's clear that Mr. Haines -- and
17 the impression that I have is Mr. Haines feels quite strongly
18 that Mr. Aiwasian has perpetrated a fraud on this Court and on
19 the class members.

20 Respectfully, Mr. Haines, your opinion is not
21 relevant. The same thing can be said for Mr. Bacon. I don't
22 know how strongly Mr. Bacon feels, but he thinks as well, it's
23 evident to the Court, that Mr. Aiwasian has perpetrated a fraud
24 on the Court -- and other courts by the way -- and defrauded
25 class members. Mr. Bacon's opinion, respectfully, sir, also
26 not relevant.

1 The only issue is, were these fees properly
2 characterized in the submissions to the Court for final
3 approval of the settlement? I'm not going to make any
4 determination whether Mr. Aiwazian did or did not perpetrate a
5 fraud on the Court or on the class members. I'm only going to
6 determine whether I believe these fees were mischaracterized.
7 And if they were -- provided the Court has jurisdiction, we'll
8 talk about that -- I would make an order that Mr. Aiwazian
9 effectively reimburse these costs, pay them to the
10 administrators. There would be additional administration fees
11 that have to be -- need to be paid. Mr. Aiwazian would be
12 responsible for those.

13 I understand there is a State Bar investigation
14 underway and the State Bar may make findings. I'm also going
15 to send a letter to the State Bar if I find at the conclusion
16 of this case that the fees were mischaracterized. I'll say in
17 that letter the State Bar may wish to conduct an investigation.
18 It's not relevant to my inquiry what was inside Mr. Aiwazian's
19 mind.

20 Also, with respect to Mr. Bacon, portions of
21 Mr. Bacon's declaration I think probably violate the mediation
22 privilege. There's probably a fraud exception to the mediation
23 privilege, but nobody is suggesting that any fraud occurred at
24 these mediations. The fraud, if there was fraud, occurred when
25 Mr. Aiwazian presented these motions for final approval to the
26 Court.

1 So I don't think I can invade the mediation
2 privilege. So I'm going to disregard all of that in
3 Mr. Bacon's declaration. If anybody thinks otherwise about
4 that, you can tell me about that when you have an opportunity
5 to speak.

6 Okay. I think that's all I need to supplement.

7 Mr. Aiwazian, why were these fees, in your view,
8 properly characterized as expert charges? And by the way,
9 actually before I ask that question, I want to say one thing
10 more. I take partial responsibility for this. I should have
11 scrutinized Mr. Aiwazian's fees. I don't look back in every
12 case, but I think it's his custom and practice -- it's usually
13 my order, that even if a fee is being asked -- or under the
14 Common Fund Doctrine, Mr. Aiwazian frequently asks for
15 35 percent. I typically award 33 and a third percent.

16 I think I recall one case, Mr. Aiwazian, where I
17 awarded 35 percent. I think all of these cases were 33 and a
18 third percent. But I generally require counsel to submit the
19 bills. And if I had looked at those bills more closely,
20 apparently I would have said, well, where was Mr. Aiwazian or
21 someone from his firm at the mediation? They're not there.
22 This work that was done by the other lawyers wasn't done by
23 Lawyers For Justice, and I probably would have asked some
24 questions and ended up lowering the fee award that would have
25 been paid. So anyway, that's my part in this.

26 Mr. Aiwazian?

1 MR. AIWAZIAN: Your Honor, in your first two to three
2 sentences you mentioned a name that I haven't heard of.

3 THE COURT: Oh, I'm sorry. It's somebody from
4 CounselOne is on one of the cases.

5 MR. AIWAZIAN: Yes, your Honor. And you mentioned
6 someone by the name of Ozzello. I believe you were referring,
7 just for the record, to Anthony Orshansky.

8 THE COURT: Mr. Orshansky, I apologize. I did
9 misspeak.

10 MR. AIWAZIAN: Your Honor, may I sit down?

11 THE COURT: You may. Anyone else wants to sit down,
12 go ahead.

13 MR. PARRIS: Do you mind if we have water with us?

14 THE COURT: Not at all.

15 MR. PARRIS: Thank you very much.

16 And can I correct one thing also, your Honor?

17 THE COURT: Yes, please.

18 MR. PARRIS: As a consulting expert, I have never
19 been at a mediation with Lawyers For Justice or anyone else
20 without the attorney present.

21 THE COURT: Okay. All right. Thank you.

22 MR. PARRIS: I just want to clarify that.

23 THE COURT: All right. Thank you.

24 MR. PARRIS: Thank you, sir.

25 And attorney from Lawyers For Justice or the firm
26 that I'm working for.

1 THE COURT: Well, then maybe I don't need to say what
2 I said earlier about not having scrutinized the bills.

3 What you're saying is it wouldn't have appeared that
4 no one was at the mediation.

5 MR. PARRIS: That's correct.

6 THE COURT: Thank you for clarifying that.

7 MR. PARRIS: Yes, your Honor.

8 THE COURT: Mr. Ozzello -- I'm sorry. Mr. Ozzello is
9 going to be very upset. His name has come up several times and
10 he has nothing to do with this case.

11 Mr. Aiwazian.

12 MR. AIWAZIAN: Good morning again, your Honor. Edwin
13 Aiwazian. Counsel for the plaintiffs and the various classes.

14 I have worked as hard as humanly possible to be
15 leading class action and PAGA lawyer in the state of
16 California. I have not achieved perfection, but I strive to
17 come close to it daily in my work. As a wage and hour lawyer,
18 I've only met a handful of individuals more skilled than me. I
19 love the practice of law and especially appearing before judges
20 like your Honor.

21 As I have said before in this courtroom on the
22 record, I think the world of your expertise, your Honor, in
23 this area, and therefore, I'm extremely troubled by the
24 tentative ruling.

25 I'm highly confident that everything before your
26 Honor has been above board, and although I'm usually brief in

1 court, this one time I request your patience as I communicate
2 my thoughts, your Honor.

3 My reputation is on the line and accordingly I need
4 to set the record straight. I apologize if the paperwork I
5 filed was either misunderstood or not clear enough to
6 communicate my justification for using consulting experts in
7 class actions who also happen to be lawyers.

8 The Court's tentative, your Honor, has incorrect
9 facts. The Court's tentative concludes something that I did
10 not intend to say and that is not accurate.

11 The Court appears under the impression that I said
12 Mr. Parris is doing that work that I, my team members, as
13 putative counsel are doing. I'm here to explain that is not
14 the case, your Honor. I want the record to be clear on this.

15 I, and my team members, have performed all the legal
16 work on these cases. Mr. Parris is an expert that assists us
17 to perform the work by providing consulting advice on discrete
18 factual issues that require specialized expertise like damages
19 on a claim-by-claim basis and financial analysis regarding the
20 same.

21 But this work is merely supplement to our work. We
22 do the legal work in these cases, not Mr. Parris or any other
23 expert. Your Honor --

24 THE COURT: That's not what your declaration says,
25 Mr. Aiwazian. You talk about how he's working towards class
26 certification, doing that analysis, management of individual

1 issues, things that a lawyer does.

2 MR. PARRIS: Your Honor, I want to focus on the
3 Flores case for a moment, which this Court refers to on page 2,
4 paragraph 3 of the tentative ruling.

5 In the Flores case, I and my team performed the
6 functions described in paragraph 3 of your tentative. We
7 analyzed and assessed facts regarding variability, community of
8 interests, pattern and practice, manageability. We assessed
9 how the case would be tried, including individual issues and
10 affirmative defenses.

11 We assessed damages and penalties. We gave
12 assessments of settlement scenarios. All of the things in that
13 paragraph we did and took ultimate responsibility for. Of
14 course we do that. This is our role as putative counsel. We
15 agree with the Court that we are responsible for this, and I
16 have all of the work product to prove it, your Honor.

17 Mr. Parris's role was as an expert to assist with
18 various aspects of those issues. Principally, an assessment of
19 the settlement value of each of the claims. But we were
20 ultimately responsible as counsel. He assisted us with those
21 issues, but he did not handle them or take responsibility for
22 them. And with his assistance, your Honor -- I apologize, one
23 second -- your Honor, with his assistance, we had great results
24 in the Flores versus Windsor Fashions action.

25 The case initially settled for approximately
26 \$1 million through the work of my colleague Mr. Bacon, the

1 person who is now raising complaints about me. We had a very
2 contentious relationship with Mr. Bacon in the Flores versus
3 Windsor Fashions matter. And I think this is part of what is
4 happening here. I would ask the Court to consider this in
5 assessing the credibility of Mr. Bacon and the value of
6 experts.

7 THE COURT: Well, let me interrupt you. I'm
8 disregarding Mr. Bacon's testimony and Mr. Haines' testimony
9 for the reasons explained.

10 But let me ask one other question. In my tentative
11 ruling, the second paragraph I indicated that Flores versus
12 Windsor Fashions should not be included here because I didn't
13 see Mr. Parris on that case.

14 Was he on that case?

15 MR. AIWAZIAN: Yes, your Honor.

16 THE COURT: Okay. Well, then we're going to keep
17 that in there. I just missed that.

18 Actually, hang on a second. Let me double-check
19 this. Now, unfortunately, I am looking -- this stack of
20 documents that I have is what Mr. Haines filed and he attached
21 all of your declarations in the various cases, Mr. Aiwasian, so
22 I'm assuming that this is an accurate copy. And I'm having
23 difficulty locating their charge by Mr. Parris.

24 MR. BACON: Your Honor, I can assist with this. This
25 is Adrian Bacon. The charge is at page 65 of Mr. Aiwasian's
26 declaration in support of his motion for attorneys' fees and

1 costs. It is itemized on --

2 THE COURT: Oh, and I just found it. Is it
3 \$9,144.53?

4 MR. BACON: That is it. That is correct, your Honor.

5 THE COURT: Okay.

6 I apologize for interrupting, Mr. Aiwarzian.

7 MR. AIWAZIAN: No need to apologize, your Honor. I'm
8 just trying to do my best and I have a lot to say.

9 THE COURT: Go ahead.

10 MR. AIWAZIAN: Mr. Bacon's declaration, your Honor,
11 conveniently omits just how and why the Windsor Fashion cases
12 came to be consolidated. The way the cases came to be
13 combined, the genesis of it all was that our firm had to call
14 out Mr. Bacon's conduct and engage in contested motion practice
15 intervening into Mr. Bacon's case and protect the class.
16 Mr. Bacon attempted a reverse auction in that case that would
17 have led to an approximate \$1 million settlement.

18 We objected. Accused him of collaborating with the
19 defendant in that case. Mr. Bacon's late filed declaration
20 references Mr. Bacon's Bonilla action and our Flores action and
21 that they came to be consolidated. I think it is very
22 important to provide the Court with some background and context
23 I have here regarding the Flores action and Bonilla action.

24 We had to hold Mr. Bacon accountable for his conduct
25 in the cases. We questioned his conduct, which we perceive to
26 be unethical. We had to object to his settlement, which was

1 for approximately half the value we --

2 THE COURT: Mr. Aiwarzian, I need to interrupt you,
3 because I don't think this is relevant.

4 What's relevant is, what did Mr. Parris do on the
5 case?

6 MR. AIWAZIAN: I'm getting to that, your Honor,
7 please.

8 THE COURT: Okay.

9 MR. AIWAZIAN: We were then able to approximately
10 twice that value at mediation in January of 2019, at which
11 we've used Mr. Parris, whose damages analysis helped us get an
12 extra \$1 million.

13 We were successful in objecting to Mr. Bacon's
14 settlement. When denying Mr. Bacon's motion for preliminary
15 approval and granting our motion to intervene into Mr. Bacon's
16 case, San Bernardino Superior Court Judge, the Honorable Brian
17 F. Foster, found that Mr. Bacon did not obtain all the
18 necessary data to properly evaluate a fair, reasonable, and
19 adequate settlement on behalf of themselves, the class members,
20 and the State of California. And that is a quote.

21 There was, open quote, inadequate data to properly
22 determine the actual size of the proposed class. And the
23 amount of the proposed settlement reached by Mr. Bacon was,
24 quote --

25 THE COURT: And again -- I apologize, Mr. Aiwarzian,
26 but I need to interrupt you. None of this is relevant.

1 Let's assume that you're 100 percent right about
2 that, Mr. Bacon may disagree, it's not relevant. What you're
3 telling me is that Mr. Parris came to the rescue with his
4 analysis.

5 Well, the issue is, what was his analysis? Was it
6 legal in nature, or was it something that a non-lawyer could
7 have done? Everything that Mr. Parris has said and everything
8 that you've said in your declarations about what
9 Mr. Parris did said he was acting as a plaintiff's class action
10 lawyer, a very good one and doing a good job. But I don't see
11 how it is non-legal work.

12 MR. AIWAZIAN: I want to --

13 THE COURT: Help me with that.

14 MR. AIWAZIAN: I want to be clear, your Honor.

15 Mr. Parris's focus is damages and valuation. He
16 consults on damages and valuations. He takes the violation
17 rates and the maximum damages models and uses them among other
18 factors to assess the value of each claim for settlement
19 purpose. In Flores he was able to do this to approximately
20 double the size of the settlement. In other cases he did the
21 same thing. He assesses damages on a claim-by-claim basis. He
22 is available at mediation to rebut expert opinion presented by
23 the defense on valuation.

24 Mr. Parris is uniquely qualified and provides
25 expertise on the potential recovery on each claim and the
26 discounted settlement value of each claim based on complicated

1 computations and all of the relevant factual analysis.

2 No one has experience of wage and hour claims like
3 Mr. Parris. Any economist or statistics person is not going to
4 have the sufficient experience to render the type and quality
5 of the opinions Mr. Parris offers me regarding valuation.

6 I'm an advocate. I'm a lawyer. I prepare for the
7 mediation and I participate in the mediation. I do everything
8 required of me. The experts assist me in performing discrete
9 valuation of the claims that ultimately supports my own
10 analysis and conclusions regarding potential for recovery on
11 each claim and reasonable settlement value.

12 Due to the size of our firm, your Honor, I believe we
13 have more talented wage and hour lawyers than any other firm.
14 At the same time, neither myself nor anyone at my firm has the
15 totality of education, experience, and training that Mr. Parris
16 and other experts have in valuing the damages and complex wage
17 and hour claims. And in some cases I decide, your Honor, that
18 retaining such an expert is sufficient value add to justify the
19 costs. And the results have proved this time and time again.
20 I do what I'm supposed to do, your Honor. I don't outsource
21 that work to anybody else.

22 Mr. Parris assists me in doing this work, but does
23 not do my work. I want to address the Court's comment implying
24 that I can't do what Mr. Parris does. The part where the Court
25 says my statement is remarkable, I don't feel comfortable
26 billing Mr. Parris's work because it's not legal work, your

1 Honor. It is complex damages analysis relevant to a legal
2 issue. That factual damages analysis is not legal work, but
3 expert work. I don't feel comfortable billing this as legal
4 work. I feel it is appropriate to bill it as the work of a
5 consulting expert because he doesn't do legal work. I don't
6 feel it's appropriate to bill him as an attorney.

7 Your Honor, I am not aware of -- I'm only going to
8 talk about this section in my outline, your Honor, only because
9 the Court's tentative requested and as diligent counsel I
10 should answer.

11 THE COURT: Okay.

12 MR. AIWAZIAN: I'm not aware of any authority that
13 the Court can change the final judgments or continue to
14 exercise jurisdiction at this point. However, the monetary
15 sums, your Honor, at issue are not material to me. Also, the
16 money at issue here is -- although, I'm not aware of any
17 authority that allows this Court to alter final judgments
18 entered in these cases, if it would please the Court, I will
19 voluntarily pay the sums to the administrators along with any
20 interest and additional administration costs, and thereafter
21 file declarations from the administrators verifying the same.

22 I need to use experts to help advocate for the class
23 members and secure higher resolutions such as doubling the
24 Flores resolution. I will continue to use them. And if need
25 be -- if I need to absorb the costs, if that's what this Court
26 prefers, then I will absorb the costs.

1 The Court's tentative ruling requests that I address
2 whether this Court's post-judgment retains jurisdiction to
3 order the Lawyers For Justice to pay the amounts paid to
4 non-affiliated lawyers. Based on the applicable law, I don't
5 believe objectors can collaterally attack judgment and/or that
6 the Court can on this basis reopen judgment.

7 Excuse me, your Honor.

8 California Rules of Court, Rule 3.769 provides that
9 if the Court approves the settlement agreement after the final
10 approval hearing, the Court must make and enter judgment. And
11 the judgment must include a provision for the retention of the
12 Court's jurisdiction over the parties to enforce the terms of
13 the judgment.

14 Your Honor, the trial court's continuing jurisdiction
15 over class action is for the purpose of confirming that the
16 parties are in compliance with the settlement terms and to
17 enforce the terms of the judgment. The purpose of continuing
18 jurisdiction is not to indefinitely leave open issues that have
19 been considered, argued, and decided by the Court as part of
20 the settlement approval process open for reevaluation or
21 redetermination. A collateral attack on a judgment, your
22 Honor, is only appropriate in limited instances. For example,
23 to consider whether the procedures in the prior litigation
24 afforded -- afforded the party against whom the earlier
25 judgment is asserted, a full and fair opportunity to litigate
26 the claim or issue.

1 Epstein versus MCA, Inc., Ninth Circuit 1999,
2 179.F3rd 641, pages 648 through 649. The attacks that are
3 being leveled against me are not proper collateral attacks, nor
4 within the continued jurisdiction of the Court, your Honor.
5 These attacks are made by wise competitors, who are -- whose
6 credibility are in question and they do not have the standing
7 to reopen the judgment. These attacks are being used to
8 request this Court to reopen cases that were before it in which
9 the judgment was entered and now has become final.

10 In order to engage in ongoing revisitation and
11 reevaluating of issues the Court already reviewed and decided
12 the principles of finality of judgment, it's important in class
13 actions, your Honor, a central feature of the modern class
14 action advice is that a class action determination, whether in
15 the litigation or settlement context reached, it should be
16 reached after compliance with class action procedures is
17 entitled to finality. This is the citation to II McLaughlin on
18 class action Section 630.

19 At all times, your Honor, I've acted in good faith
20 and I've been transparent. Three courts have reviewed the use
21 of Mr. Parris as a consulting expert at mediation and found it
22 appropriate. The Court should not heed or adopt Mr. Haines'
23 misconstrual of these three examples of courts inquiring by
24 Mr. Parris. These are not examples of scrutiny of Mr. Parris
25 as an expert. Instead, in one case, Barela versus Quail Park,
26 Tulare Superior Court took the position that it expected that

1 an expert would be used for such a case and required --
2 inquired about the expert used.

3 And in two other cases, Zimmers versus Pinnacle and
4 Debar versus Optima Tax Relief, the Orange County Superior
5 Court simply sought information about the expert used. The
6 same judge inquired about and received information about
7 Mr. Parris on two occasions and approved Mr. Parris's case
8 costs.

9 In or around October of 2021, in Barela versus Quail
10 Park Retirement Village, LLC, your Honor, Tulare County
11 Superior Court, Case No. VCU282224. The Honorable David
12 Mathias, quote, Required additional information as to why
13 plaintiff and/or its counsel determined not to utilize an
14 expert in the assessment of damages in the case involving
15 complex wage and hour claims of hundreds of employees.

16 The court further commented that, quote, If an expert
17 was utilized and this information was simply not mentioned in
18 the moving papers, the expert should be identified along with
19 their qualifications.

20 In response to this inquiry, your Honor, my firm
21 filed a declaration from Robert A. Parris that described his
22 services and credentials. The Court did not comment further on
23 his service as an expert and ultimately approved the settlement

24 In or around July 2021, your Honor, in Zimmers versus
25 Pinnacle Property Management Services, LLC, Orange County
26 Superior Court, Case No. 30-2018-000995413. The Honorable

1 William D. Claster, observed open quote, your Honor, "Counsel
2 retained an expert to assist in claim valuation. Is this
3 Robert Parris, the expert mentioned in the cost bill? Please
4 provide a copy of the expert's CV."

5 In response, we filed a declaration attaching the
6 declaration of Robert A. Parris, detailing his services and
7 credentials. The Court had no further questions and ultimately
8 approved the settlement.

9 Your Honor, in or around December 2021, in Debar
10 versus Optima Tax Relief, LLC, Orange County Superior Court,
11 Case No. 30-2018-00972771. The Honorable William D. Claster,
12 again, your Honor, inquired as follows, open quote, Was an
13 expert retained to value the case? If so, what are his or her
14 qualifications?

15 In response, I filed a declaration explaining
16 Mr. Parris's work as a consulting expert at mediation and
17 attaching Robert A. Parris's CV. The Court had no further
18 questions and ultimately granted preliminary and final approval
19 of the settlement.

20 My declaration, your Honor, said the following to the
21 Honorable, Judge Timothy (sic) D. Claster, open quote, "Lawyers
22 for Justice, PC, engaged Robert A. Parris as a consulting
23 expert during mediation. Mr. Parris is a leading class action
24 attorney, specifically on certification of a class damages and
25 evaluation of class claims.

26 "Mr. Parris works as a mediator, an expert, and

1 expert consultant on a wide range of litigated matters,
2 including complex wage and hour cases. He was a partner with
3 the Parris Law Firm for 23 years where he participated in
4 hundreds of class action mediations resulting in settlements
5 totaling over \$500 million and since 2015 is of counsel for
6 Parris Law Firm and manages his own firm Robert A. Parris, P.C.

7 "During his time as a partner for the Parris Law
8 Firm, the firm certified numerous wage and hour class actions
9 and was appointed class counsel multiple cases in California
10 and federal courts. His attendance and participation in the
11 mediation as an expert allowed him to immediately consider and
12 provide persuasive, strategic, and authoritative input on
13 issues relating to certification and valuation. And having an
14 expert at mediation provided Plaintiffs a strategic advantage
15 in the negotiation process."

16 Your Honor, this is a prime example of a complex
17 civil judge approving Mr. Parris's consulting expert work based
18 on Mr. Parris being the leading class action attorney. And
19 because Mr. Parris provided immediate, persuasive, strategic,
20 and authoritative input on issues relating to certification and
21 valuation. And that is provided -- and that provided Plaintiff
22 a strategic advantage in the negotiation process at mediation

23 Your Honor, I have named the experts. Other firms
24 typically don't name their experts and just say -- they have a
25 category that this Court and many courts have approved that
26 just say expert and they'll have a dollar figure next to it.

1 I've identified the experts by name and/or any company they're
2 affiliated with.

3 I have identified the experts, your Honor, compared
4 to many of my colleagues in this practice area. I've been more
5 transparent with this Court and all other courts regarding the
6 use of these experts, including specifically naming them and/or
7 the entity they work for. In comparison, your Honor, some of
8 my colleagues who are here will just put a category that just
9 says experts and a dollar figure next to it.

10 And, your Honor, at all times Mr. Parris and any
11 other expert that I've submitted requests for reimbursement for
12 have always been approved and never reduced.

13 Cases in the ABA, your Honor, recognize that expert
14 witnesses are common and useful in employment cases. The
15 Flores versus Windsor case is just an example of where an
16 expert have been crucial to securing a more favorable
17 settlement for class members. Experts are approved daily in
18 these types of cases and experienced courts recognize that
19 attorneys can be experts. And in this case situation, our
20 experts were the best that we could find.

21 Your Honor, I positively believe in my opinion that
22 if we were to litigate the issue within the context of these
23 proceedings, which is very important to the plaintiff's bar,
24 namely the use of consulting experts at mediation by the
25 plaintiff's bar, this would involve considering additional
26 expert evidence in the nature of forensic analysis and this

1 would likely confirm that the use of consulting experts by
2 Plaintiffs helps match or overcome the bargaining advantages
3 the employers possess in negotiations when they use consulting
4 experts at mediation, and that Plaintiffs' use of consulting
5 experts at mediation generates and correlates with better
6 settlement outcomes.

7 Your Honor, the Court's tentative ruling does not
8 take into account or cite the applicable law on the subject at
9 hand, use of experts. Our papers refer the Court to the
10 following applicable law. Page 3, lines 3 to 17 of our
11 response to Order to Show Cause, your Honor, we cited to
12 California Evidence Code 801, which defines expert opinions as,
13 open quote, Related to a subject that is sufficiently beyond
14 common experience, end quote, and based on matters including
15 specialized knowledge, skill, experience, training, and
16 education perceived by or personally known to the witness or
17 made known to him or her at or before the hearing.

18 As recognized in Duran, your Honor, and many other
19 employee class action cases cited in our papers, the
20 certification litigation and resolution of class action cases
21 involves highly complex questions amenable to expert opinions.

22 Your Honor, on page 3, lines 18 to 28 and page 4,
23 lines 1 through 5 of our response to orders to show cause,
24 courts have regularly approved the use of experts and even
25 criticized any failure to employ such an expert in wage and
26 hour class actions. And we have provided the Court with

1 citations to several cases to support this, your Honor.

2 In addition, page 10, lines 2 to 17 of our response
3 to orders to show cause, California Evidence Code Section 805
4 is cited where it says, Expert opinions can encompass ultimate
5 issues to be decided by the trier of fact.

6 We have provided the Court with cases where courts
7 considered and/or admitted expert testimony from attorneys
8 acting as experts. Although, the admissibility of potential
9 expert testimony is not at issue here, your Honor, because the
10 experts acted as consulting and not testifying experts. Many
11 cases, your Honor, recognize that experts are useful and
12 essential on many of the issues identified in paragraph 3,
13 page 2 of your tentative, your Honor,

14 For example, the following reported cases have cited
15 the usefulness for experts to assist on damages and other
16 issues identified in paragraph 3 of your tentative. Capital
17 People First versus State Department of Developmental Services,
18 2007 case, 155 Cal.App.4th 676, pages 692 to 693, your Honor.

19 Court said it considers expert testimony in deciding
20 commonality requirements. Sav-On Drugs, your Honor. Sav-On
21 Drug Stores, Inc. versus Superior Court, 2004 case, the seminal
22 case, your Honor. The only case that somewhat went to trial on
23 missed classes, paved the way for missed-class cases.
24 34 Cal.4th 319, page 333.

25 California -- open quote, your Honor, "California
26 courts and others have in a wide variety of context considered

1 pattern and practice evidence, statistical evidence, sampling
2 evidence, expert testimony, and other indicators of a
3 defendant's centralized practice in order to evaluate whether
4 common behaviors towards similarity situated plaintiffs made
5 class certification appropriate."

6 Your Honor, in another case called Zuniga versus
7 Alexandria Care, 2021 case, 67 Cal.App.5th 871 on page 887,
8 expert testimony on employer's record is commonplace in wage
9 and hour cases.

10 Your Honor, when I Googled "consulting experts," on
11 the first page of Google an article came up from the ABA. The
12 ABA recognizes that expert witnesses can assist on many tasks
13 the attorneys perform. For example, let me read from the
14 article on the ABA website about expert witnesses. And I have
15 copies for everyone here, your Honor.

16 This article states, open quotation, "Experts have
17 various jobs in a case. They can assist with, one, assessing
18 the value of a case; formulating claims, counterclaims and
19 defenses; drafting discovery requests and responses; reviewing
20 documents; challenging the other side's experts; developing and
21 refining case strategy; identifying, evaluating, and
22 calculating damages; evaluating and responding to opposing
23 counsel's claims and theories; and aiding the fact finder
24 through trial discovery.

25 Your Honor, in the mediation context, you know that
26 it's extremely rare for a certified class to go all --

1 completely through trial. And our firm is the leading firm in
2 terms of number of certifications in the last five years. But
3 we still haven't had one get completed in trial. We've gone to
4 trial, but none of them have been completed.

5 So mediations are basically our trial, your Honor.
6 In the mediation context, the consulting experts at mediation
7 are assisting in assessing the value of a case challenging the
8 other side's experts. Developing and refining case strategy,
9 identifying, evaluating, calculating damages, evaluating and
10 responding to opposing counsel's claims and theories, and
11 providing me with information to advocate to the mediator, who
12 in a way, your Honor, is acting in the role of a fact finder in
13 so far as the mediator will take a position regarding what the
14 value of the claims are, convince our adversaries, which in
15 turn impacts the formulation of demands and offers.

16 And ultimately, your Honor, although my preference is
17 to try to bridge the gaps through distributive bargaining, it's
18 commonplace for mediators to issue a mediator's proposal and
19 that's typically given serious consideration by both sides.

20 For example, your Honor, I have retained experts to
21 address the fact that employers withhold their -- intentionally
22 save crucial information and do not disclose or present it to
23 us until we reach mediation.

24 The other side has an interest in doing this and
25 leveraging surprise at this last minute. The issues they bring
26 up are things like written meal waivers, Pick Up Stix releases,

1 arbitration agreements. These days more and more so, financial
2 constraints and restructuring sale closure of operations.

3 This is why it is important, your Honor, to have
4 consulting experts involved who are able to respond to issues
5 coming up at mediation in real time. They assist me, your
6 Honor, to factor in risks and discounts based on real life
7 outcomes. Although claim evaluation is an art instead of a
8 science, trial courts are still expecting and requiring some
9 level of science in exactitude, your Honor. And consulting
10 experts make it possible for us to value claims based on
11 complex factual analysis relevant to the case derived from
12 actual outcomes in other cases.

13 Developments in the practices and industry and data
14 points being revealed to us on the spot at mediation through
15 the mediator. Or, for example, by defendant's own expert.

16 I also want to note, your Honor, that the ABA also
17 states while experts have many different possible uses under
18 FRCP26A2 and B4, experts fall in two general categories, your
19 Honor. Consulting experts and testifying experts. If someone
20 is a trial lawyer -- like your Honor knows this probably better
21 than ABA -- a consulting expert has been retained or consulted
22 with by a party in anticipation of litigation or trial, but who
23 will not testify at trial. A testifying expert, on the other
24 hand, may be used at trial to present evidence.

25 Generally, no information about consulting experts is
26 discoverable while testifying experts are disclosed to the

1 other side and involved in pretrial discovery.

2 There are dozens of cases, your Honor, where experts
3 have helped. For example, our firm had a few cases that are
4 included in the coordinated proceeding that involved the
5 settlement that just received final approval on last Friday.
6 Our case was the late -- was the later filed case.

7 By way of background, your Honor, some counsel
8 initially settled the case for \$4 million. And my firm and
9 other firms got involved and eventually took the -- this other
10 firm took the role of a lead lawyer and co-counseled with us
11 and our co-counsel, your Honor, retained approximately five
12 different experts who worked hand and hand with the lawyers and
13 that led to a settlement, your Honor, going from \$4 million to
14 \$18 million. That was ultimately granted approval. The final
15 approval hearing was, again, last Friday and we waived the
16 formal entry of order and judgment. The matter is Akash wage
17 and hour cases, A-k-a-s-h, judicial counsel coordination
18 proceeding number 5214.

19 Your Honor, I've only tried one case, but as a hobby
20 I study as much as I can about trials. I've learned that some
21 of the nation's most prominent lawyers use jury consultants to
22 help select juries, and that some of these jury consultants are
23 lawyers. Your Honor, does this mean that the trial lawyer is
24 not performing his or her duties by obtaining this type of
25 assistance? Does this mean that the trial lawyer can't
26 adequately participate in jury selection without a jury

1 consultant? Is the jury consultant doing legal work even if --
2 even if they are a lawyer?

3 The answer to these questions, your Honor, is of
4 course not. Diligent, zealous advocates will use consulting
5 experts when these experts can add value.

6 As I have made clear, your Honor, I think very highly
7 of my abilities, but I will use an expert when an expert's
8 experience is superior to mine and his or her opinions can help
9 maximize a recovery for the class. Your Honor, I don't know
10 if -- you know, for example, there are cases that the defendant
11 has substantial ability to pay, and it's obvious from the
12 records. I can't justify, even if it's going to be a class
13 settlement. Sometimes I conclude that I can't justify hiring a
14 mediator. So the defense counsel and I will negotiate together
15 and resolve the matter.

16 Now -- and sometimes we hire mediators. Does that
17 mean the mediator is doing my work? I can negotiate, I can
18 build consensus, I can settle a case. But, you know, at any
19 time, we can -- if -- if our focus is the absent class member,
20 and the class members and the putative aggrieved employees,
21 anything we can do, your Honor, to add value on your behalf it
22 should be strongly considered.

23 Your Honor, I value my integrity. I was transparent.
24 I disclosed the experts. I used them as experts because in my
25 view they were not doing legal work, and I firmly believe that.
26 If the Court prefers that I absorb these costs in the future,

1 your Honor, I will.

2 I respectfully ask that this Court either continue or
3 vacate the OSCs and set a compliance hearing regarding my
4 voluntary agreement to pay the sums back. Alternatively, your
5 Honor, I request that the Court not adopt the tentative as is
6 and to significantly amend it to accurately reflect the record.

7 And I -- from the bottom of my heart, your Honor, I
8 thank you for letting me express all of my thoughts.

9 THE COURT: Thank you, Mr. Aiwarzian.

10 Mr. Parris.

11 MR. PARRIS: Yes, your Honor.

12 THE COURT: You've acted as a class action lawyer in
13 the past.

14 MR. PARRIS: I have, your Honor.

15 THE COURT: And now you act as an expert consultant.

16 MR. PARRIS: Consulting expert.

17 THE COURT: Help me understand the difference. What
18 do you do now that is different from what you did before?

19 MR. PARRIS: Your Honor, I have a statement that I
20 would like to go through with you. I think I will hit on every
21 point you've brought up. And if I don't, I'd be happy to
22 answer those.

23 THE COURT: Please.

24 MR. PARRIS: Will that be okay?

25 Thank you.

26 Good morning, your Honor. As you know my name is Rob

1 Parris and I -- there have been several declarations that my
2 name has come up in. I can assure you this is the last place I
3 would like to be today. After reading all the declarations of
4 Mr. Haines and Mr. Bacon, and your tentative ruling,
5 unfortunately, is the only place I can be today. I am very
6 sorry that you have to take your precious time on this subject,
7 but given the importance of the topic to me personally, I would
8 like the opportunity to explain, to clarify my role on these
9 cases.

10 I would like the record to be very clear, your Honor.
11 I do not perform legal work on cases on which I serve as an
12 expert. The work I perform is different than legal work. I am
13 a consulting expert on damages, valuation, and negotiation
14 strategy. That is all that I do. I do not play the role of an
15 attorney or a co-counsel. I will explain this in more detail,
16 but first I want to discuss my background and how I went from
17 an attorney to a consulting expert.

18 I'd like you -- I'd like to give you a very short
19 history of me and how it came about that when I retired from
20 being a trial and litigating attorney in 2015, I started
21 spending most of my time being a mediator and consulting
22 expert. Your Honor, before I became an attorney I was in the
23 California Highway Patrol for 16 years, rising to the rank of
24 Captain before I left to join my brother as an attorney.

25 As a young trainee in the CHP I learned the most
26 important traits to be successful in life is my integrity.

1 After leaving the CHP, I became a member of the Los Angeles
2 County Sheriff Reserves and continued volunteering to be a law
3 enforcement officer for another 20 years, honorably retiring.

4 As a law enforcement officer for 36 years and as an
5 attorney, and now consulting expert, I have an unblemished
6 record. My integrity is extremely important to me and as you
7 know it's being questioned today by Mr. Bacon and Mr. Haines.

8 THE COURT: Mr. Parris, I need to interrupt you.
9 Your integrity is not questioned by this Court at all.

10 MR. PARRIS: I agree with that, your Honor.

11 THE COURT: And what I really need to know -- you've
12 served both roles. You've been class counsel and you've been a
13 consulting expert. Talk about the differences. What do you do
14 now that you -- that's different?

15 MR. PARRIS: And I'm getting into that. And I'm --
16 and this next part kind of explains to you how I got here and
17 what I'll do.

18 THE COURT: Okay.

19 MR. PARRIS: Okay. And again, I really appreciate
20 your patience.

21 As I came to my -- end of my career as an attorney,
22 your Honor, I had the good fortune of hiring an executive from
23 Allstate Insurance Company. I met him as adversary at many bad
24 faith insurance mediations. Although he wasn't an attorney, he
25 is an expert in valuing bad faith personal injury cases and had
26 been involved in hundreds of mediations regarding them.

1 When he retired, I was fortunate to hire him to act
2 as a consulting expert in bad faith cases where I was the
3 attorney at the mediation. I have done hundreds of bad faith
4 cases, but he had unique abilities that I did not have that
5 added value to the cases. He provided advice on damages,
6 valuation, and negotiation strategy. He was excellent. Most
7 importantly, his involvement helped my clients get sometimes
8 significantly higher outcomes.

9 His work as a consulting expert gave me the idea to
10 become a consulting expert as well on damages valuation,
11 negotiation strategy. It is from this experience that when I
12 retired as a litigating trial attorney that I began my practice
13 as a consulting expert in the area of wage and hour and
14 catastrophic injury mediations.

15 Now, Mr. Aiwasian has already given you the
16 definition and some background regarding consulting experts. I
17 too went to legal scholar Mr. Google and found probably one of
18 the best articles on consulting experts and regular experts.
19 It's from Lam & Com Insights Journal 19, Autumn 2019. It's
20 working with testifying experts. I have gone through the
21 definition very similar to this, and I also have a copy for you
22 and other counsel that I'll give you at the conclusion.

23 Would that be okay, your Honor?

24 THE COURT: Of course.

25 MR. PARRIS: And I will not go back through what
26 Mr. Aiwasian said.

1 So, your Honor, my role in mediations as a consulting
2 expert includes the following: My role as a consulting expert
3 is to assist the attorneys in two categories, damages and
4 valuation and negotiation strategies. These are two discrete
5 issues that I focus on. What I don't do: I do not do legal
6 work. I do not do or argue facts and law. I read the facts
7 and law only to the extent necessary for my two discrete
8 topics. You could see that in my bills. I typically spend
9 only two hours in preparation for mediation, your Honor.

10 When I was the litigation attorney, I would spend
11 dozens of hours in preparation for mediation in order to master
12 the facts and the law.

13 The first category, damages and valuation. Let me
14 describe this to you. I consult on damages and valuation. I
15 value damages on a claim-by-claim basis, whether it be off the
16 clock, missed meal breaks, meal breaks, rest breaks, not being
17 paid for business items. I look at each one of these topics.

18 I consult on damage valuation. I value those damages
19 on a claim-by-claim basis using among other things, a database
20 that I developed as a consulting expert after retiring from
21 litigation -- litigation.

22 I will prepare damage and value analysis prior to
23 mediation, but usually my work occurs during the mediation.
24 This is because, as Mr. Aiwazian told you, defendants often do
25 not produce damages analysis before mediation and instead
26 surprise the plaintiff with new information at the mediation.

1 During the mediation as I receive more information from the
2 defense regarding pick-up sticks they've done, arbitration
3 agreements they have, meal waivers, premiums paid, financial
4 condition of the company and other factors, I reassess my
5 evaluation and the value and adjust negotiating strategy.

6 In order to value claims I need to know the details
7 of a case. So it is true that I do some of the activities
8 described in paragraph 3 of page 2 of your tentative, your
9 Honor. I look at variability, manageability, and other aspects
10 of the case to the extent necessary to value damages. But I do
11 not replace the work of attorneys and I do not take on the
12 duties that the Court describes in paragraph 3 of page 2 of the
13 tentative.

14 Negotiation strategy, your Honor, I also advise my
15 attorney/clients on negotiation strategies. And I look as my
16 client as the attorney, your Honor. I don't have regular
17 clients other than the attorneys. I've developed expertise in
18 negotiations as an attorney, as a mediator, and as a
19 consultant. I advise clients on what strategies and tactics to
20 use in negotiations. This is similar to the services of the
21 All State expert provided to me when I hired him years ago.

22 My goal in every mediation I attend as a consulting
23 expert is to get the maximum settlement proposal for the
24 attorney/client that I'm working with that represents the
25 class. I am not a neutral mediator or expert in these
26 engagements. I'm a consulting expert hired only to maximize

1 recovery of the clients or the attorney I am hired for.

2 We've already gone over this part of it, but in the
3 role that I work I would never contemplate testifying in court
4 as a consulting expert because all my work is done as an expert
5 consultant for attorneys. I believe it would be confidential
6 by the attorney/client privilege and because all my work is
7 done in mediations. I have a high expectation that the work I
8 do and the conversations I participate in are confidential by
9 state law and normally the mediation privilege.

10 At the end of my engagement I send a bill for my
11 services and I am paid whether the case is settled or not. I
12 do not take contingency payments. Now, your Honor, I clearly
13 believe that my qualifications in the area of damages,
14 valuation, negotiation provided in my CV to you, that was an
15 exhibit to my declaration, and the declarations that I have
16 given to you would meet the higher standards of Evidence Code
17 720, and I know you're aware of them so I'm not going to read
18 them to you. But some qualifications to qualify an expert
19 witness to be a testifying expert. I believe I can qualify in
20 that area, but I have no desire to be a testifying witness.

21 As stated in my declaration and on my CV, my
22 qualifications include, I'm an expert at the mediation process.
23 I've had extensive training in mediation and negotiation
24 mediations from the premier law schools and mediators in the
25 country. I'm a federal court mediator. I've been trained at
26 the federal court in mediations on our panel training sessions.

1 I've been a mediator for hundreds of superior court, federal
2 court and private mediations. I'm an expert at evaluating wage
3 and hour cases. I was the partner of one of the first wage and
4 hour firms in California. And worked with one of the other
5 premier wage and hour firms Stan Saltzman. And I know that
6 Mr. Bacon knows him and worked with him. I have actively
7 litigated hundreds of wage and hour cases and participate as a
8 litigating partner in hundreds of wage and hour mediations.

9 I'm an expert at valuing claims in negotiation
10 strategy. I believe there is nobody -- and I don't say this
11 lightly and I say this as humbly as I can. There is nobody in
12 California that has more combined experience as a mediator, as
13 a wage and hour attorney attending mediations and as an expert
14 consultant focused on maximizing settlements and wage and hour
15 mediations.

16 What I do not do, your Honor, and I think this is a
17 question of yours -- I want to make it clear -- I do not do
18 legal work. I don't research cases, analyze cases. I don't
19 master the facts or argue the facts or law. I stick to my two
20 areas.

21 Mind if I take a drink of water?

22 THE COURT: Not at all.

23 MR. PARRIS: Thank you.

24 Your Honor, I am retired as a litigating attorney. I
25 do not want to do Mr. Aiwasian's, Mr. Haines's, or Mr. Bacon's
26 job. I only want to do my consulting expert work. I want to

1 stay in my lane and do only the limited work on damages
2 valuations and negotiations.

3 As you can see again from my invoices, I saw you
4 getting them, I spent only two hours before mediation. This is
5 not sufficient time to do the legal work necessary to be class
6 counsel. I am in no way doing the work of Mr. Aiwazian,
7 Mr. Haines, or Mr. Bacon. I don't want to do that work. And I
8 do not do that work.

9 Drawing your attention, your Honor, to paragraph 3 of
10 page 2 of your tentative, I do that work only to the extent
11 necessary for my two discrete areas, damages and negotiations
12 evaluations. But I do not take responsibility for those
13 issues. I assist the attorneys with specific tasks, but they
14 are responsible for those issues.

15 I know about Mr. Aiwazian's, Mr. Haines's and
16 Mr. Bacon's qualifications and none of them are qualified to do
17 what I do as a consulting expert. However, all of them are
18 qualified to be counsel, or co-counselor, or even contract
19 counsel in wage and hour cases.

20 I am not a co-counsel. I am not a contract counsel.
21 Before retiring as a partner from Parris Law Firm I was
22 co-counsel in over 100 wage and hour cases. As co-counsel in a
23 wage and hour case, either the Parris Law Firm or I would find
24 and sign clients, assist with litigating cases, meeting with
25 clients, drafting complaints, answering discovery, taking
26 depositions of party witnesses and PMKs, drafting discovery

1 motions and opposing motions, appearing in court to argue
2 motions attending mediations, going to trial, advancing the
3 costs to litigate the cases, provide billing for the time and
4 tasks that I work on cases.

5 And, your Honor, my billing rate is substantially
6 higher as a wage and hour co-counsel or even as a contract
7 counsel than my rate as a consulting expert.

8 I would either have a retainer signed by the client
9 or a fee sharing letter signed by the client to ensure I would
10 be paid in case it settles. That's what I would do as a
11 co-counsel, your Honor. I don't do any of this. I just do the
12 discrete work I described on damages and evaluation and
13 negotiation.

14 Your Honor, I know -- and it's evident you know
15 through the declarations -- there is bad history between
16 Mr. Aiwarzian, Mr. Bacon and Mr. Haines. From reading the
17 declarations it is clear to me that we are here today more
18 about getting even than to protect the class members.

19 As an attorney for over 30 years, I have found these
20 disputes are bad for everyone in the plaintiff's firm to take
21 away from the time and energy that could be devoted to working
22 on our cases and gives ammunition to our adversaries to hurt
23 our cases. It is always better to work together as a team than
24 to injure each other's reputations.

25 Already I'm not sure who is doing it, but the State
26 Bar complaint is circulating among the defense bar about

1 Mr. Aiwarzian with my name attached as an expert. And I'm being
2 questioned about that at mediations by mediators.

3 I sincerely believe and have been told by several of
4 the leading class action mediators and the former judges that
5 my involvement in many mediations result in substantially
6 better outcomes for the class members.

7 Although, for obvious reasons as neutral mediators do
8 not like to give declarations regarding these types of actions,
9 I am confident if it would help your ability to rule about my
10 qualifications as a consulting expert, I could obtain some
11 declarations for your review. I have spoken to Mr. David
12 Rothman, the mediator in the Flores case regarding Mr. Bacon's
13 declaration and I did provide it to him. And he told me that
14 he could not comment for the same reasons you said. There's
15 confidentiality requirements at mediation, and unless all the
16 parties would waive that confidentiality agreement, he couldn't
17 do anything. But if they would, he would provide a declaration
18 to this Court regarding my mediation role in the Flores case.
19 And he -- I know has sent you a letter, your Honor, through
20 your e-mail and sent CCs to --

21 THE COURT: David Rothman.

22 MR. PARRIS: Yes, he did.

23 THE COURT: I haven't received it.

24 MR. PARRIS: It was through some e-mail. And he sent
25 it to, I think, Mr. Haines and Mr. Bacon, and to Mr. Aiwarzian.

26 THE COURT: When -- when was it sent?

1 MR. AIWAZIAN: At 8:12 this morning, your Honor.

2 THE COURT: Oh, maybe I do have it.

3 MR. PARRIS: You would be able to see that.

4 THE COURT: Give me a moment.

5 I don't have it.

6 MR. AIWAZIAN: Your Honor, it went to an e-mail
7 address called joint CMC reports.

8 THE COURT: That's probably the only one he had.
9 Could you pull that up?

10 THE JUDICIAL ASSISTANT: I don't have access to that
11 e-mail.

12 THE COURT: Okay. I'll have to get access to it
13 later. That is an e-mail address we use exclusively for case
14 management reports for courtesy copies of it. So it's not an
15 e-mail that I check regularly. Jessica usually does it. She's
16 not here. I'll figure out how to get access.

17 MR. AIWAZIAN: And your Honor, the person who sent
18 it, her name is Karen Cuckla [phonetic], who is Mr. David
19 Rothman's longtime assistant.

20 THE COURT: Is this an lengthy e-mail?

21 MR. AIWAZIAN: The e-mail is only one short
22 paragraph, but --

23 THE COURT: Does somebody have a printout of it?

24 MR. AIWAZIAN: No, your Honor. But there is --
25 there's a letter attached to the e-mail from Mr. David Rothman.
26 It's not long, but --

1 THE COURT: Okay.

2 MR. AIWAZIAN: If you'd like me, I can read it into
3 the record. If not, that's fine.

4 THE COURT: Any objection?

5 MR. BACON: Your Honor, I have no objection, but the
6 letter only addresses confidentiality as to my declaration
7 which your Honor is not considering anyway, so I think it's a
8 moot point.

9 THE COURT: Is there anything in that e-mail that --
10 is that accurate that I'm not considering Mr. Bacon's
11 declaration, so is this e-mail relevant?

12 MR. AIWAZIAN: To -- to me it's relevant, your Honor,
13 because it talks about --

14 THE COURT: Go ahead and read it.

15 MR. AIWAZIAN: So it's dated March 20, 2023. And
16 it's sent electronic e-mail only to the Honorable Judge David
17 Cohn. Subject line says, Flores, et al. and Bonilla, et al.
18 versus Windsor Fashions, Inc.

19 "Dear Judge Cohn, I have been asked to comment on a
20 controversy that I understand arises out of the reference
21 mediation, which took place on January 15th, 2019. I was
22 specifically asked to comment on the March 20, 2023,
23 declaration of Adrian Bacon. By way of background, I attended
24 Cornell University and the University of Chicago Law School,
25 where I served on the law review. I then practiced law in
26 California as first an associate, then a partner with the firm

1 then known as Pillsbury, Madison & Sutro for about 20 years.

2 When I resigned my partnership and left the firm, I
3 began my mediation practice. I have been a mediator for
4 33 years. In that time I have mediated approximately 3,500
5 matters.

6 My practice has always been to require for each
7 mediation that all participants, including myself, sign a
8 confidentiality agreement. The actual form of agreement is one
9 that I have used with few changes during the entire time. I
10 attach a copy of the signed agreement in the referenced
11 mediation. It includes the signatures of Mr. Bacon and myself.

12 In pertinent parts it states -- and then it's a block
13 quote, your Honor. "No aspect of the mediation shall be relied
14 upon or introduced as evidence in any arbitrable judicial or
15 other proceeding, including, but not limited to, A, views
16 expressed or suggestions made with respect to a possible
17 settlement of the dispute; B, admissions made in the course of
18 the mediation proceedings; and C, proposals made or views
19 expressed by the mediator or the response of any party," end
20 quote.

21 I feel strongly that the confidentiality required by
22 this agreement is key to my practice as the mediator. Without
23 the agreement that all participants sign, the parties could not
24 speak freely during the mediation, undermining the process and
25 making settlement much more difficult.

26 The California legislature considered mediation

1 confidentiality so important that it codified the mediation
2 privilege in California, Evidence Code Sections 1115
3 through 1128.

4 Section 1126 provides that that inadmissibility --

5 THE COURT: Mr. Aiwazian, I'm going to interrupt you.
6 And I will read this letter. I'll find it. But this isn't
7 relevant to anything that we're doing here. I'm not
8 considering Mr. Bacon's declaration. I've already indicated
9 that.

10 Is there anything that Mr. Rothman says about what
11 Mr. Parris does -- not in connection with any specific
12 mediation, but just generally.

13 MR. AIWAZIAN: And your Honor, he -- my morning
14 reading of it, I think, he mentioned that -- reviewed what the
15 declaration does to be in violation. And so just understanding
16 the mediation confidentiality and privilege, just so you know,
17 when we have filed a response to these OSCs in consultation
18 with various counsel, et cetera, we've been narrowly tailored
19 in how we've responded. You know, we -- I have the mediation
20 briefs, your Honor, from these cases. I have the damages
21 models that our firm created, which is the maximum exposure. I
22 have the violation rates that we relied on. Things that we did
23 ourselves that we gave to Mr. Parris. I have them with me.

24 If, you know -- if -- I think the Court has --

25 MR. PARRIS: And, your Honor -- your Honor, if I
26 could just conclude my statement?

1 THE COURT: Yes.

2 MR. PARRIS: I do want to thank you, your Honor, for
3 taking this time and being so patient. As I said when I
4 started, my integrity is important to me and I appreciate the
5 comments you made that it is not in question at least with this
6 Court.

7 I would never mischaracterize my bills before a
8 court. I truly believe my invoices should be billed as an
9 expert, not as an attorney. There was never any effort to
10 deceive the Court or do something improper. I -- I have always
11 been transparent. And I appreciate you giving me this time to
12 address the Court.

13 Mr. Rothman did not give any declaration regarding
14 what I do. I certainly could ask him to do that if it were
15 outside of mediation privilege. He's very concerned about
16 that. Certainly, if Mr. Bacon and Mr. Odinger [phonetic]
17 waived that, and Mr. Aiwasian waived that, and Mr. Aiwasian
18 would, he would even do a declaration regarding exactly what he
19 did at the Flores mediation, your Honor.

20 THE COURT: All right. Thank you, Mr. Parris.

21 MR. PARRIS: Yes, sir.

22 THE COURT: Mr. Bacon, did you have any comments?

23 MR. BACON: I have several. I will try to keep this
24 relatively brief.

25 Mr. Aiwasian said that returning the money to the
26 class members was not material and he would voluntarily do it.

1 I just want to say it was material to the minimum wage
2 employees that were represented in the Flores matter that my
3 office was trying to represent as class counsel who were
4 largely teenagers and young women who were working in a mall
5 selling dresses.

6 It might not be a lot of money per person, but that's
7 always what happens in these minimum wage settlements. And
8 those dollars add up.

9 What Mr. Parris has described to this Court is not
10 distinct from what any of us do as class counsel at a
11 mediation. He said that he does damages evaluations and
12 negotiation strategy. It's the same thing I do every single
13 mediation I'm in, whether it's an employment mediation, or a
14 consumer mediation, or any other type of class action
15 mediation, it's the exact same work in every respect.

16 And I'm not disparaging anybody here. This is an
17 accounting issue. It's a question of which bucket these
18 expenses go into. And they are properly viewed as an
19 attorney's fee because that is the same work that we all do
20 when we're mediating these class actions. It is not the same
21 work as was described in the Duran case or the Sav-On case.
22 Those are different types of experts. They're experts who look
23 at spreadsheets of data and they help us as the lawyers who are
24 not accounting experts necessarily to figure out what the
25 violation rates are by looking at the evidence.

26 That is very different from looking at the results of

1 the expert's work and then assessing how that fits into the law
2 of the case and what our next move should be in the context of
3 the mediation when it comes to responding to the defendant's
4 counteroffer to our demand. That is what we do. And it is
5 solely an attorneys' fee and no class action attorney could
6 possibly be confused about that.

7 Your Honor asked about jurisdiction. I want to
8 address this point very directly. There is a Rule of Court
9 talking about this. It is Rule 3.769(h). And that rule is
10 cited in the judgments on the cases that you called for us
11 today. In fact, I will point you to paragraph 16 of the
12 Gallegos final judgment, which says that the Court retains
13 jurisdiction. Rule 3.769(h) says that the Court must enter
14 judgment and retain jurisdiction and the Court may not enter an
15 order dismissing the action.

16 This Court has jurisdiction in perpetuity under the
17 plain language of the Rules of Court. And there are very few
18 cases which have interpreted this. There is in fact only one
19 that I found that is published. And it is Lofton versus Wells
20 Fargo Home Mortgage, 230 Cal.App.4th 1050. And that case says
21 that the court retains jurisdiction in perpetuity to ensure the
22 fairness to the costs.

23 So I disagree with the characterization by
24 Mr. Aiwazian that this Court doesn't have jurisdiction. I
25 think the Court does. I think class actions are different than
26 other plaintiff cases where judgments are entered for very good

1 reasons, because absent class members have rights which
2 sometimes get violated and require cases be reopened to
3 reexamine those things for any number of reasons.

4 It could be that there's a due process concern about
5 the notice, an opt-out to who may have sent their notice and
6 maybe it wasn't received or entered into the judgment properly.
7 The Court will need to relook at that. Maybe an attorney was
8 taking money that they shouldn't have. In this case, the Court
9 may need to take another look at that. I think these are
10 really important safeguards that protect absent class members.
11 And that's the reason why California has specific rules of
12 court to address class actions as is distinct from federal
13 rules.

14 There were several misrepresentations to the Court
15 here today by both counsel. But I would have to disclose
16 confidential information under the mediation privilege in order
17 to rebut that. And, your Honor, has explained that you don't
18 want to consider that. And so I will refrain from doing that.
19 What I would say is that I'm perfectly comfortable waiving the
20 mediation privilege, if Mr. Rothman would like to provide
21 information to the Court. But I think that information needs
22 to be probative of the actual issue. We heard a lot of
23 generalities from my counsel on the other side over here
24 talking about the work that they did, but no specifics.

25 Mr. Parris didn't describe that he spent time looking
26 through the damages analysis and assessing what the violation

1 rates were. He didn't explain any actual analysis that he
2 conducted of anything with any level of detail. And I know for
3 a fact that some of the things he said about what he did in the
4 Flores mediation are inaccurate, but I can't describe those to
5 you today, your Honor, without going past where your Honor is
6 comfortable in going. And I think that's a fair concern that
7 you have because any ruling that you have has to withstand any
8 challenge.

9 So I -- I would not encourage you to change your
10 stance on that, but I do think it's important that I advise the
11 Court accurately of those facts.

12 As to this issue of bias and getting even and all
13 these things, I've only had one case in my career involving
14 these two attorneys. It was the Windsor case. Mr. Aiwasian's
15 office and I have never ever litigated cases against each other
16 as competing plaintiff's counsel. I've never had Mr. Parris
17 come to another mediation I've ever been involved in. I don't
18 know them. I don't care to know them. All I'm here today to
19 do is to make sure that your Honor has as much accurate
20 information as possible, to make sure that the class I helped
21 represent and get that result for was treated fairly and that
22 the money is returned to them. That is it. That is my sole
23 motive. I have no financial motive in this.

24 I'm not a competitor to Lawyers For Justice under any
25 circumstances and I don't plan to be.

26 And -- and I just have to say also that we are all

1 very familiar with what is happening in the plaintiffs' class
2 action community right now with our reputations being maligned
3 across nationwide headlines with Tom Girardi taking money from
4 people.

5 I did not want to be like the sycophant that followed
6 him and let him get away with this sort of thing. That's the
7 only reason that I came forward and that I brought these issues
8 up, is that so the tarnish -- I'm told that I'm doing this for
9 some sort of financial reason is awful. It is awful and that's
10 all I will say on that.

11 THE COURT: All right. Thank you, Mr. Bacon.

12 Mr. Haines, do you have any comments?

13 MR. HAINES: Thank you, your Honor. I just have --
14 need to take a few minutes please, two to three minutes, I
15 think is sufficient.

16 The Court had indicated that what -- my opinion
17 wasn't relevant. And I agree, my opinion is irrelevant. So I
18 just want to talk about some of the actual facts here before
19 the Court. That is considering, one, let's take a look at
20 Mr. Parris's invoices. They show as he's admitted that he does
21 nothing more than attend mediation. There is one to two hours
22 of prep time always the day before the mediation and then he
23 goes -- travels to mediation, attends the mediation. That is
24 the totality of his invoices, your Honor.

25 With respect to, you know, the expert invoices for an
26 actual expert, my office regularly uses experts, actual

1 experts, consulting experts that don't testify. But almost
2 always when it's with respect to the data analysis, I use an
3 economist. He works at an actual company that's located in
4 Florida. He has a Ph.D. in economics. He's an adjunct
5 professor in economics. He's filed multiple expert reports in
6 court as well. He actually has skills, qualifications, and
7 training to deem him an expert.

8 Same thing with -- I often too run into defendants
9 that look like they're going to be financial inability to pay.
10 I have retained a certified a public accountant who specializes
11 in forensic accounting. He has his own company that is
12 unrelated to me that he deals with other clients.

13 Unlike that, Mr. Aiwasian's consulting expert also
14 just happens to be his co-counsel who he's worked on 50, 100
15 class actions over the years. He's had multiple opportunities
16 to describe the work that he's doing at these mediations in
17 declarations and supplemental declarations in about an hour
18 before this court today. And all the work that he's described
19 is the work that I regularly do as a practicing attorney. This
20 is what I do, your Honor. That's not what my expert does.

21 And so there's really been nothing presented to show
22 the Court -- and I think one thing that is relevant -- well,
23 the Court said it was going to disregard, you know, statements.
24 I do think there is one thing that is admissible and relevant
25 and that is the parties that attended the mediation. And I
26 told this Court in my declaration filed in support of the

1 objection in the Biscomerica case that the only lawyers at that
2 mediation were me and Tony Orshansky, who is another consulting
3 expert.

4 Now, yes, Mr. Aiwarzian did not bill him as a
5 consulting expert in Biscomerica case, but that's because a
6 State Bar complaint had been filed against him six months
7 prior. So it kind of makes sense why they didn't do, but what
8 was Mr. Orshansky doing there at mediation? Was he a
9 consulting expert that day or an attorney that day? I'm not
10 sure because I was there and he seemed like he was an attorney
11 to me, your Honor, doing what us attorneys do.

12 So there's been no explanation provided for that at
13 all. What Mr. Orshansky the consulting expert didn't show up
14 was -- and I think that's admissible, whether who -- the
15 parties that attended the mediation.

16 So I mean, again, yeah, Mr. Aiwarzian said this
17 morning is not significant to me, but it looks like I just
18 found the tip of the iceberg in those 62 cases that were
19 identified. I found about \$450,000 in excess of -- paid to
20 Mr. Parris. But actually it's a much greater number.
21 Mr. Parris said he served as a consulting expert in over
22 300 cases. I wonder what percentage of those case are for
23 Mr. Aiwarzian.

24 So in the aggregate, assuming these expert fees are
25 about the same, we're talking about \$3 million. That is a
26 significant amount of money that class members have been

1 defrauded of. And my motivation is the same as Mr. Bacon's.

2 Yes, Mr. Aiwarzian is a competitor. I have many
3 competitors in this space. We get along quite well, the vast
4 majority of them. But here is somebody who is not doing the
5 right thing. He's stealing from these class members and he's
6 doing it unapologetically. Perhaps today apologetically
7 because of what's happening. But this -- Mr. Parris is doing
8 nothing but serving in a consulting role. He brings no unique
9 skills to the table.

10 As he said, he was a -- he worked as a sheriff and as
11 a school bus driver. That was his experience prior to becoming
12 a lawyer. So all of his experience that he's talking about
13 that he's garnered is in the context of being a lawyer. I
14 don't hear him talking about being an expert in driving a
15 school bus or being a sheriff. You know, my experts have real
16 degrees in the areas in which they're retained. And by the
17 way, they do significant work typically prior to a mediation.
18 Actual consulting expert, I've usually got dozens of hours of
19 bills there because the volume of data often, your Honor, is
20 not at a level that we can evaluate. It's so big it will
21 actually crash Microsoft XL. Oftentimes they -- most of the
22 time they load the data in this stuff called SQL tables and
23 that's beyond my expertise how they're evaluating that, but
24 it's such a voluminous amount of data that they're going
25 through that, you know, the bills will often be 20-, \$30,000
26 just for the data analysis preparing the, you know, reports and

1 whatnot.

2 So I think that's really it, your Honor. I mean,
3 Mr. Parris talks about the two things he does at mediation. He
4 said damages and valuation and negotiation strategies. I mean,
5 that's what we're doing here. We're looking at these claims,
6 what are the potential of getting these claims certified,
7 prevailing on the merits. Okay. Well, if the meal break claim
8 is strong on a late meal claim, but the rest break claim is
9 weaker -- that's what we're doing, claim by claim, evaluating
10 these claims and the defenses. That's -- that's literally my
11 job. That's why you're awarding me an attorney fee.

12 And so, your Honor, I think your tentative is
13 directly on point. You see this issue for what it is. I
14 appreciate your Honor looking at this. And I don't like being
15 in this position. There are many other places I would rather
16 be today, but it is important, I think, that the State Bar has
17 deemed it important. There's all kinds of news going around
18 right now about our obligation to report other lawyers who are
19 doing this kind of stuff because the repetition of one man has
20 tarnished our entire profession.

21 And so I ask the Court to hold its tentative. And
22 the Court sees it for exactly what it is and I don't have
23 anything further for the Court.

24 THE COURT: Thank you, Mr. Haines.

25 Mr. Aiwazian, it is your billing practice that's been
26 questioned, so do you have any final thoughts?

1 MR. AIWAZIAN: One thing I will tell you, your Honor,
2 that -- and just very briefly. One of my first conversations
3 with Mr. Haines, he told me that he reported approximately ten
4 people to the bar. This was years ago. And after that, he was
5 asking me to mediate a dispute for him and was threatening --
6 asking -- telling -- asking me to threaten another person in
7 the profession that he was going to report him to the bar.

8 And so I just wanted to -- and to explain to me why
9 he reports lawyers to the bar. And he shared -- I'm not going
10 to get into details, unless the Court wants me to -- gruesome
11 details as to what makes him report lawyers to the bar.

12 Putting that aside, your Honor, I will -- on behalf
13 of the class members, I will be at a significant disadvantage
14 if I can't hire an expert like Anthony Orshansky or Robert
15 Parris and take them to the mediation.

16 Robert Parris is not willing to serve as co-counsel.
17 He's not willing to put his name on a pleading, is retired from
18 active practice of law. And I don't hire him and other experts
19 on every case. I make a determination --

20 THE COURT: Well, let me point -- point something out
21 to you, Mr. Aiwazian, because it apparently isn't clear. And
22 don't take this as any indication on how I may rule. I gave
23 you a tentative ruling, which I may or may not adopt. I'm
24 going to be taking this under submission.

25 No one is saying that you can't retain Mr. Parris for
26 the purpose for which you retain him. No one is saying that he

1 can't do that work. The only issue is -- as I think Mr. Bacon
2 aptly put it -- what bucket does it go in? Does it go into the
3 33 and a third percent fee or does it go into costs? It's your
4 characterization. That's the only thing that's at issue.

5 MR. AIWAZIAN: So, your Honor, so I'm practicing law
6 sitting there and I've hired a consulting expert. If I don't
7 put him on my cost bill, your Honor, it's going to make it look
8 like I have a co-counsel without a fee sharing agreement. That
9 I have co-counsel -- that I have someone that I'm sharing
10 information with that is not counsel of record.

11 Now, my retainer allows me to hire experts. But I
12 can't -- there's rules and regulations. I can't just hire
13 another attorney to be my co-counsel, but not make it look like
14 a co-counsel.

15 I've done what I believe was absolutely accurate.
16 I've disclosed the name of the expert and courts have
17 positively commented on it numerous times, including three
18 times in writing where I've accurately described their role
19 either through Mr. Parris's declaration or myself.

20 Your Honor, if I don't -- sometimes I don't decide to
21 hire experts on every case, only when I determine it's value
22 added, your Honor.

23 So, for example, I engage in a lot of what I called
24 chia [phonetic] putting the bonus here. I meet with opposing
25 counsel before the mediation. I share with them a lot of
26 information because these days many opposing counsels do not

1 want to take the deposition of the plaintiffs. I tell them
2 some bad facts about our case and many of the great commonality
3 issues that we're focused on. And, your Honor, I learned a lot
4 from there. And I learn how highly contested some of the
5 damages issues are going to be and how strong of a lawyer I'm
6 dealing with. And they come to these meetings sometimes, your
7 Honor, some really big time, big time defense lawyers come to
8 these meetings with expert reports and -- and valuation. And
9 at the mediation they'll either have a live expert sometimes or
10 have reports. And if you don't have an expert, your Honor, to
11 rebut, the X claim is worth this much, you're going to be at a
12 disadvantage.

13 An economist, your Honor, is not going to be able to
14 give you the quality of opinion of what the reasonable
15 settlement value is. He's got a database, your Honor, of what
16 these cases are settling per opposing counsel, per county, per
17 workweek, per violation rate.

18 Your Honor, for example, in some -- if the case is
19 pending before a specific judge, whether it's right or wrong,
20 sometimes the value is more or less. He's got -- depending on
21 defense counsel. If defense counsel has never paid \$150 for a
22 PAGA pay period, you know, negotiation strategy needs to be
23 adjusted if you're going to work towards this potential
24 settlement.

25 So there's so many factors. An economist, your
26 Honor, is not going to be able to give us the damages

1 assessment claim by claim that we need in these cases. And in
2 the negotiation strategy, your Honor, that's a massive added
3 bonus and I challenge this Court or anyone else to present me
4 with experts that are more qualified than the ones I've used.

5 Thank you so much.

6 THE COURT: All right.

7 MR. AIWAZIAN: And again, your Honor, I want to
8 emphasize that I am not apologetic about the conduct in any way
9 whatsoever, your Honor. I am taking this absolutely seriously.
10 Any conclusions you may have, I'm voluntarily -- if, if it
11 pleases the Court after you make the final ruling, I am -- I
12 will -- whether the Court has jurisdiction or not, I -- I'm
13 open to voluntarily agreeing to pay these sums back if that
14 would please the Court.

15 THE COURT: All right. Thank you, all. This is
16 under submission.

17 MR. PARRIS: Your Honor, could I just respond one
18 more time?

19 THE COURT: Yes, sir.

20 MR. PARRIS: What was said about me.

21 Mr. Bacon, Mr. Haines do not have the qualifications
22 I have. I am a mediator as I said. I've been trained as a
23 mediator. I've mediated wage and hour cases before. I've done
24 hundreds of them. And that assists me in my negotiation skills
25 and that part of what I do at mediation.

26 I also -- and I probably attend more mediations in a

1 year than either of them do in their lifetime. I'm pretty
2 certain of that. And the amount of knowledge and information I
3 receive because of that assists me in being able to assess the
4 value and claims and getting better settlements for these
5 classes.

6 And Mr. Aiwazian is right, there's no reason in the
7 world he would pay me as an attorney if I would be an attorney
8 on these cases for him, but I will not. I am not actively
9 working as co-counsel on these cases. I don't want that
10 responsibility. And I stopped doing that. If I wanted to do
11 that, I'd still be at the Parris firm doing that. And my
12 billing rates for doing that are much, much higher, your Honor,
13 than they are for doing the expert consulting work I do.

14 Again, if it would help you in making your decision,
15 I could try to get some declarations from mediators that --

16 THE COURT: I don't need anything further from
17 anyone. I'm going to take this matter under submission.

18 MR. PARRIS: Great. Thank you, your Honor. I really
19 appreciate your patience and attention to this.

20 THE COURT: Mr. Aiwazian.

21 MR. AIWAZIAN: I just have the ABA article I
22 mentioned. I ask the Court to take judicial notice of the
23 article. And we have copies for --

24 THE COURT: It's not evidence, so I won't take
25 judicial notice. It's authority. I'm happy to look at it.

26 Okay. Thank you.

(The foregoing proceedings were concluded
for the day.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT S26

HONORABLE DAVID COHN, JUDGE

RUTH FUENTES, individually, and)
on behalf of other members of)
the general public similarly)
situated,)

Reporter's
Certification

Plaintiff,)

Case No. CIVDS1802427

-VS-)

COMMUNICATIONS TEST DESIGN,)
INC., an unknown business)
entity, and DOES 1 through 100,)
inclusive,)

Defendants.)
_____)

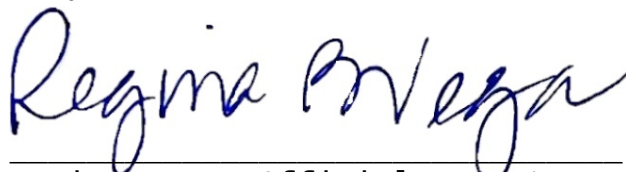
STATE OF CALIFORNIA)

) ss.

COUNTY OF SAN BERNARDINO)
_____)

I, Regina Vega, Official Reporter of the
Superior Court of the State of California, for the
County of San Bernardino, do hereby certify under penalty of
perjury that the foregoing pages, 1 through 60, comprise a
full, true, and correct transcript of the proceedings held in
the above-entitled matter on Monday, March 20, 2023.

Dated this 21st day of March, 2023.



Regina Vega, Official Reporter
CSR No. 12612

EXHIBIT 2

Superior Court of the State of California
For the County of San Bernardino
Department S-26
Judge David Cohn

March 24, 2023

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 24 2023

Fuentes v. Communications Test Design, Inc.
Case No. CIVDS 1802427

BY 
Rafael Hernandez DEPUTY

Gallegos v. Pneudraulics, Inc.
Case No. CIVDS 1721082

Minor v. HSNI, LLC
Case No. CIVDS 1910946

Reed v. Quadramed Affinity
Case No. CIVDS 1804388

Flores v. Windsor Fashions, Inc.
Case No. CIVDS 1610178

Ruling on Submitted Matter: Orders to Show Cause (OSCs)

Each of these five cases involve a "wage and hour" class action settlement, which the court approved, resulting in a final judgment. In each case, the court issued an award of attorney fees and a separate award for costs. After judgment was entered in each case, counsel in an unrelated case alleged that plaintiffs' counsel in these five cases, Edwin Aiwarzian at Lawyers for Justice, P.C., mischaracterized attorney fees as "expert" fees (or in one case as "professional" fees), thereby surreptitiously increasing the amount awarded by the court as attorney fees.¹ Based on the allegation, the court issued orders to show cause (OSCs) in the five cases why the dollar amounts of costs awarded as "expert" or "professional" fees should not be paid by class counsel, for distribution to the classes.

The court held a hearing on the OSCs on March 20, 2023, after issuing a written tentative ruling the day before. In attendance at the hearing were Edwin Aiwarzian, plaintiffs' counsel in each of the five cases; attorneys Paul Haines and Adrian Bacon, both of whom accuse Mr. Aiwarzian of wrongdoing; and Robert A. Parris, whom Mr. Aiwarzian had listed on the cost listings as an "expert." The court heard at length from Mr. Aiwarzian and Mr. Parris, and briefly from Mr. Haines and Mr. Bacon. Defense counsel on several of the cases also made appearances but did not otherwise participate in the hearing. At the conclusion of the hearing, the court took the matter under submission.

¹ The accusation was made with respect to sixty-two cases, but only five involved a judgment by issued by this court.

The individuals who were compensated as experts—Mr. Parris and Anthony Orshansky²—are attorneys licensed to practice law in California, but were not counsel of record in any of the five cases and were not formally affiliated with Mr. Aiwanian or Lawyers for Justice as partners, associates, or “of-counsel.” Rather, these non-affiliated lawyers were hired by Mr. Aiwanian or Lawyers for Justice to perform work on the cases, preparing for and attending mediations or performing other discrete tasks.

There is nothing improper about a lawyer (counsel of record on a case) retaining a lawyer from another firm (a non-affiliated lawyer) to perform work on the case, and paying that non-affiliated lawyer an agreed upon fee. But in each of these five cases, the court awarded an attorney fee to Lawyers for Justice (one-third of the gross settlement amount pursuant to the common fund doctrine) for *all* legal work performed on the case. Therefore, if Mr. Parris and Mr. Orshansky were performing legal work on the cases, their fees should have been paid out of the fee award issued by the court, not billed and compensated separately as an item of costs.

Moreover, if the lawyers were performing as lawyers, payment should have been presented to the court as a fee-splitting issue, not as a cost issue, because attorney fees are generally not allowable costs. (See Code Civ. Proc., § 1033.5(10).) An attorney fee-splitting agreement must be disclosed to the court as a prerequisite to obtaining approval of a proposed class action settlement. “To fulfill its role in protecting absent class members, the class action court must consider the potential effect of a fee-splitting agreement *before* approving a proposed settlement. Evaluating the substance of the settlement separate from the attorney fees is insufficient.” (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 227-228 (emphasis in original); see also Cal. Rules of Court, rule 3.769(b) [“Any agreement, express or implied, that has been entered into with respect to the payment of attorney’s fees or the submission of an application for the approval of attorney’s fees must be set forth in full in any application for the approval of the dismissal or settlement of an action that has been certified as a class action”].)

There is also nothing improper about a lawyer performing *non*-legal expert or consulting services if that individual has expertise in the relevant non-legal field. For example, many lawyers are also certified public accountants, engineers, physicians, or other professionals. But Mr. Parris and Mr. Orshansky were never designated as experts (nor were there any issues in the cases that would require an expert designation of *lawyers*), though the cases settled before the time for designation of experts. More fundamentally, the services they provided were distinctly legal in nature and were precisely the type of services typically performed by class counsel in wage and hour class action cases. Mr. Parris and Mr. Orshansky may have been hired as “consultants,” but they were consultant *lawyers* who were consulted on *legal* matters. They were practicing law, doing exactly what plaintiffs’ lawyers in “wage and hour” class action litigation do.

² Mr. Orshansky did not appear at the hearing.

The evidence submitted in connection with the OSCs demonstrates that these individuals were themselves experienced lawyers in the class action arena,³ but they had no special qualifications beyond what is necessarily required of competent class counsel, and they performed no unique services that could not be performed by competent class counsel. No evidence was presented showing that they had any relevant non-legal expertise.

Mr. Aiwazian's own responses to the OSCs amply demonstrate that the work performed by Mr. Parris and Mr. Orshansky was the basic work typically performed by class counsel. For example, in the *Flores* matter, Mr. Aiwazian states that Mr. Parris "analyzed and assessed facts regarding variability, community of interest, pattern and practice, and manageability for class certification, gave assessment regarding the structure and methodology of a contemplated trial plan, manageability of individual issues, and affirmative defenses, calculated and provide an assessment regarding damages and penalties, and gave assessment regarding settlement scenarios and industry practice" (Response 8:2-7.) This summary describes, in part, basic duties of class counsel in a wage and hour case.

Had Mr. Aiwazian disclosed the nature of Mr. Parris's and Mr. Orshansky's work on these cases, the court would not have awarded those items of costs and would have informed Mr. Aiwazian that Mr. Parris and Mr. Orshansky would need to be compensated from the attorney fees awarded by the court, and the court would need to consider the fee splitting arrangement.

Mr. Aiwazian's Response further states, "The consulting work that Mr. Parris performed in connection with the mediation in this matter, is distinct from work that *could be* performed by a lawyer at Lawyers for Justice, PC." (Italics added.) Frankly, this is a remarkable statement, since the type of work apparently performed by Mr. Parris (and presumably Mr. Orshansky) is *exactly* the type work expected of competent class counsel and which the court assumed was performed by Mr. Aiwazian or others at his firm. If Mr. Aiwazian and others at his firm were *not* able to perform this type of work, they should never be appointed as class counsel.

The court interprets Mr. Aiwazian's statement, however, not as an admission that he is unqualified to serve as class counsel—he is qualified. The court has found repeatedly that he is qualified and the court has no reason to disavow the finding now. Rather, the court interprets the statement simply as a poorly-phrased attempt to differentiate what Mr. Parris does (and presumably what Mr. Orshansky does) from what class counsel does and *must* be able to do to qualify as class counsel. The unsuccessful attempt at differentiation involved an unfortunate choice of words, but it was not a confession of inadequacy.

³ The court was previously unacquainted with Mr. Parris, but Mr. Orshansky has appeared in this court on a number of occasions representing plaintiffs in wage and hour class action litigation and the court is aware of his experience in the field.

Mr. Parris and Mr. Orshansky may have considerable expertise, but that does not make them non-legal consultants. They were practicing law, and that should have been disclosed to the court.

Nevertheless, the court has located no authority for the proposition that it can unwind part of a judgment after it is final and the parties have fully complied with it. Normally, once judgment is entered, trial courts lose jurisdiction to set aside or amend the judgment except in accordance with statutory procedures (e.g., on motion for new trial or for motion for judgment notwithstanding the verdict). (*APRI Ins. Co. v. Sup.Ct. (Schatteman)* (1999) 76 Cal.App.4th 176, 182.)⁴

Therefore, the OSCs are dismissed.

Finally, the court is unable to conclude based upon the limited record before it that Mr. Aiwazian acted intentionally in mischaracterizing the work performed by Mr. Parris and Mr. Orshansky. Therefore, the court will not be making a report to the State Bar. The court understands, however, that a State Bar investigation is already underway based on a report by a lawyer. In any event, the court assumes Mr. Aiwazian will properly characterize the work of legal consultants in the future.

Dated: March 24, 2023



David Cohn
Judge of the Superior Court

⁴ The court also notes that the amount of each fee that was improperly characterized as a “cost,” when spread across the entire class is a small amount as pertains to each class member.

EXHIBIT 3



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Transcript of Hearing

Date: July 13, 2023

Case: Myers, et al. -v- Nationwide Guard

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Transcript of Hearing
Conducted on July 13, 2023

2

1 APPEARANCES:

2 FOR PLAINTIFF MYERS
3 AND DE SOUSA:

LAWYERS FOR JUSTICE, PC
BY: EDWIN AIWAZIAN, ESQ.
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Glendale, CA 91203

5 FOR PLAINTIFF WINSLOW:

GAINES & GAINES APLC
BY: EVAN S. GAINES
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4550 East Thousand Oaks Boulevard
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Transcript of Hearing
Conducted on July 13, 2023

3

1 SAN BERNARDINO, CALIFORNIA; THURSDAY, JULY 13, 2023

2 MORNING SESSION

3 DEPARTMENT S17

HONORABLE JOSEPH ORTIZ, JUDGE

4 APPEARANCES:

5 EDWIN AIWAZIAN, Attorney at Law,
6 representing the Plaintiffs MYERS and DE
7 SOUSA; EVAN S. GAINES, Attorney at Law,
8 representing Plaintiff Winslow; also
9 present, ROBERT A. PARRIS, Attorney at
10 Law; PAUL HAINES, Attorney at Law.
11 (Regina Vega, Official Reporter
12 Pro Tempore, C.S.R. No. 12612.)
13

14 THE COURT: Myers versus Nationwide Guard Services.
15 In person, first.

16 MR. AIWAZIAN: Good morning, your Honor. Edwin
17 Aiwazian on behalf of two plaintiffs, Mary Myers and Joao
18 De Sousa.

19 MR. PARRIS: Good morning, your Honor. Rob Parris.
20 I'm a witness in this case. I have filed a declaration for
21 you.

22 THE COURT: And I do believe -- do we have someone on
23 CourtCall? Let's get an appearance, I think a friend of the
24 court --

25 MR. GAINES: (Unintelligible.)

26 THE REPORTER: I'm sorry, I didn't hear that.

Transcript of Hearing
Conducted on July 13, 2023

4

1 THE COURT: One more time, sir?

2 MR. GAINES: Evan Gaines for Plaintiff Winslow.

3 THE COURT: I'm going to note -- I don't have
4 Defendant here, but I do have a stipulation for appointment of
5 an official court reporter pro tem.

6 Who brought the court reporter, was that you,
7 Mr. Aiwazian?

8 MR. AIWAZIAN: No, your Honor. It's, I believe,
9 Mr. Haines.

10 THE COURT: Mr. Haines, you're online. You're
11 stipulating to the court reporter, correct?

12 MR. HAINES: That's correct, your Honor. I apologize
13 to the Court I'm not able to be there today. I was at the last
14 hearing before Judge Cohn -- (unintelligible.)

15 THE COURT: I understand. And just so you know, your
16 audio is a little low. That's one problem with Zoom.

17 But I'm noting on the stipulation that you're
18 stipulating on the record.

19 MR. HAINES: Thank you, your Honor. I'll move the
20 microphone closer to my mouth --

21 MR. AIWAZIAN: Our office --

22 MR. HAINES: -- is that better?

23 THE COURT: It's much, much better.

24 And Mr. Aiwazian?

25 MR. AIWAZIAN: Our office did contact this exact
26 reporter to retain her, but she had already been retained, your

1 Honor.

2 THE COURT: Okay. So I do have the stipulation, let
3 me read it into the record. Pursuant to Government Code
4 Section 68066/70044, as well as California Rules of Court,
5 Rule 2.956, Regina Vega, whose license number is 12162, and who
6 is a certified shorthand reporter is appointed as an official
7 court reporter pro tem in these proceedings, and is ordered to
8 comply with the terms of the court reporter agreement. The
9 order is signed and filed this date.

10 Just to make it quicker in the future, if you get the
11 stipulation submitted beforehand, I'll take care of it right in
12 front.

13 Okay. So this is on for an OSC. I'll note that on
14 this matter with preliminary approval and final approval by
15 Judge Cohn, I inherited the case pursuant to a case split after
16 the fact to sort of watch over distribution.

17 I have seen the declarations, the arguments. This
18 relates generally to an assertion that was brought forth on a
19 separate case by Mr. Haines's office, that there was a use and
20 it was couched as untoward by -- I'm not taking a position, but
21 it was couched as an inappropriate use of an attorney and
22 couched as an expert for the purposes of ascribing it to costs
23 in the settlement as opposed to attorney's fees. The theory
24 being that that's a way to inflate attorney's fees beyond what
25 the Court might otherwise approve.

26 I will note there is no hard number. I oftentimes

1 see preliminary approvals and final approvals that argue -- or
2 plaintiff's counsels argue, well, courts can approve up to 50
3 percent even if they wanted. So there's no hard number.

4 Although most courts do look with particular scrutiny
5 when you see above a third. I think back in the day it used to
6 be 25 percent, but it seems to be inching upwards.

7 I've read through Judge Cohn's tentative on other
8 matters. I did not prepare my own tentative because I think --
9 I'm going to want to hear arguments from both sides -- but I
10 think I'm in line with Judge Cohn's position, which is because
11 this is after final approval that I don't have jurisdiction to
12 put my hands into it to reassert things.

13 But let me kind of lay through some thoughts and
14 where I land on it.

15 So, first of all, I'm going to go through. With
16 regard to the ascribing Mr. Parris's work as an expert rather
17 than attorneys, I'm somewhat in line with Judge Cohn's analysis
18 in the previous matter. Although, I do understand that they
19 are not identical. They are substantially similar.

20 In other words, the certifications and qualifications
21 and experience of Mr. Parris are 100 percent ascribable to his
22 prior work as an attorney. I don't see any other way to
23 justify the experience and qualifications.

24 The certifications and qualifications do not go to
25 valuation. In other words, there's no CPA. There's no
26 certification, financial valuations.

1 Also, although I see declarations that state that
2 there's a proprietary method for valuation, I see no submission
3 of a patent, corporation, or other proof of intellectual
4 property for proprietary methods. So I keep an eye on that.
5 Perhaps there's a proprietary method. I don't see it.

6 The work is exactly the kind of work that would be
7 expected and, in fact, touted by plaintiffs' counsel during
8 approval. So motions for final approval, motions for
9 preliminary approval, I typically get very thick declarations
10 from plaintiffs' counsels explaining that they've done exactly
11 this kind of work. In other words, getting elbows deep.

12 And I will differentiate. It is -- an attorney that
13 does wage and hour work is necessarily steeped in valuation, is
14 steeped in somewhat CPA type work, but still ascribable to
15 those wage and hour attorneys. They may tout themselves as an
16 expert.

17 And I will state that just for the record, that prior
18 to the taking the bench I was on the executive committee for
19 the Labor and Employment, it used to be the section of the
20 State Bar, now it's the CLA. So we've had a number of
21 individuals that tout themselves and their expertise as being
22 different, but more of a specialty in legal practice as opposed
23 to a separate and distinct expertise.

24 Notably, there's also no declaration from the
25 mediator -- and I understand mediators would not necessarily
26 want to provide a declaration -- or defense counsel on how

1 Mr. Parris presented himself during the course of the
2 mediation; whether everyone was of the belief that he, in fact,
3 was an attorney and part of the attorney panel representing
4 Plaintiff, or whether he -- and no bones made about it, I'm an
5 expert on valuation, here it is. But I don't have that. I
6 have only the declarations that were submitted by Lawyers for
7 Justice.

8 However, I am going to note that Judge Cohn granted
9 the final approval previously. I find no evidence of intent to
10 defraud. In other words, I can't reach into the heart of a
11 party and say for certain that they looked at this and said,
12 this is really different work, and I'm going to ascribe it to
13 an expert cost as opposed to an attorney.

14 I think the allegation that has been floating, as
15 brought by the third party, is that this is really something
16 different, but that this is somehow contrivance to inflate
17 attorney's fees. But I don't have any evidence of that intent.
18 That might be the end result, but I don't have any evidence of
19 that intent.

20 Further, as I've noted at the onset, you know,
21 enhanced attorney's fees, even if incorrectly couched as costs,
22 are within the Court's discretion to approve. Right? So it
23 could have been -- you could have ascribed them as attorney's
24 fees and simply asked for 35 percent, 40 percent, and
25 Judge Cohn may have considered it. And I'm not going to reach
26 into Judge Cohn's heart or analysis or intent and understanding

1 on this matter to make the determination that he looked at this
2 and was not apprised that this was an attorney who was
3 performing valuation services.

4 And finally, and probably most importantly, I don't
5 see any authority to allow the reopening and reallocation of
6 fees at this juncture.

7 I know Judge Cohn, I think in his tentative talked
8 about a letter perhaps to the State Bar. Since I wasn't
9 steeped in this case, again, I'm not going to put myself in the
10 shoes of the analysis of the judge that did the final approval.
11 I don't -- I don't feel that it's necessary for me to join on
12 that juncture.

13 So first, I want to hear -- well, let's hear from
14 Mr. Aiwanian.

15 MR. AIWANIAN: Thank you so much for the opportunity
16 to be heard on this very serious allegation and serious issue,
17 your Honor. I can't personally be taking it more seriously.

18 First of all, your Honor, at our firm with over 40
19 lawyers, we have the utmost respect for Judge Cohn. We don't
20 believe there's a judicial officer within the last five years
21 that's had to deal with more class actions and PAGA actions.
22 So whatever Judge Cohn says to us, that is something that we
23 would follow.

24 And Judge Cohn's tentative, your Honor, is
25 drastically different from the order that he issued in the
26 case. I'm sure you have access to it, and I have it here also,

1 your Honor.

2 Judge Cohn's final order, the last sentence of it
3 said, "In any event, the Court assumes Mr. Aiwasian will
4 properly characterize the work of legal consultants in the
5 future."

6 Since Judge Cohn's ruling, your Honor, our firm has
7 not billed for any attorney expert as costs. And if we ever do
8 use them in any case, attorney experts, we will absorb the
9 costs until some other organization or body of law has
10 something else to say about that that's drastically different
11 than Judge Cohn's comments.

12 I want to now, your Honor -- and, again, I really ask
13 for your indulgence for the serious issue. I have a lot more
14 than what I usually say in court. I'm usually very, very
15 brief, your Honor.

16 I'd like to address just some of the nuanced points
17 that you raised, your Honor, first, and then give you a small
18 speech or a long speech on some things.

19 MR. PARRIS: Your Honor, could we be seated?

20 THE COURT: Yeah, of course. Please be seated.

21 MR. AIWAZIAN: I'll sit down in a second, your Honor.

22 This case was different than the other cases before
23 Judge Cohn where he has -- where he was alerted about this
24 issue and the State Bar investigation. And so there was five
25 or so OSCs that he issued this ruling on.

26 This case was different from those cases, in that it

1 was also an ability to pay issue that we were alerted to prior
2 to the mediation and provided information directly and through
3 the mediator.

4 The mediator, your Honor, in this case was the
5 Honorable Lou Meisinger, one of the owners of Signature
6 Resolution. He is extremely highly trained in mediation. Not
7 every judge, not every lawyer has that type of training.

8 We would welcome any input to this Court, subject to
9 conferring with our clients, we would be open to
10 Judge Meisinger sharing anything he wants about how Rob
11 presented himself. Rob has declared, and we have stated in our
12 papers, that in mediation he makes it clear that he's a
13 consulting mediation expert on ability to pay and damages
14 issues only.

15 He doesn't sign pleadings. He's retired from the
16 practice of law. He doesn't make appearances. He doesn't give
17 legal advice. He assists counsel on the valuation and analysis
18 of damages and ability to pay issues.

19 This case was different than other cases in front of
20 Judge Cohn -- well, this case was in front of Judge Cohn. But
21 those OSCs, your Honor, it was different in that there was an
22 ability to pay issue and Judge Cohn ultimately approved a
23 payment plan, where the first payment was due shortly after the
24 effective date; and thereafter, another payment a year after
25 that; and a third payment, your Honor, in installments. And
26 that was based on, partly due to Rob's analysis.

1 Rob's analysis, your Honor, and experience does not
2 necessarily come from him being an attorney. We said in our
3 papers that it's irrelevant that he's and an attorney. But I
4 wouldn't -- probably walk that back a little bit. I think it
5 is relevant in that it adds to his experience, and I'll explain
6 why first in a second.

7 But, your Honor, Mr. Parris is an elected official on
8 an agency in Antelope Valley. He's on several important boards
9 of different types of bodies that regulate water in different
10 counties, et cetera, your Honor. He is trained. He's a
11 certified mediator from the Straus Institute. He has mediation
12 training, just like your Honor does when you were serving as a
13 mediator, your Honor. He has -- he has mediation training from
14 Harvard, from the Ken Cloke institute and other dispute
15 resolution institutes.

16 He has worked as a mediator for the courts. He's
17 worked as a private mediator. He's been in the defense rooms.
18 He's been to more wage and hour mediations in different
19 capacities, your Honor, in the last decade than anyone else I
20 know. If I knew someone more experienced, more trained on
21 these issues, I would have hired them.

22 My colleagues, your Honor, including Mr. Haines who
23 is with us today, has always been extremely complementary of
24 Rob's involvement in cases that he's been involved in.

25 And my colleagues, your Honor, when they -- before
26 you now that you're handling a lot of class actions and will be

1 handling more -- thank you for that, your Honor. When you
2 approve these approval motions, the final approval and award
3 costs, most of my colleagues -- and I'm not criticizing them,
4 I'm just telling you how it is -- industry practice, your
5 Honor, most of my colleagues just put a category, including
6 Mr. Haines, that says "expert." And they'll have whatever
7 amount of money, and usually a lot more than what Mr. Parris
8 charged, and they don't identify the expert.

9 I, your Honor, have always identified Mr. Parris as
10 an expert in dozens and dozens of cases. Sometimes courts have
11 commended the use of Mr. Parris. In our papers we point at
12 three written examples, your Honor, where the court inquired
13 about Mr. Parris and we exactly explained who he is, what he
14 does, and the court has approved the reimbursement for
15 Mr. Parris. Every single time we've requested reimbursement
16 for Mr. Parris, it's been completely approved.

17 Prior to Judge Cohn's hearing, your Honor, no one had
18 anything negative ever to say, and our firm has had
19 thousands --

20 THE COURT: But, generally speaking -- I'm sorry to
21 interrupt, sir. Generally speaking, in practice, and before
22 the court, the experts that are brought forward have a CPA or
23 have some kind of financial -- are associated with some kind of
24 forensic accounting, for instance, experience, and typically
25 have software so when you download these payroll records they
26 go through and they can put together nice graphs and averages

1 and speak as an expert in the financial services sector. I
2 don't see anything of that nature here. And it does strike the
3 Court as unusual.

4 MR. AIWAZIAN: Yes, your Honor.

5 So there's different types of experts, your Honor.
6 So, for example, our firm in the last five years has certified
7 more wage and hour cases than anyone. And in those cases, your
8 Honor, when it's for certification purposes, it's not going to
9 be Rob who's a damages person. It's going to be Dr. Drogin and
10 whole bunch of other folks that that's -- they're statistics
11 experts that do those kinds of things.

12 A lot of what you're talking about, your Honor, our
13 firm in this case and in a lot of other cases, unless it's
14 extremely complicated, does that in house with our own team
15 members. And most of my colleagues, your Honor, don't use the
16 kinds of people you're talking about. They'll just use data
17 entry people because it's simply sorting Excel columns and
18 things like that.

19 But what you get from that, you just get violation
20 rates, it's just counting how many meals were shorter than
21 30 minutes. And then you apply it by the hourly rates -- and
22 you apply it to the hourly rate, your Honor and the number of
23 some other data points and you get the maximum exposure. And
24 then from that you do your lawyer work, which we did in this
25 case.

26 However, your Honor, Mr. Parris, what he brings to

1 the table and what he assists us with is drastically different
2 than that, your Honor. And so what he does, putting aside the
3 ability to pay issue, and is outside of attorney experience, on
4 these types of issues, your Honor, he does have a proprietary
5 database, your Honor, of what these cases settle for based on
6 violation rates, who the mediator is, who opposing counsel is,
7 what type of industry, union or not, employees, and all kinds
8 of other important items, your Honor, to give us a baseline in
9 industry practice on how to evaluate each of these claims as we
10 learn information in the mediation process.

11 And I don't have that database. I prepared for the
12 case, your Honor. I go in with my experience and everything.
13 But he's got access to things that I haven't spent years
14 accumulating, your Honor.

15 But in addition to that, he has an incredible amount
16 of experience in terms of valuation of these. That's his job.
17 He's retired from the practice of law. He serves as an expert
18 on these cases in terms of valuation of the claims. So it's
19 easy to have the maximum exposure and then come here and say,
20 well, I discounted it.

21 These days, your Honor, based on -- especially after
22 the Kullar case, there's an incredible amount of scrutiny, your
23 Honor, even though there isn't a set standard in all of the
24 courts that we have a truly statewide practice, there's a
25 higher level of scrutiny on why did you discount it? What was
26 the -- why is this settlement, this compromise, reasonable,

1 fair, and adequate?

2 And Mr. Parris is extremely, your Honor, helpful on
3 that issue. And many, many courts have commended our use of
4 experts on that and we cited that in the papers.

5 Your Honor, for example --

6 THE COURT: Isn't that a legal database, though? So,
7 for instance, a database that goes through what kinds of cases
8 given particular facts, isn't that case law? Or essentially a
9 Lexis search or perhaps a tentative approval search, going
10 through and saying these kinds of cases, given this kind of
11 facts, settle for around this amount, which is a discount from
12 the max? Why is that not legal work?

13 MR. AIWAZIAN: Very good question, your Honor.

14 I'm not in the defense rooms, your Honor. I'm only
15 involved either in mediations I directly do or my over 40
16 lawyers directly do. I don't have access -- a lot of
17 settlements you see, your Honor, in the courts, we don't -- we
18 don't know what the violation rates are in those cases.

19 Rarely --

20 THE COURT: Isn't that distinguishable why each case?
21 In other words, not every employer is going to have the same
22 violation rate, depending upon their particular policies.

23 MR. AIWAZIAN: Yes, your Honor. But it's so helpful
24 to have that information. What defense counsel is settling
25 cases for, what mediators are settling cases for, what is the
26 potential recovery on these types of cases all over the state,

1 everything. So he has access to unique information on that,
2 your Honor, that I don't have.

3 THE COURT: Well, why isn't -- and excuse me. I grew
4 up in a big family so I like the back and forth, and I don't
5 mean any disrespect by it.

6 Why isn't that a time and motion expert? So you go
7 into a place of employment, an industrial time and motion
8 person would say this violation rate, given these policies, are
9 at this rate. Why isn't that a former attorney?

10 MR. AIWAZIAN: I love that question, your Honor. So
11 here's what I -- let me put my advocate lawyer, class cert
12 lawyer type hat on. Okay.

13 First of all, any type of study like that, your
14 Honor, a time and motion study or any study like that, I think,
15 I've been telling the courts that it would be generally not
16 justified. And here's why, your Honor.

17 Because until the class is certified and you know
18 exactly who's in the class and what the size of the exact class
19 is, our statistics experts like Dr. Drogin, et cetera, say it's
20 not necessarily representative. We need to know what type of
21 people are in the class, if there's variations that we need to
22 cover for, et cetera.

23 Moreover, that kind of a study, your Honor, would
24 just give you approximately how much time people are spending
25 off the clock or things of that nature. But it's not real life
26 information about what defense lawyers and mediators are

1 settling cases on, what rates and things like that. Only
2 someone who's been a mediator, who is in the defense rooms who
3 has substantial experience, who's on -- who's working with
4 auditors and everything on financial issues and things like
5 that can help us in that.

6 So I -- the reason I retained him is because I found
7 him to be the most talented, your Honor, on these issues.

8 And what I would tell your Honor -- and I know you
9 come from a background of litigation. And so if we were to
10 litigate this issue, I have to see what value you get. We
11 didn't hire him on every case. We made a determination: Do we
12 need him? Is it going to be value added here?

13 If we were to litigate that issue, your Honor, I
14 humbly tell this Court that we think we'd be able to show that
15 with Rob's help and with some other experts we've used we -- we
16 will -- we have better per work week outcomes on average than
17 our really qualified competitors, your Honor.

18 THE COURT: Well, let me ask a question. You're a
19 litigator, a seasoned litigator. If this went to trial and you
20 were trying to bring him up to testify as an expert, is it your
21 belief you'd be able to certify him as an expert in this
22 particular field -- and excuse the expression -- amorphous,
23 kind of a combination of mediator's instinct with a time and
24 motion sort of analysis of exposure?

25 I think that's what you're arguing. I don't see how
26 you're going to get him qualified as an expert.

1 MR. AIWAZIAN: Your Honor, what I would ask is on
2 what issue? On what issue? I could tell you that if I were to
3 bring him on as an expert on a case whether -- for example, on
4 a malpractice case, whether the result was more than fair,
5 adequate, and reasonable, on those grounds, your Honor, I think
6 he would be more than qualified.

7 Now, on statistics, for example, I would go hire a
8 statistics guy as an expert who does that, a statistical
9 analysis on a survey. This guy from Stanford, your Honor, I
10 would hire him on survey. Before Duran came out we would do
11 those confidential surveys on these class cases, you know. But
12 I wouldn't hire him on those issues.

13 I did not hire him -- we've given the Court a lot of
14 authority in our papers, your Honor, so I would ask that you to
15 take this under submission and check out some of the authority
16 for all of them, your Honor. And it makes it clear, there's
17 two types of experts. There's consulting experts, where
18 they're never designated and they're actually confidential.
19 That's why maybe my colleagues don't put them on the cost bill.
20 I'm not sure.

21 But there's designated experts. Our intention has
22 never been to have him as a designated expert. He's a
23 consulting expert for mediation. You know, when you go into
24 mediation, your Honor, on these cases, oftentimes you're
25 surprised on -- regarding some damages-type information that in
26 real time you need to adjust your calculations and do things

1 like that. And he helps with those computations. One of those
2 things you learn about.

3 For example, you'll learn that there's -- while you
4 were waiting four and a half months to doing informal
5 discovery, the defendant engaged in Pick Up Stix; or that
6 there's some union contract or a subset of employees where the
7 wages were on paper more than 30 percent so there's exemption
8 on overtime; or that there's arbitration agreements of the type
9 that would exclude a class waiver since the filing of the case.

10 So in real time, your Honor, you have to adjust your
11 computations. And, you know, for those kinds of things
12 Mr. Parris is very helpful. He assists us with that. Do I
13 make the ultimate conclusions? Do I do brief in my long
14 declaration that was filed before Judge Cohn?

15 And moreover, your Honor, in this case and every
16 other case, the stakeholders involved, potential objectors,
17 potential object to counsel, defendants, et cetera, they've all
18 been involved and no one's ever raised concerns.

19 If you look at our filings, your Honor, and I hope
20 you read every sentence of it, you'll see I'm not attacking a
21 single person there, your Honor. I wanted to focus on
22 defending my own actions. At the same time, your Honor, this
23 all came about after we reported the person who reported us to
24 the bar on this issue, to various courts on various ethical
25 issues, your Honor. Including cases that were before
26 Judge Cohn, and it's all on the transcript that we argued at

1 length much longer than today in those OSCs.

2 Your Honor, I have a lot more to add, but I'd like to
3 maybe make this that dynamic family thing you're talking about
4 and hear from others, and --

5 THE COURT: Well, let me -- I know we have, I guess I
6 couch it a friend of the court, we have a third party with
7 Mr. Gaines on the line. I do want to give an opportunity to
8 have that party be heard. Then I do think you want Mr. Parris
9 to say a few words; is that correct?

10 MR. AIWAZIAN: Yes, your Honor. He did file a
11 declaration.

12 THE COURT: I did get that.

13 MR. AIWAZIAN: And, your Honor, I do have
14 Judge Cohn's final order, if I may hand it to the Court.

15 THE COURT: I've already reviewed it.

16 MR. AIWAZIAN: Not the tentative, right?

17 THE COURT: Not the tentative but, the final. I do
18 understand there's some distinctions. The analysis I don't
19 think is altered sufficiently -- significantly.

20 Mr. Gaines, do you want to be heard?

21 MR. GAINES: No, your Honor.

22 MR. HAINES: Your Honor, you have both a Mr. Haines
23 and Mr. Gaines on the phone. This is Mr. Haines, Paul Haines.
24 I know it's a little bit confusing. We've been mixed up many
25 times over -- (unintelligible) the other.

26 THE COURT: Okay. We have Mr. Gaines on the line.

1 MR. GAINES: You do, and I have nothing further to
2 add, your Honor.

3 THE COURT: All right. Thank you very much.
4 And did you want, Mr. Aiwarzian, did you want
5 Mr. Parris to address the Court?

6 MR. HAINES: Your Honor, Your Honor, this is
7 Mr. Haines. I would like to be heard. Mr. Haines, your Honor.

8 THE COURT: I see.

9 So Mr. Gaines does not want to be heard. Mr. Haines,
10 who is for Plaintiff, you do want to be heard -- well, third
11 party plaintiff.

12 Mr. Haines, go ahead.

13 MR. HAINES: Thank you, your Honor.

14 And I'm the individual that brought these issues to
15 Judge Cohn's attention that resulted in the OSCs being issued,
16 including these ones. And so I apologize for not being at
17 today's hearing, as I was before. I was at the hearing on
18 March 20 before Judge Cohn.

19 And actually, let me just ask the Court a question.
20 Did the Court by chance receive the filing that I made this
21 week on the 11th?

22 THE COURT: I did. I received it I believe last
23 night.

24 MR. HAINES: I apologize, your Honor. We had a copy
25 personally delivered on the 11th. I apologize I didn't get
26 that to you sooner. But I won't take much of the Court's time.

1 I'll just take about five minutes here.

2 I've attached a copy of the transcript from that
3 hearing before Judge Cohn. And, you know, nothing deviated
4 from Judge Cohn's tentative ruling to his final ruling
5 regarding the nature of the work performed by Mr. Parris or
6 Mr. Orshansky. And he found that there was nothing -- nothing
7 expert about the nature of the work that they were doing. It
8 was just a type of work performed by lawyers, exactly the same
9 conclusion that this Court is reaching.

10 And, you know, I realize the Court is just coming
11 into this matter. And I've practiced in this area for over
12 16 years, exclusively doing wage and hour class actions, and
13 I've known Mr. Parris and Mr. Aiwasian and Mr. Orshansky for
14 virtually the entirety of that time.

15 I know exactly the type of work that Mr. Parris is
16 doing and Mr. Orshansky is doing, which is what caused us to
17 bring this to the attention of the court. And the conclusion
18 that both you and Judge Cohn have reached is that these are not
19 legitimate expert costs.

20 And, you know, with that conclusion, you know,
21 Judge Cohn -- the issue that I was having trouble with from
22 Judge Cohn's tentative ruling to his final ruling is a
23 statement that he made during the hearing. And I've quoted
24 that in a statement that I filed with the court.

25 And Judge Cohn said, "I understand there's a State
26 Bar investigation underway and the State Bar may make findings.

1 I'm also going to write a letter to the State Bar. If I find
2 at the conclusion of the case that the fees were
3 mischaracterized, I will say in that letter to the State Bar
4 that they may wish to conduct an investigation -- and this is
5 important -- because it's not relevant to my inquiry what was
6 inside Mr. Aiwazian's mind."

7 And the Court said something like that the Court
8 didn't know what was in his heart. But the fact of the matter
9 is, your Honor, that Mr. Parris has been Mr. Aiwazian's
10 co-counsel of record. They've filed over a hundred cases
11 together, a hundred class actions as co-counsel.

12 So, you know, and Mr. Parris doesn't have the skills
13 or qualifications to serve as an accountant, like you said, or
14 a CPA. He was a school bus driver and a sheriff before he
15 became an attorney. He doesn't have any of that training or
16 expertise.

17 And Mr. Aiwazian was alluding that my expert is not
18 legitimate. My expert's name is Michael Duman [phonetic].
19 He's got a Ph.D. He's an adjunct professor at Florida State,
20 where he teaches economics. He's a partner at ERG Consulting.
21 He's a real expert. He's the same expert -- and if the Court
22 ever wanted to see his actual bill, I could produce those along
23 with proof of payment.

24 And that's the problem here, your Honor, is that we
25 are officers of the court. And the Court very rarely asks to
26 see that backup receipt. And Mr. Aiwazian knows that because

1 he's been in front of the court hundreds of times. And he's
2 exploiting that candor that we as attorneys are supposed to
3 have with the court.

4 You take me at my face value when I tell you I have
5 an expert consulting bill, because I'm an officer of the court
6 with a duty to disclose that.

7 And so, you know, Mr. Aiwasian has attempted to
8 essentially hide this from the Court like a hidden fee. You
9 know, an important thing I think is that he told Judge Cohn at
10 the last hearing, that he was going to voluntarily pay all the
11 costs back, along with the administration costs, and he would
12 file a declaration after he did so.

13 I cited to that portion of the transcript in my
14 statement as well. Did Mr. Aiwasian do that? Of course not.
15 And Mr. Aiwasian said, oh, you know -- he said the money is
16 immaterial to me. I'll return it. But it is material. We're
17 talking about millions of dollars here. I want to emphasize
18 this is millions of dollars, your Honor.

19 Mr. Parris said that he had served as a consultant on
20 300 cases, over 300 cases. That's what he said at the hearing
21 in front of Judge Cohn. And on average those fees are coming
22 in at ten grand a case. So that's about \$3 million. That is a
23 very considerable amount of money. And it's a math scale
24 fraud.

25 You know, I, too, employ consulting experts. There's
26 lawyers at my office that I pay hundreds of thousands of

1 dollars of salary to a year to do this work. And Mr. Aiwazian
2 is just trying to sidestep that and get more -- keep in mind,
3 this is the same -- your Honor, I know you've only been in the
4 complex department for a short time, but long enough to know
5 that Mr. Aiwazian is the lawyer always asking for 35 percent,
6 38 percent. He's always trying to get a little bit more.

7 And, you know, I put a statement on the Court's
8 tentative today that there was settlement to approve
9 Mr. Aiwazian's settlement, and the Court adjusted his fees
10 down. Appears he's done it in here as well.

11 So here's someone whose greed, it really knows know
12 bounds, your Honor. And he's taken from these class members.
13 The problem with this is that for this and for Judge Cohn to
14 draw these conclusions and the repercussions are nothing to
15 Mr. Aiwazian, I mean, this is the type of -- I really see this
16 no different -- I hate to say different, more perhaps a size
17 scale, than what was done by Tom Girardi. It took a hundred
18 State Bar complaints to get anything done about that.

19 This is a big deal. We're talking about millions of
20 dollars here. Mr. Aiwazian knew exactly what he was doing.
21 And like you said, if Mr. Parris was put up before the court,
22 whether in this court or federal court, he couldn't have this
23 Daubert standard or the standard of an expert. He has no
24 skills, training, qualification, or unique expertise to do
25 those things. He's there in his role as a lawyer, acting as a
26 lawyer.

1 And, you know, unless the Court has any questions I
2 think that's -- I think that's essentially all I would have for
3 the Court at this time, your Honor.

4 THE COURT: I appreciate the analysis. I've heard
5 from Mr. -- is it pronounced Aiwazian, Aiwazian? I want to
6 make sure I get it correct.

7 MR. AIWAZIAN: Your Honor, in Armenian it's Aiwazian,
8 but I say in English Aiwazian.

9 THE COURT: So, first of all, I would comment there
10 was a couple times the statement there -- were millions of
11 dollars at issue. My focus today is regarding this particular
12 case, so the Myers case.

13 And so that level of money is not at issue. In fact,
14 I don't see a significant distinction -- I guess "significant"
15 is the wrong word -- between the amount of attorney's fees
16 asked and even adjusted upward for the costs. I think this
17 Court, if I were going to redo the final approval, may have
18 ascribed it to attorney's fees. I can't say it was without --
19 outside the realm of reason to approve even if they had been
20 couched as attorney's fees.

21 That being said, you know, certainly, and I think
22 going forward, you've probably noticed in preliminary approvals
23 and final approvals that this Court -- and I think all of the
24 complex departments are now specifically asking for
25 clarification if there are attorneys being used as experts for
26 the purpose of analysis.

1 It does seem to me and to this court that when you're
2 talking about wage and hour work for attorneys, there is a
3 level of specialty. And certainly, it can be confusing to a
4 lay person and sometimes even attorneys, as to whether that
5 means they're doing something different than legal work.

6 I am convinced, as I set forth before, that I don't
7 think Mr. Parris would -- if he was brought forth and
8 questioned for the purpose of establishing an expertise for
9 valuation or time and motion studies or anything that wouldn't
10 be considered legal work, that he wouldn't be certified as an
11 expert. He is an expert in the legal realm and as to wage and
12 hour cases and the legal analysis thereon.

13 It seems to this Court that if it were doing the
14 final approval it would ascribe that work to attorney's fees.

15 That being said I know -- I think Mr. Haines made the
16 argument and cited Judge Cohn's position that it doesn't matter
17 what's in Plaintiff's counsel's mind. And I do think good
18 faith versus, you know, bad faith or an intent to defraud does
19 make a difference. But I think the long and short of it is, I
20 don't think I've got authority after the final approval to
21 reach back.

22 Mr. Aiwazian, do you want to be heard further?

23 MR. AIWAZIAN: Your Honor, I may, but is there any
24 way we can hear from Mr. Parris so maybe you can change your
25 mind about --

26 THE COURT: Do you want him sworn under penalty of

1 perjury? I've already seen his declaration. If he's just
2 going to summarize it, that's fine.

3 MR. AIWAZIAN: He has points he'd like to present,
4 your Honor. Whatever -- if you want to put him under oath,
5 that's fine. Whatever you'd like to do.

6 THE COURT: It's whatever you're comfortable with,
7 sir, you're the one that's a little bit more under fire.

8 MR. AIWAZIAN: I'm not representing him. He's here
9 to present his points, your Honor.

10 THE COURT: Mr. Parris?

11 MR. PARRIS: Yes, your Honor. I think what's missing
12 here, and it's in my declaration, is I have been trained as a
13 mediator. I serve as a mediator. I have hundreds of hours of
14 training from -- as Mr. Aiwazian told you, from some of the
15 best law schools in the nation on mediation negotiation,
16 negotiation strategies.

17 And coupled with the fact that I come from a firm
18 that was one of the first wage and hour firms, I've spent
19 hundreds and hundreds or thousands of hours litigating wage and
20 hour cases. When I retired from being a litigating attorney in
21 2015, I went of counsel, but I have not litigated cases since,
22 let's say, 2017. I have exclusively worked as a mediator on
23 cases.

24 And I know you volunteered for the court as a
25 mediator. You have special training as a mediator. Some
26 attorneys do. Some attorneys don't. The work I do for

1 Mr. Aiwazian and other attorneys at mediations -- because I
2 don't just work for Mr. Aiwazian. I work in two specific
3 areas: Wage and hour and catastrophic personal injuries.

4 And I work as a -- go to mediations and assist with
5 valuating the cases, with coming up with what a reasonable
6 settlement would be, and helping the attorney with the
7 valuation and negotiation strategies to get the very best
8 outcome in a case that you can.

9 So the difference, and what's really being missed, is
10 people don't become good negotiators through going to law
11 school. I don't think you had many negotiation classes at law
12 school, maybe one. That is what I have focused most of my
13 career on, mediation, negotiation, and then becoming a mediator
14 to do that.

15 So as Mr. Aiwazian has said, I have been in both
16 rooms of a mediation, and I came up with this niche when I
17 retired, because I came across many attorneys that were not
18 very good as negotiators [sic]. Were not good at mediation.
19 And I think as a mediator you've seen attorneys that come in
20 and expect you to settle their case as the mediator. And
21 that's not being an attorney, right?

22 And so I bring a certain level of my experience, my
23 training. And as the Evidence Code says, you can be an expert
24 if you have specialized training, specialized expertise,
25 specialized experience. I have all those things. I have
26 testified in court before, not in wage and hour, but have

1 testified as an expert regarding personal injury lens in trial.

2 And so do I expect to testify in these cases? No. I
3 don't want to. That's not what I do.

4 I go to mediation, and I'm -- in some ways I bring
5 all the skills I have as a mediator, negotiator, and my ability
6 and experience in the past.

7 And as Mr. Aiwazian said, I don't have time -- time
8 studies. What I do is I keep track of every mediation I attend
9 as an expert consultant. I keep track of what work weeks are,
10 who the defense attorney is, what the violation rates are,
11 potentially who the judge is, how many work weeks, how many pay
12 periods, and what cases settle for.

13 And I have hundreds of these cases in a database that
14 I use when I'm at mediations to help me come up with the
15 ability to help the attorney figure out the best way to value
16 the case, negotiate the case.

17 I would say to you that Mr. Aiwazian said, and as
18 humbly as I can, there's no attorney in the State of California
19 that has been at more wage and hour mediations, that know the
20 wage and hour mediators better than I do, just because of
21 experience, just because being involved. And also being
22 trained by some of those mediators, I've been able to shadow
23 some of the best wage and hour mediators in the country and
24 learn from them and be in both rooms and learn what is -- how
25 to get the best outcome for the cases.

26 So that's what I bring to the table. It's different

1 than what -- there's very few attorneys or experts in
2 California that have that breadth of experience that I do.

3 MR. AIWAZIAN: Can you go over your experience in the
4 field?

5 MR. PARRIS: Yeah. I have some talking points. I'll
6 go quick. I know your time is precious and I hate to take it,
7 but this is very important to me. I want the record to be very
8 clear, your Honor.

9 I hold myself out as an expert consultant on these
10 cases, not as an attorney. The work I perform is different
11 than legal work. I'm a consulting expert on damages, valuation
12 and negotiation strategy, in cases like Nationwide, assisting
13 with analyzing the financial ability of the defendants to pay.

14 I'm not a CPA. I'm not an economist. But I have
15 been at probably well over 50 to a hundred cases, where I've
16 had to help analyze the ability of the defendants to pay.

17 In my career, and Mr. Haines said I was a sheriff. I
18 actually was a captain in the California Highway Patrol. I've
19 been involved in pretty high level budgeting and things. I
20 worked in our headquarters doing some type of budgeting with
21 overtime, those type of things.

22 I'm also elected official on a state water contractor
23 board, which I know you're familiar with from your past work.
24 And we deal in multimillion-dollar deals. We have audits. We
25 work on financials and budgets all the time. And on several
26 other boards and through business experience. And also, with

1 working with CPAs and many other cases on helping to evaluate
2 the financial condition of companies.

3 And in this case that was one of the major issues.

4 My role as a consulting expert is to assist the
5 attorneys in damages and valuations. And sometimes, like this
6 case, assisting with the assessment of Defendant's ability to
7 pay a settlement and negotiation strategies. And these are the
8 issues I work on.

9 What I don't do, your Honor, I do not do legal work.
10 I do not argue facts. I do not argue law. And every time I go
11 to mediation, your Honor, I let the mediator know and I let the
12 defense know if I'm in a joint session, that I am an expert
13 consultant, I am not there as an attorney, for these discrete
14 issues. And I say that at the mediations.

15 As you can see from my bill I work very hard to bill
16 for only the time I spend in this case, with travel expenses,
17 about \$5200. I spent 5.5 hours at the mediation, two hours
18 preparing for the mediation and travel time.

19 When I was class counsel, your Honor -- and you know
20 from your experience as an employment lawyer, I used to spend,
21 you know, 20, 30, 40, 50 hours preparing for a major mediation.
22 That's not what I do now as an expert consultant. I try to
23 keep my bills reasonable and bill for only the time I need to
24 prepare for what I do.

25 And Mr. Aiwazian said earlier, but my goal in every
26 mediation I attend as a consulting expert is to get the maximum

1 settlement proposal for my attorney client and the class I
2 represent.

3 I am not a neutral mediator at those mediations.
4 However, I do use a number of the skills I have learned as a
5 mediator to maximize the recovery for the client and attorney
6 that I work for.

7 I would never -- for these type of cases, I have
8 never contemplated testifying as an expert. I believe the work
9 I do is confidential. And when I'm in mediation I believe what
10 I do in the mediation is confidential.

11 I have had numerous mediators who are judges say that
12 my involvement in the mediation for the discrete things I do
13 have created great value for the lawyers that I work for.
14 Mr. Aiwasian has heard that. I've heard that.

15 And you're correct, mediators do not like to do
16 declarations because they work with Mr. Haines, they work with
17 Mr. Gaines, they work with Mr. Aiwasian. But they have said
18 that many times.

19 And at the end of my engagement I bill for my time.
20 Whether the case settles or not, I get paid. I never take a
21 contingency. I never get more than what I bill for in a case.

22 And, your Honor, you've seen my declaration, so I
23 won't go into what my qualifications and experience is. But
24 again, what I think is --

25 (Counsel and Mr. Parris confer.)

26 MR. PARRIS: I'll just go through quickly.

1 I'm an expert at mediation process. I have extensive
2 training in mediation negotiation. I've already discussed that
3 with you. I have attended and worked at, as an expert
4 consultant now, more wage and hour mediations than I know of
5 any attorney in the State of California.

6 I'm an expert at valuing claims and negotiation
7 strategy at the mediation.

8 And I do want to make it very clear to your Honor, I
9 do not do legal work. I don't research cases. I don't analyze
10 cases. I don't master the facts or argue the facts or law. I
11 stick to my two areas that I've been hired to do.

12 THE COURT: Certainly legal work includes such things
13 as assessing damages, strategy for negotiations, participation
14 in mediation and maximizing settlement. These are all things
15 that you claim is your area of expertise. Assessment of
16 ability to pay, I don't know any attorney that doesn't do that,
17 respectfully.

18 MR. PARRIS: Yes, your Honor. And as a mediator,
19 again, I think you know there's a level of skill in each one of
20 those things, right? Experience is really important.

21 You've been at mediations with many attorneys that
22 don't have the skills at valuing claims, at negotiating claims
23 and have never been to any type of mediation training, have
24 never been to negotiation training, have never served as a
25 mediator, does not understand the process, Has not worked with
26 multiple mediators in the wage and hour area or catastrophic

1 personal injury area.

2 THE COURT: Don't law schools promote their ADR
3 courses and mediation, not only for the purpose of people
4 becoming mediators, but in furtherance of the attorneys
5 becoming better at their job at mediation. So doesn't that put
6 it under the umbrella of attorney work?

7 MR. PARRIS: Well, and how I would respond to that,
8 your Honor, since we're going back and forth, is what I do
9 is -- I mean, you don't hesitate for a minute to let an
10 attorney claim in a cost bill for the cost of a mediator,
11 right?

12 Maybe 30 years ago judges wondered, you know, what
13 are they doing? Attorneys should be negotiating their own
14 cases. And that's how we did it.

15 When I first started practicing law we didn't work
16 with mediators. Now we do. Now they're accepted. Now they're
17 different.

18 Mr. Aiwazian said in his papers, trial attorneys,
19 great trial attorneys, hire jury consultants that are attorneys
20 oftentimes to help them pick juries. Isn't that something a
21 trial attorney should be able to do? Some feel that they have
22 the skills to do it but some feel there's people with greater
23 expertise that can do that.

24 And I think that's what Mr. Aiwazian has found here.

25 How I discovered this niche, your Honor, is our firm
26 used to do multiple insurance bad faith cases. I was a very

1 good bad faith litigator. But I came across the vice president
2 from Allstate Insurance company that had done hundreds and
3 hundreds of bad faith mediations. He was the go-to guy for
4 Allstate.

5 When he retired I hired him to go to my mediations
6 and help me value these cases, to get the best outcome for my
7 client. He wasn't an attorney, but he had great expertise in
8 mediation and valuation of damages.

9 And that's how I found this niche. I think I'm very
10 good at it. I don't do this as class counsel.

11 Mr. Haines said that we were co-counsel with
12 Mr. Aiwazian for many years. Yes, the Parris firm was. But
13 when I retired I have not served as co-counsel. I have not
14 served as counsel. I work only as an expert consultant and as
15 a mediator. That's what I want to do. That's all I want to
16 do. I don't want to be hired as an attorney and Mr. Aiwazian
17 is aware of it.

18 So, question, your Honor?

19 THE COURT: No. Nothing further unless
20 Mr. -- Plaintiff's counsel, you want to be heard any further?

21 MR. AIWAZIAN: Yes, your Honor.

22 So in the last set of OSCs we had before Judge Cohn,
23 your Honor, we reached out to a mediator that was involved in
24 one of the cases, David Rotman, and we asked him to provide a
25 declaration or come to the court and talk about it. He instead
26 wrote a letter to the parties and to the Court, addressed to

1 Judge Cohn. And the letter, I have a copy of it, but it was in
2 those cases.

3 And he said that -- he emphasized the rules,
4 regulations, and his own confidentiality agreement. And he
5 accused my colleagues of violating that. And he said that
6 under no circumstance will anyone compel him to talk about the
7 role that Rob played or anyone else, what they said or did at
8 the mediation.

9 So we would have -- we thought long and hard about
10 asking Judge Meisinger to do the same, but out of respect for
11 him and the process, we didn't do that, but we welcome that.

12 Moreover, your Honor, there's many times that we've
13 hired Mr. Parris where the case hasn't settled or settled on an
14 individual basis, and he did not recover his fees.

15 And so any argument that we do this at a firm with
16 over 40 lawyers and over 70 other team members to maximize the
17 fees, your Honor, I would -- I would strongly disagree with
18 that.

19 Now, as a byproduct, if there's a bigger settlement,
20 your Honor, and we get a percentage of the fees as we did in
21 this case, one-third, then as a byproduct of that does everyone
22 benefit from maximizing the settlement value? Yes. But the
23 reason I would hire him, your Honor, is to maximize the
24 settlement value.

25 And after Judge Cohn concluded or said his last
26 comment that I read to the Court, that he assumes Mr. Aiwanian

1 will fully characterize the work of legal consultants in the
2 future, we have not billed for any of the previous cases we had
3 hired Mr. Parris or any attorney consultant work.

4 In or around October of 2021, your Honor -- and this
5 goes to the good faith that's documented. You know, I could
6 tell you I've been to dozens and dozens of hearings in courts
7 and have had discussions about the use of experts and whether
8 experts were used -- when it's on paper it's a little bit
9 different, your Honor.

10 In or around October 2021, your Honor, in a case
11 called Barela versus Quail Park Retirement Village, LLC, in
12 Tulare County, Honorable David Mathias, quote, your Honor,
13 Required additional information as to why Plaintiff and/or its
14 counsel determined not to utilize an expert in its assessment
15 of damages in the case involving complex wage and hour claims
16 of hundreds of employees, end quote.

17 The court further commented, your Honor, that, open
18 quote, If an expert was utilized and this information was
19 simply not mentioned in initial moving papers, experts should
20 be identified along with their qualifications.

21 In response to this inquiry, your Honor, my firm
22 filed a declaration from Mr. Parris that described his services
23 and credentials, and the Court had no further comment and
24 approved his costs.

25 In or around July of 2021, your Honor, in a case
26 called Zimmers versus Pinnacle Property Management Services,

1 LLC, Honorable Judge William Claster observed, Counsel retained
2 an expert to assist in claim valuation -- this is quotation --
3 is this Robert Parris, the expert mentioned in the cost bill,
4 question mark. Please provide a copy of the expert's CV.

5 In response, your Honor, we filed a declaration
6 attaching the declaration of Robert Parris detailing his
7 services and credentials. The Court had no further questions
8 and ultimately approved both the settlement and the
9 reimbursement of costs.

10 In or around December of '21, your Honor, in Debar,
11 et al., versus Optima Tax Relief, LLC, Honorable William
12 Claster again inquired as follows, Was an expert retained to
13 value the case? If so, what are his or her qualifications?

14 In response, your Honor, I filed a declaration
15 explaining Mr. Parris's work as a consulting expert at
16 mediation and attaching Mr. Parris's CV. The Court had no
17 further questions and ultimately granted preliminary and final
18 approval of the settlement.

19 THE COURT: I believe all of these were in your
20 declaration, correct? And in the paperwork filed preceding
21 this OSC.

22 MR. AIWAZIAN: It is, your Honor, but it's -- I
23 just --

24 THE COURT: And I do note trial courts don't have
25 precedential value. I don't know Judge Claster's workload or
26 how -- what the analysis was.

1 MR. AIWAZIAN: There isn't a scientific tool for you
2 to go to the heart and mind that has been used, your Honor.
3 But I'm talking about what I've said to courts and what their
4 response has been. And these are not just some judge who was
5 their first class action or anything like that, your Honor.
6 These are judges like you and Judge Cohn --

7 THE COURT: Understood. And I started from the
8 beginning saying the judges have a lot of discretion in making
9 their approvals. And frankly, the attorney's fees, even if
10 Judge Claster reviewed it -- this isn't attorney's fees, but
11 it's only, let's say, a few thousand dollars, he could have
12 taken the position that even if I inflated the attorney's fees
13 it would have resulted in a fraction.

14 I don't know what the analysis was, is what I'm
15 trying to say. What I've set forth here, I don't think I've
16 moved off of, which is there's no doubt that there's value. As
17 far as the evidence that's been presented today, there's no
18 doubt there's value by Mr. Parris's work. The question is, is
19 it expert value or is it co-counsel value.

20 From what I've seen it seems it could be
21 characterized -- and I do understand and I've said before --
22 wage and hour work, attorney work in the wage and hour field is
23 specialized and looks different, it can be characterized as
24 different from general litigation work. I see that. But I
25 haven't seen anything that strikes me as absolutely outside of
26 the four corners of attorney work.

1 Go ahead, sir.

2 MR. AIWAZIAN: Your Honor, I'm violating my own rules
3 and basic common sense, that if there's nothing the judge is
4 saying that you're trying to overturn, then you just say thank
5 you and go home.

6 But, your Honor, I just -- this is not the last time
7 we're going to see each other. And whatever you rule, whatever
8 you decide, I just want to make sure that you hear from me
9 verbally in court about what was in my mind and what has been
10 in my mind. I just want to --

11 But I'm also very cautious about taking more of your
12 time on these issues, your Honor. All I can tell you also is
13 we've cited -- there isn't -- obviously, we're working with
14 ethics experts on this and all kind of stuff, your Honor. But
15 there isn't a tremendous amount on point. But whatever we've
16 been able to find on point, we've put before the court, and it
17 is a substantial amount, your Honor, in terms of the use of
18 experts, the use of experts for these types of purposes in
19 these types of cases.

20 And we've also cited to California Evidence Code
21 Section 801, your Honor. We've given an ADA article about it.
22 We've provided defense blogs on the use of experts and how they
23 use similar experts at mediation, your Honor, which puts us at
24 a disadvantage if we don't come to mediation with the type of
25 expert that can help us.

26 And, your Honor, an economist, statistics expert, is

1 substantially limited. I know it will look good that I've got
2 an expert there who's got a Ph.D. But other than that, your
3 Honor, in terms of the actual assistance, your Honor, I feel
4 extremely qualified -- maybe some of that, you know, it's
5 whatever reason, whatever experience I've had, my confidence
6 and feelings and qualifications are in the stratosphere in
7 terms of the work I do.

8 However, your Honor, at the same time, those feelings
9 and that experience humbles me enough to know when I could use
10 some help to maximize the value. And Mr. Parris has maximized
11 the value. Has added value for the absent class members and
12 the plaintiffs, your Honor. There's no doubt in my mind.

13 And I'm ready, willing, and prepared to litigate that
14 issue at any time before any -- any agency or body, your Honor.

15 Thank you so much for giving me this opportunity.

16 THE COURT: One final comment.

17 In law firms there are various attorneys with various
18 levels of skill throughout. It's often the case that there's
19 an attorney that pitch hits when it comes to litigation, for
20 instance. It doesn't strike this Court that it's very
21 different or very off the ball, so to speak, to have an
22 attorney come in and pitch hit with their strength, which might
23 be valuation, negotiation, maximizing settlement.

24 We understand each other. I understand we'll see
25 each other again for motions for preliminary approval and for
26 final approval. You understand the Court's position.

1 At this juncture I don't think there's anything to be
2 done. In any event, I don't think the money at issue is
3 outside of the four corners of the Court's prerogative. We're
4 talking about \$5,000. Not to say that if there were a fraud
5 that would be -- that wouldn't be considered and that wouldn't
6 be a problem. But I don't have any evidence of that here.

7 And I do understand when we're talking about wage and
8 hour, the attorney work, the specialty, can be construed as
9 different. And reasonable parties can think that it may be
10 something different. This Court's perspective is that it is
11 attorney's work.

12 All right. Anything further for the good of the
13 order?

14 MR. PARRIS: I just want to thank you for
15 your patience today and for the time you've taken with us.
16 Thank you.

17 MR. HAINES: (Unintelligible) may I be heard briefly,
18 your Honor?

19 THE COURT: Yes, Mr. Haines. Go ahead.

20 MR. HAINES: I won't take -- I will not take more
21 than a few minutes of the Court's time, your Honor. I just
22 wanted to say a couple of things in closing here.

23 You know, the Court has come back several times in
24 saying the Court has discretion in what to award in attorney's
25 fees, and the Court could have awarded -- at least
26 characterized consulting expert costs as attorney's fees. That

1 is true, the Court could have done that. But the key here is
2 that there was a misrepresentation made to the Court and the
3 Court didn't do that. That wasn't what was requested of the
4 Court and it was concealed and disguised.

5 I think that's the real concern.

6 And the Court said, well, we're only talking about
7 \$5,000. If you go into a store and steal \$5,000 worth of
8 goods, that's a felony, your Honor.

9 And this right here, I understand what you're talking
10 about \$5,000 in this one case, but this is multiplied like a
11 class action over hundreds of cases, so that it does aggregate
12 to millions of dollars.

13 And the final thing I would say to the Court is that
14 I feel that I have a fiduciary duty here as an officer of the
15 court. Certainly the Court has a fiduciary duty as the
16 presiding judge over this class action that continues beyond
17 the approval date.

18 And even if the Court has concluded that it doesn't
19 have the jurisdiction to amend the final approval order, the
20 State Bar does have the ability to order restitution to these
21 individuals.

22 And both your Honor and Judge Cohn made the same
23 conclusion, these were attorney's fees and they should have
24 been characterized as such.

25 Mr. Aiwarzian has said, I will voluntarily pay these
26 people back. Why hasn't he done that? Why didn't he do that?

1 Because the money's not material. Why hasn't he gone in all
2 these cases and said, I see that these judges have made these
3 rulings, I respect Judge Cohn more than any other judge in the
4 land. And he's made this ruling. Judge Ortiz has made this
5 ruling. I'm going to go give this \$3 million back. Why hasn't
6 he done that?

7 I believe that needs to be addressed. This Court has
8 the power to address that through, you know, referral to the
9 State Bar that this has occurred. And, you know, that's --
10 that's all I really have to say on the matter, your Honor.

11 I do obviously feel strongly about this. I feel like
12 there has been fraud perpetrated on the Court and the class
13 members and it is of a significant nature in the aggregate.

14 And I thank the Court for the time. Again, I
15 apologize to the Court for not being able to be present in
16 person today.

17 THE COURT: I appreciate the input, sir. And
18 obviously, I've kept my eye open for any hardened intent to
19 defraud. I know that that's the suspicion, but I have not seen
20 hard evidence of that. With that, I think we're done.

21 Is there any other housekeeping? Do we need to put a
22 final date on calendar? Do we have a final distribution date?

23 THE JUDICIAL ASSISTANT: Today is on for final
24 distribution.

25 THE COURT: I don't think I got any declarations
26 regarding a final distribution.

1 Mr. Aiwazian?

2 MR. AIWAZIAN: Your Honor, I'll check on that. I
3 believe everything's been distributed, but I'll check on that.

4 THE COURT: Typically I need a declaration just
5 indicating that and we can take it off calendar. Let put a
6 housekeeping date on calendar. 45 days. Any reason we can't
7 do August 29 at 8:30? And then I'd ask Plaintiff's counsel to
8 give notice.

9 MR. AIWAZIAN: And this is a hearing -- what is it
10 called?

11 THE COURT: OSC re Final Distribution. So typically
12 I get a claims administrator declaration indicating
13 everything's been taken care of.

14 MR. AIWAZIAN: I'll double-check. It's possible it's
15 already been done, your Honor. I'll double-check.

16 THE COURT: Thank you very much, everyone. Have a
17 good day.

18 MR. AIWAZIAN: Thank you so much.

19 MR. PARRIS: Thank you, your Honor.

20 MR. GAINES: Thank you, your Honor.

21 (The foregoing proceedings were concluded
22 for the day.)
23
24
25
26

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO
3
4
5
6

7 STATE OF CALIFORNIA)
8) ss.
9 COUNTY OF SAN BERNARDINO)

10 REPORTER'S CERTIFICATION

11 I, Regina Vega, Official Reporter Pro Tempore of the
12 Superior Court of the State of California, for the
13 County of San Bernardino, do hereby certify under penalty of
14 perjury that the foregoing pages, 1 through 47, comprise a
15 full, true, and correct transcript of the proceedings held in
16 the above-entitled matter on Thursday, July 13, 2023.

17 Dated this 19th day of July, 2023.

18 
19
20

21 Regina B. Vega
22
23
24
25
26

EXHIBIT 4



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
San Bernardino District
247 West 3rd St
San Bernardino, CA 92415
www.sb-court.org

PORTAL MINUTE ORDER

Case Number: CIVDS1907100

Date: 7/13/2023

Case Title: (COMPLEX) MYERS, ET AL -V- NATIONWIDE GUARD

Department S17 - SBJC

Date: 7/13/2023

Time: 8:30 AM

Order to Show Cause -
Predisposition

Judicial Officer: Joseph T Ortiz
Judicial Assistant: Victoria Sanchez
Court Reporter: Regina Vega
Court Attendant: Patrick Pierson

Appearances

Attorney Edwin Aiwarzian present for Plaintiff HARRY MYERS, JOAO DE SOUSA, INDIVIDUALLY AND ON BEHALF OF OTHER MEMBERS OF THE GENER
Attorney Evan Gaines appears by Zoom for Plaintiff NINA WINSLOW
Attorney Paul Haines appears by CourtCall for Plaintiff on case # CIVDSD1936782
Robert Parris present for Plaintiff Harry Myers, Joao De Sousa, Individually and on Behalf of Other Members of the General

Proceedings

Stip and appointment of pro tem reporter filed
Oral argument presented by counsel.
Court rules as follows:
Settlement will stay as previously ruled.

== Minute Order Complete ==

EXHIBIT 5



DECLARATION OF ROBERT A. PARRIS

I, Robert A. Parris, declare as follows:

1. I make this declaration in response to the Court's Order to Cause issued on February 28, 2023 that is set for July 13, 2023 at 8:30 a.m. in *Myers, et al. v. Nationwide Guard Services Incorporate*, San Bernardino County Superior Court, Case No. CIVDS1907100.
2. I have been licensed to practice law in California since June of 1992. During my practice, I worked on numerous significant wage-and-hour class action and catastrophic personal injury cases and wrongful death matters in multiple capacities. I was employed with the Parris Law Firm from 1994 to 2015, and I was a Partner at the firm from 1999 to December 2015. While I was employed by Parris Law Firm, the firm certified numerous class actions and was appointed as class counsel in California state and federal courts, and I litigated and participated in the certification of, and served as class counsel in, numerous significant cases in state and federal courts. I personally participated in hundreds of class action mediations and settlements which resulted in, collectively, over \$500 million dollars in settlements. In the course of this work, I retained the services of consulting experts to provide assessment and opinions on damages, valuation, and negotiation strategies—which inspired me to consider the same calling. I also gained experience in appellate practice and settled numerous class actions on behalf of tens of thousands of California employees.
3. After approximately 25 years, I took a step back from traditional practice of law and retired from being a trial and litigation attorney. Instead, since approximately 2017 to present, I have predominantly worked as a mediator and expert consultant on a wide range of litigated matters, and performed other civic and public service duties described below.
4. I am a certified mediator; I was certified in June 2004 by Pepperdine Law School Straus Institute for Dispute Resolution.
5. I have received hundreds of hours of training from many prestigious law schools, including, Harvard, Pepperdine Straus Institute, and Loyola Law School, regarding mediating litigated cases, valuating cases, and mediating complex disputes. Additionally, I have received training from the United States District Court Alternative Dispute Resolution Program, Ken Cloke Center for Dispute Resolution, and Los Angeles County Superior Court Alternative Dispute Resolution and Voluntary Settlement Conference Panel Orientation, regarding advanced mediation and negotiation skills, conflict resolution consulting, analyzing interests to facilitate settlement, maximizing your clients settlement, effective legal negotiation and

DECLARATION OF ROBERT A. PARRIS

Page 2

impact of cultural issues on the mediation process. This extensive training that I have completed was not in the course of, in the pursuit of, or required for, my work as an attorney. Instead, this training was crucial to developing my knowledge base for my work as a mediator and consulting expert.

6. I served on the Los Angeles County Superior Court Alternate Dispute Resolution Voluntary Settlement Conference Panel. I was appointed and served on the Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel, and Civil Neutral Evaluation Panel. Additionally, I was appointed to the Mediation Panel for the United States District Court of California in 2012, where I currently serve as a mediator for dozens of cases per year. I have also volunteered as a Judge Pro Tempore in L.A. County Superior Court for several years.
7. I have also provided training at advanced mediation workshops, through the United States District Court Alternative Dispute Resolution Program.
8. Prior to becoming an attorney and after retiring from traditional law practice, I have taken an interest in and pursued public service and gained a lot of invaluable experience through this work. Prior to pursuing a career as an attorney, I was an officer for the California Highway Patrol for approximately 16 years and rose to the rank of Captain. I was also a member of the Los Angeles County Sheriff Reserves and continued volunteering as a law enforcement officer for another 20 years until I retired. Since retiring from law practice, I continue to perform civic and public service in a different capacity, through my work for Antelope Valley-East Kern Water Agency and the Antelope Valley State Water Contractors Association, and the Antelope Valley Watermaster Board. This work has allowed me to develop significant experience in connection with budgeting and review of audits, financial statements, performance reports, and financial records.
9. I have worked as a consulting expert on over three hundred (300) wage and hour cases.
10. The Court has sought an explanation of the nature of the work that I have performed as a consulting expert in the *Nationwide* matter, as such I provide that information herein as best I can without revealing any mediation, settlement, or work product confidences or privileged information (e.g., without revealing any private, confidential, or proprietary information of the defendant and its owner, that was provided to me confidentially).
11. As a consulting expert in the *Nationwide* matter and other matters, I provided the party in the lawsuit on whose behalf I was retained, and their counsel, my opinions on various complex issues associated with the wage and hour class action case, including but not limited to the following: (a) analysis and computation of violation rates, damages, and penalties, (b) industry practice, and (c) financial circumstances and the ability or inability of defendants to fund various settlement scenarios and settlement structures. The last issue, regarding financial circumstances and ability

DECLARATION OF ROBERT A. PARRIS

Page 3

to pay was especially relevant in the *Nationwide* matter. A key issue considered was the defendant and its owner's financial circumstances and ability to pay, and the settlement that was ultimately reached after mediation involves funding and disbursement of payments over the course of several years by way of several installments.

12. In the *Nationwide* matter and other matters where I have acted as a consulting expert, I have reviewed the facts gathered and presented by the parties, including investigative notes and reports, declarations, employer records, and damage and penalty analyses, and also performed my own investigation, analysis, and computations, and then formed and provided my own opinions on the issues described in Paragraph 11 as well as critiquing the defense position on those issues, based on my training, experience, and expertise.
13. Through my work as a mediator and a consulting expert, I have developed and utilized certain proprietary tools (namely, data sets) based on my study of wage and hour cases and settlements across mediations, which inform my opinions and assessments offered at mediation. These tools that I have developed assist me in performing analysis of settlements and settlement results in actual cases, and to provide results-based facts and information regarding distributive bargaining. A simple description of these tools is that they are based on proprietary information that I have gathered regarding actual, previous settlements reached by multiple firms practicing in the area, and sorting said information by various metrics (e.g., class size, pay periods count, workweeks count, violation rates, industry, mediator, and the judge the case is assigned to).
14. When serving as a consulting expert in the *Nationwide* matter and other matters, I have not and do not act as a lawyer for a client who is a party in the case, nor have I or do I represent a client or provide a client with legal advice. I have never entered an appearance, filed a notice of association, signed or drafted briefs, argued motions, taken or defended depositions or performed any work that would require a law license, on behalf of the party on whose behalf I was engaged as a consulting expert, in either the *Nationwide* matter or any other matter in which I served as a consulting expert. I also never entered into or executed any legal service engagement, contingency fee, or retainer agreement and never entered into or executed any attorney fee sharing agreement, with respect to the party on whose behalf I was engaged as a consulting expert in the *Nationwide* matter and other matters—further confirming that I did not serve as a lawyer and was not entitled to attorney fee compensation in the matters.
15. When serving as a consulting expert in the *Nationwide* matter, I was not, and when serving as a consulting expert in other matters, I am not, a co-counsel or contract counsel. Before retiring as a partner from Parris Law Firm, I was co-counsel in over 100 wage and hour cases. As co-counsel in a wage and hour case, either the Parris Law Firm or I would be retained by the clients as their legal representative, assist with litigating cases, meeting with clients, drafting complaints, responding to

DECLARATION OF ROBERT A. PARRIS

Page 4

discovery, taking depositions of party and non-party witnesses and PMKs, drafting discovery motions and opposing motions, appearing in court to argue motions, going to trial, and advancing the costs to litigate the cases. My billing rate was substantially higher as a wage and hour co-counsel or even as a contract counsel than my rate is as a consulting expert, and I would either have a retainer signed by the client or a fee sharing letter signed by the client to ensure I would be paid in case if there is a recovery. However, I did not do any of this in the *Nationwide* matter or any other matters in which I served as a consulting expert.

16. When I participate in a mediation as a consulting expert, I tell the mediator that I am a consulting expert retained by a party in the case and not a legal representative for any party in the case. If I am involved in any joint sessions with the defendant and defense counsel, either I or the attorney who has retained me on behalf of his or her client introduces me as a consulting expert on the case.
17. I am qualified to act as a consulting expert on the matters described above due to the specialized knowledge, skill, experience, training, and education I have received, as discussed above. Namely, my expertise is based predominantly on my extensive formal training and certification, my work experience, and proprietary tools as a mediator, neutral, and consulting expert, and to a lesser extent, my previous work experience practicing law, all of which are discussed above.
18. Prior to the Orders to Show Cause recently set by Honorable Judge Cohn and his March 24, 2023 Ruling on Submitted Matter: Orders to Show Cause (OSC), in all of the hundreds of cases in which I have worked as a consulting expert, I am only aware of three (3) cases where a judge approving a settlement sought more information about my work as an expert and/or my qualifications. In two of those cases, I provided declarations regarding my services and qualifications as well as my curriculum vitae, and in one of those cases, I provided only my curriculum vitae. In all three cases, the settlements and requested costs for my services were approved. I am not aware of any defense attorney involved in the hundreds of cases that I have worked as a consulting expert questioning my services or the costs submitted for my services as a consulting expert.
19. My work as a consulting expert in the *Nationwide* matter and other matters has been different than work that could be performed by lawyers handling the case. My work is specific and focused on an assessment of damages and settlement and other questions and issues identified in Paragraph 11. I have unique and specialized knowledge, skill, experience, training, and education in the subject matters identified in Paragraph 11, that the attorneys who retain my service on behalf of their client do not have. In addition, as discussed above, I rely on and use proprietary tools that I have personally developed, which are not common knowledge. As noted, I do not act as an attorney whenever I serve as a consulting expert, and I do not make appearances, drafts briefs, represent clients, or handle any aspect of the litigation.

DECLARATION OF ROBERT A. PARRIS

Page 5

20. As a consulting expert at a mediation, my function is to offer my specialized knowledge, skill, experience, training, and education at the mediation, and in turn, this bolsters the bargaining position of the party who hires me while also facilitating all parties' realistic assessment of the case; by hiring and utilizing an expert, the party's legal counsel is investing in supporting the presentation of their case at mediation in order to maximize a settlement recovery. When I serve as a consulting expert at mediation, I do not intend to testify and I am required by the mediation privilege to keep all communications regarding the mediation confidential other than the written negotiated settlement.
21. With all humility, over the past 30 years, as a former attorney at the Parris Law Firm and now as a mediator and consulting expert, I believe I have been involved in more wage and hour class action mediations than anyone in California. I have worked numerous times with the best wage and hour mediators in California. I am uniquely qualified as a consulting expert to assist parties, and their lawyers who retain my services, with respect to the issues discussed in Paragraph 11 and in assessing the maximum settlement that can be achieved in a wage and hour mediation.
22. I have been hired as a consulting expert for mediation by attorneys at firms other than Mr. Aiwazian's firm.
23. I have had the pleasure of working with Edwin Aiwazian and Lawyers for Justice, PC for over a decade. During that time, Lawyers for Justice, PC has become a premier plaintiff's wage and hour firm. Since about 2017, after retiring as a Partner for the Parris Law Firm and from litigating cases as an attorney, I have worked as a consulting expert for some of Lawyers for Justice, PC's wage and hour cases. I have personally found Mr. Aiwazian to be an incredibly talented, dedicated, and ethical attorney. He aggressively represents his clients and routinely obtains outstanding results.
24. As a consulting expert in the *Nationwide* matter and other matters, I have only billed for my time spent working on the case (including preparing for and attending the mediation and associated costs), I have been paid whether or not the case settles (and I have never been paid on a contingency basis and never been paid more than what I have legitimately billed), and all of my consulting expert work is performed and billed through my own firm (Robert A. Parris, PC). Attached as "**Exhibit A**" is a copy of my invoice for my work as a consulting expert in the *Nationwide* matter.
25. Attached as "**Exhibit B**" is a list of significant wage-and-hour cases in which I participated in litigation and settlement negotiations as a partner with the Parris Law Firm.

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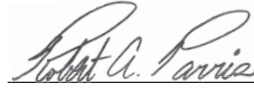
DECLARATION OF ROBERT A. PARRIS

Page 6

26. Attached as “**Exhibit C**” is my current Curriculum Vitae.

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

Executed on this 20th day of June 2023 at Lancaster, California.

A handwritten signature in cursive script, appearing to read "Robert A. Parris", is written over a horizontal line.

Robert A. Parris

EXHIBIT A



Robert A. Parris
Professional Corporation

43364 10th Street West
Lancaster, California 93534
T: 661.949.2595
F: 661.949.7524

Bill To:

Edwin Aiwarzian, Esq.
Lawyers for Justice, PC
410 Arden Avenue Suite 203
Glendale, CA 91203

Please Remit To:

Robert A. Parris, PC Tax ID #61-1483024
43102 28th Street West
Lancaster, CA 93536

INVOICE

Invoice Date: November 14, 2019

Invoice #: 087

Due: Upon receipt

Regarding: Harry Myers & Joao De Sousa v. Nationwide Guard Services, Inc.

Forensic Analysis of Damages Data for Trial Manageability Purposes and Examination of Total Damages for Settlement Purposes

Posted	Description	Hours	Rate	Totals
11/05/2019	Review brief, work on damage analysis and prepare notes	2.0	\$550	\$1100.00
11/05/2019	Travel from Burbank Airport to Glendale	0.25	\$275	\$68.75
11/06/2019	Travel from Glendale Hyatt to Los Angeles	0.75	\$275	\$206.25
11/06/2019	Attend Mediation	5.5	\$550	\$3025.00
11/06/2019	Travel from Los Angeles to Lancaster	1.25	\$275	\$343.75

Total Fees

\$4743.75

Costs

1. Hotel		\$295.87
2. Parking		\$40.00
3. Mileage		\$51.04
	Miles Travelled	88
	Cost per mile	58 cents

Total Costs

\$386.91

Total Amount Due

\$5130.66

"Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough." - Abraham Lincoln

EXHIBIT B

PARRIS LAW FIRM – SELECTED CLASS ACTION EXPERIENCE

- ***Gutierrez vs. State Farm***, Los Angeles Superior Court Case No. BC 236552
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2004 for **\$135,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***Sekly vs. Allstate Insurance Company***, Los Angeles Superior Court Case No. BC240813
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2005 for **\$120,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***CNA Class Action Litigation***, Los Angeles Superior Court Case No. BC242487, Orange County Superior Court Case No. 01CC08868
 - Plaintiffs’ counsel in class action misclassification case seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$33,000,000.00**, with Final Approval granted and no objections filed.
- ***Parris v. Lowe’s Home Improvement***, Los Angeles Superior Court Case No. BC260702
 - Plaintiffs’ counsel in class action seeking payment of “off the clock” hours worked by all hourly employees of Lowe’s in the State of California. Class certification ordered by the Court of Appeal. Case settled in 2009 for **\$29,500,000.00**, with Final Approval granted and no objections filed.
- ***Chavoya v. Southern California Edison Company***, Los Angeles County Superior Court Case No. BC366032 and BC425358
 - Plaintiffs’ counsel in class action seeking overtime compensation for employees that were reclassified in February 2006 that were not employed at Edison’s San Onofre Nuclear Generator facility. Class certification granted, in part, by the trial court. Class was provisionally certified for settlement purposes. Case settled in 2010 for **\$29,000,000.00**, with Final Approval granted and no objections filed.
- ***Roberts vs. Coast National Insurance***, Orange County Superior Court Case No 01CC08478
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then the matter was tried in binding arbitration. Case settled for in excess of **\$18,000,000.00** during arbitration.
- ***Dotson vs. Royal Sun Alliance***, Orange County Superior Court Case No. 02CC01787
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$12,300,000.00** with Final Approval granted and no objections filed.
- ***Ingalls v. Hallmark***, Central District of California Case Nos. CV08-04342-VBF (Ex) C/W; CV08-05330-VBF (FFMx)
 - Plaintiffs’ counsel in class action seeking payment of “off the clock” hours worked by all hourly employees of Hallmark in the State of California. Class was provisionally certified. Case settled in 2009 for **\$5,625,000.00**, with Final Approval granted and no objections filed.

- ***Rodriguez v. Pacific Bell Telephone Company***, Los Angeles County Superior Court Case No. BC415309
 - Plaintiffs' counsel in class action seeking overtime compensation for employees employed by defendant in the State of California that were reclassified in May 2009. Class was provisionally certified. Case settled in 2010 for **\$5,500,000.00**, with Final Approval granted and no objections filed.
- ***Kim v. Jamison Services, Inc.***, Los Angeles County Superior Court Case No. BC400414
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt employees (except for high-level management and Receptionists) employed by defendant in the State of California. Class was provisionally certified. Case settled in 2009 for **\$2,797,861.24**, with Final Approval granted and no objections filed.
- ***Lippold v. Godiva Chocolatier, Inc.***, Northern District of California Case No. CV-10-00421-SI
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt Store Managers employed by Godiva in the State of California. Class was provisionally certified. Case settled in 2010 for **\$1,000,000.00**, with Final Approval granted and no objections filed.

EXHIBIT C

Robert A. Parris, Curriculum Vitae



43364 10th Street West
Lancaster, CA 93534
(661) 382-2262

Work Experience:

Currently I am self-employed with the Robert A. Parris, Professional Corporation, working as an attorney, mediator, arbitrator, and catastrophic injury and wage and hour valuation expert consultant. I have been an attorney for 31 years, for the first 22 years I worked as an attorney/partner for the Parris Law firm. Before becoming an attorney, I was a sworn member of the California Highway Patrol (CHP), and completed my career at the rank of Captain. Upon leaving the CHP I became a sworn member of the Los Angeles County Sheriff's Department Reserve Forces retiring in 2016.

Employment:

- Robert A. Parris, A Professional Corporation – President/Owner - June 2005 to Present
- Parris Law Firm – Attorney – August 1994 to January 1999
- Parris Law Firm – Partner – January 1999 to January 2016
- Parris Law Firm – Of Counsel – January 2016 to April 2022
- United States District Court for the Central District of California – Mediation Panel -July 2012 to Present
- Los Angeles County Sheriff Department – Reserve Deputy - October 1994 to December 2014
- California Highway Patrol – Officer/Sergeant/Lieutenant/Captain - February 1978 to August 1994
- Antelope Valley Union High School District – School bus driver/Campus Supervisor - March 1975 to February 1978

Education:

- J.D. (December 1991) – Loyola Law School, Los Angeles, California
- University of California Davis School of Law (August 1987-June 1988)
- B.S. in Criminal Justice (December 1982) (*Magna Cum Laude*) – California Polytechnic State University at San Luis Obispo
- A.A. in General Education (June 1975) – Antelope Valley College, Lancaster, California

Robert A. Parris, Curriculum Vitae

Professional Licenses:

Admitted to Practice:

- District of Columbia Court of Appeals – 2020
- United States District Court – 1998
- California State Bar -1991

Professional Memberships:

- Mediator, United States District Court for the Central District of California (2012-present)
- Volunteer Judge Pro Tempore – L.A. County Superior (2006 – 2010)
- Mediator, Los Angeles County Superior Court Alternate Dispute Resolution (2009-2011)
- Mediator, Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel and Civil Neutral Evaluation Panel (2012-2013)
- Southern California Mediation Association (2013)
- Designated Mediator, The Mediator Registry (2013)

Community Involvement:

- Member of the Board of Directors (Division 5) - Antelope Valley-East Kern Water Agency (2014- Present)
- Chairman of the Antelope Valley Water Master Board (2016- Present)
- Chairman of the Antelope Valley State Water Contractors Board (2018-Present)
- Chairman of the Board of Directors – Friends of the Antelope Valley Fair (1998-Present)
- Chairman of the Board of Directors – Antelope Valley Fair Joint Powers Authority (2018-2019)
- Member – City of Santa Clarita Planning Commission (2002-2004)
- Member of the Board of Directors – Grace Resource Center (2010-2014)
- L.A. County Sheriff's Reserve Deputy (1994-2016) (retired)
- Member – California Highway Patrol (1978-1993) (retired as captain)
- Past President and Board Member – Antelope Valley Bar Association (1994-1999)

Dispute Resolution Training:

- May 2018: Association of California Water Agencies: 2018 Spring Conference Attorney Programs: Groundwater Adjudications and SGMA training; Water transfer and SGMA
- November 2017: Association of California Water Agencies: CLE Workshop for Water professionals
- June 2017: Straus Institute: Professional Skills Program in Conflict Resolution Consulting
- June 2016; Advanced Mediation Workshop: Mediating Complex Disputes, Program on Negotiation, Harvard Law School
- June 2014; Straus Institute: Professional Skills Program in Dispute Resolution
- December 12, 2013 – United States District Court: ADR Program – Analyzing Interests to Facilitate Settlement
- November 16, 2013 – CAOC Annual Convention – Mediation: Maximizing Your Client's Settlement
- June 2013; Straus Institute: Professional Skills Program in Dispute Resolution
- May 15, 2013; United States District Court: ADR Program – Advanced Mediation Training

Robert A. Parris, Curriculum Vitae

- Fall 2012; Kenneth Cloke's Center for Dispute Resolution: Mediation Training
- November 9, 2012; United States District Court: Cross-Cultural Challenges in Mediation
- November 2, 2012; Straus Institute: Apology, Forgiveness and Reconciliation
- September 21, 2012; United States District Court: ADR Program – Mediation Training
- June 2009; Straus Institute: Negotiating the Litigated Case I&II
- March 3, 2009 - Los Angeles Superior Court: ADR VSC Orientation
- June 2004 - Straus Institute: Mediating the Litigated Case
- September 11, 1993 - California Bar CLE: Effective Legal Negotiation

Awards and Honors:

- Super Lawyers (2014 -Present)
- Consumer Attorneys of California's Consumer Attorney of the Year Finalist (2013)
- Antelope Valley Fair Association's Distinguished Director Award (2012)
- Appointed by California Governor Pete Wilson to the 50th District Agricultural Association as President (1999-2000) and Member of the Board of Directors (1994-2000)
- Los Angeles County Sheriff's Reserve Deputy of the Year – Lancaster Station (1999)
- Bachelor's Degree in Criminal Justice awarded *Magna Cum Laude* (1982)

EXHIBIT 6

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ARBY AIWAZIAN (SBN 269827)
arby@calljustice.com
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amir@protectionlawgroup.com
PROTECTION LAW GROUP, LLP
237 California Street
El Segundo, California 90245
Tel.: (424) 290-3095 / Fax: (866) 264-7880

Attorneys for Plaintiff
NEREIDA BARELA

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

NEREIDA BARELA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

QUAIL PARK RETIREMENT VILLAGE,
LLC, an unknown business entity; LIVING
CARE, an unknown business entity;
MORRISON COMMUNITY LIVING, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: VCU282224

*Assigned for All Purposes to: Hon. David
Mathias, Dept. 1*

**DECLARATION OF ROBERT A.
PARRIS**

Hearing Date: October 7, 2021
Hearing Time: 8:30 a.m.
Dept: 1

Complaint Filed: February 25, 2020
Jury Trial Date: None Set

BY FAX

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION
OCT 01 2021
STEPHANNE CAMERON CLERK
BY: Pam Ching

DECLARATION OF ROBERT A. PARRIS

I, Robert A. Parris, declare as follows:

I am an attorney duly licensed to practice before all courts of the State of California and the District of Columbia. I was a partner with the Parris Law firm for 23 years, where I actively litigated numerous wage and hour class actions and complex litigation matters. Since 2015 I have been of counsel for the Parris Law firm and have my own law firm, Robert A. Parris, P.C.

1. I have practiced law in California since June of 1992, and have handled, as class counsel, numerous significant wage-and-hour class action and catastrophic injury cases.

2. During the time I was a partner at the Parris Law Firm, the firm certified numerous class action.

3. As a partner at the Parris Law Firm I specialized in complex class action litigation and catastrophic personal injury and wrongful death matters.

4. I have been involved with the certification of numerous wage-and-hour class actions in the in the Superior Courts of Los Angeles County, San Francisco County, Orange County, and Kern County Superior Courts, as well as the United States District Court for the Central and Northern Districts of California. As a partner with the Parris Law Firm, I have experience in appellate practice and have settled numerous class actions on behalf of tens of thousands of California employees. The Parris firm has been court-appointed class counsel in multiple cases in California state and federal courts.

5. While a partner at the Parris Law Firm I personally participated in hundreds of class action mediations and settlements which resulted in over \$500 million dollars in settlements.

6. Currently, I work as a mediator and expert consultant on a wide range of litigated matters specializing in wage-and-hour and catastrophic personal injury cases.

7. I am a certified mediator and have received hundreds of hours of training from many prestigious law schools, including, Harvard, Pepperdine Straus Institute and Loyola Law School. Additionally, I have received training from the United States District Court ADR Program, Ken Cloke Center for Dispute Resolution and Los Angeles County Superior Court ADR VSC Orientation. I was on the Los Angeles County Superior Court Alternate Dispute Resolution Voluntary Settlement Conference Panel. I was appointed to the Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel and Civil Neutral Evaluation Panel. Additionally, I was appointed to the Mediation Panel for the United States District Court of California in 2012 where I currently mediate dozens of cases per year.

8. I have worked as an expert consultant on over two hundred wage-and-hour cases. I am an expert on whether a class action case will likely be certified and the valuation of wage-and-hour class action cases.

9. I was retained by Lawyers for Justice, PC to perform services in the action entitled *Nereida Barela v. Quail Park Retirement Village, LLC, Millennium Advisors, Inc., dba Living Care, and Morrison Management Specialists, Inc., dba Morrison Community Living*, Tulare County Superior Court Case No. 282224. My assignment was to review hundreds of pages of documents that were produced in the case in preparation for mediation/settlement negotiations. I also reviewed a statistical analysis of the violation rates and damages in order to assess the manageability, individual issues, and potential settlement values for this case. I then participated in the mediation with Lawyers for Justice, P.C.

10. Attached as Exhibit "A" is a list of significant wage-and-hour cases I assisted with litigating and settlement negotiations as a partner with the Parris Law Firm.

11. Attached as Exhibit "B" is my current Curriculum Vitae.

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

Executed on this 30th day of September 2021 at Lancaster, California.

A handwritten signature in black ink, reading "Robert A. Parris", written over a horizontal line.

Robert A. Parris

Exhibit A

PARRIS LAW FIRM – SELECTED CLASS ACTION EXPERIENCE

- ***Gutierrez vs. State Farm***, Los Angeles Superior Court Case No. BC 236552
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2004 for **\$135,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***Sekly vs. Allstate Insurance Company***, Los Angeles Superior Court Case No. BC240813
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2005 for **\$120,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***CNA Class Action Litigation***, Los Angeles Superior Court Case No. BC242487, Orange County Superior Court Case No. 01CC08868
 - Plaintiffs’ counsel in class action misclassification case seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$33,000,000.00**, with Final Approval granted and no objections filed.
- ***Parris v. Lowe’s Home Improvement***, Los Angeles Superior Court Case No. BC260702
 - Plaintiffs’ counsel in class action seeking payment of “off the clock” hours worked by all hourly employees of Lowe’s in the State of California. Class certification ordered by the Court of Appeal. Case settled in 2009 for **\$29,500,000.00**, with Final Approval granted and no objections filed.
- ***Chavoya v. Southern California Edison Company***, Los Angeles County Superior Court Case No. BC366032 and BC425358
 - Plaintiffs’ counsel in class action seeking overtime compensation for employees that were reclassified in February 2006 that were not employed at Edison’s San Onofre Nuclear Generator facility. Class certification granted, in part, by the trial court. Class was provisionally certified for settlement purposes. Case settled in 2010 for **\$29,000,000.00**, with Final Approval granted and no objections filed.
- ***Roberts vs. Coast National Insurance***, Orange County Superior Court Case No 01CC08478
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then the matter was tried in binding arbitration. Case settled for in excess of **\$18,000,000.00** during arbitration.
- ***Dotson vs. Royal Sun Alliance***, Orange County Superior Court Case No. 02CC01787
 - Plaintiffs’ counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$12,300,000.00** with Final Approval granted and no objections filed.
- ***Ingalls v. Hallmark***, Central District of California Case Nos. CV08-04342-VBF (Ex) C/W; CV08-05330-VBF (FFMx)
 - Plaintiffs’ counsel in class action seeking payment of “off the clock” hours worked by all hourly employees of Hallmark in the State of California. Class was provisionally certified. Case settled in 2009 for **\$5,625,000.00**, with Final Approval granted and no objections filed.

- ***Rodriguez v. Pacific Bell Telephone Company***, Los Angeles County Superior Court Case No. BC415309
 - Plaintiffs' counsel in class action seeking overtime compensation for employees employed by defendant in the State of California that were reclassified in May 2009. Class was provisionally certified. Case settled in 2010 for **\$5,500,000.00**, with Final Approval granted and no objections filed.
- ***Kim v. Jamison Services, Inc.***, Los Angeles County Superior Court Case No. BC400414
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt employees (except for high-level management and Receptionists) employed by defendant in the State of California. Class was provisionally certified. Case settled in 2009 for **\$2,797,861.24**, with Final Approval granted and no objections filed.
- ***Lippold v. Godiva Chocolatier, Inc.***, Northern District of California Case No. CV-10-00421-SI
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt Store Managers employed by Godiva in the State of California. Class was provisionally certified. Case settled in 2010 for **\$1,000,000.00**, with Final Approval granted and no objections filed.

Exhibit B

Robert A. Parris, Curriculum Vitae



43364 10th Street West
Lancaster, CA 93534
(661) 382-2262

Work Experience:

Currently I am self-employed with the Robert A. Parris, Professional Corporation, working as an attorney, mediator, wage and hour and catastrophic injury valuation expert consultant. I have been an attorney for approximately 30 years, working as a partner for the Parris Law firm for 23 years, and presently serving of counsel. Before becoming an attorney, I was a sworn member of the California Highway Patrol (CHP), and completed my career at the rank of Captain. Upon leaving the CHP I became a sworn member of the Los Angeles County Sheriff's Department Reserve Forces retiring in 2016.

Education:

- J.D. (December 1991) – Loyola Law School, Los Angeles, California
- University of California Davis School of Law (August 1987-June 1988)
- B.S. in Criminal Justice (December 1982) (*Magna Cum Laude*) – California Polytechnic State University at San Luis Obispo
- A.A. in General Education (June 1975) – Antelope Valley College, Lancaster, California

Professional Licenses:

Admitted to Practice – Bar of the District of Columbia Court of Appeals (2020), United States District Court (1998), California Superior Court (1992) and California State Bar (1991).

Professional Memberships:

- Mediator, United States District Court for the Central District of California (2012-present)
- Volunteer Judge Pro Tempore – L.A. County Superior (2006 – 2010)
- Mediator, Los Angeles County Superior Court Alternate Dispute Resolution (2009-2011)
- Mediator, Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel and Civil Neutral Evaluation Panel (2012-2013)
- Southern California Mediation Association (2013)
- Designated Mediator, The Mediator Registry (2013)

Robert A. Parris, Curriculum Vitae

Community Involvement:

- Member of the Board of Directors (Division 5) - Antelope Valley-East Kern Water Agency (2014- Present)
- Chairman of the Antelope Valley Water Master Board (2016- Present)
- Chairman of the Antelope Valley State Water Contractors Board (2018-Present)
- Chairman of the Board of Directors – Friends of the Antelope Valley Fair (1998-Present)
- Chairman of the Board of Directors – Antelope Valley Fair Joint Powers Authority (2018-2019)
- Member – City of Santa Clarita Planning Commission (2002-2004)
- Member of the Board of Directors – Grace Resource Center (2010-2014)
- L.A. County Sheriff's Reserve Deputy (1994-2016) (retired)
- Member – California Highway Patrol (1978-1993) (retired as captain)
- Past President and Board Member – Antelope Valley Bar Association (1994-1999)

Dispute Resolution Training:

- May 2018: Association of California Water Agencies: 2018 Spring Conference Attorney Programs: Groundwater Adjudications and SGMA training; Water transfer and SGMA
- November 2017: Association of California Water Agencies: CLE Workshop for Water professionals
- June 2017: Straus Institute: Professional Skills Program in Conflict Resolution Consulting
- June 2016; Advanced Mediation Workshop: Mediating Complex Disputes, Program on Negotiation, Harvard Law School
- June 2014; Straus Institute: Professional Skills Program in Dispute Resolution
- December 12, 2013 – United States District Court: ADR Program – Analyzing Interests to Facilitate Settlement
- November 16, 2013 – CAOC Annual Convention – Mediation: Maximizing Your Client's Settlement
- June 2013; Straus Institute: Professional Skills Program in Dispute Resolution
- May 15, 2013; United States District Court: ADR Program – Advanced Mediation Training
- Fall 2012; Kenneth Cloke's Center for Dispute Resolution: Mediation Training
- November 9, 2012; United States District Court: Cross-Cultural Challenges in Mediation
- November 2, 2012; Straus Institute: Apology, Forgiveness and Reconciliation
- September 21, 2012; United States District Court: ADR Program – Mediation Training
- June 2009; Straus Institute: Negotiating the Litigated Case I&II
- March 3, 2009 - Los Angeles Superior Court: ADR VSC Orientation
- June 2004 - Straus Institute: Mediating the Litigated Case
- September 11, 1993 - California Bar CLE: Effective Legal Negotiation

Awards and Honors:

- Super Lawyers (2014 -Present)
- Consumer Attorneys of California's Consumer Attorney of the Year Finalist (2013)
- Antelope Valley Fair Association's Distinguished Director Award (2012)
- Appointed by California Governor Pete Wilson to the 50th District Agricultural Association as President (1999-2000) and Member of the Board of Directors (1994-2000)
- Los Angeles County Sheriff's Reserve Deputy of the Year – Lancaster Station (1999)
- Bachelor's Degree in Criminal Justice awarded *Magna Cum Laude* (1982)

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
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Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

STEVEN ZIMMERS, individually, and on
behalf of other aggrieved employees pursuant to
the California Private Attorneys General Act;

Plaintiff,

vs.

PINNACLE PROPERTY MANAGEMENT
SERVICES, LLC, an unknown business entity;
and DOES 1 through 100, inclusive,

Defendant.

Case No.: 30-2018-00995413-CU-OE-CXC

Honorable William D. Cluster
Department CX104

**FURTHER SUPPLEMENTAL
DECLARATION OF EDWIN
AIWAZIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (CAL.
LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND
AWARD OF ATTORNEYS' FEES AND
COSTS, ENHANCEMENT FEE, AND
SETTLEMENT ADMINISTRATION
COSTS**

[Supplemental Brief in Support of
Plaintiff's Motion for Approval of Private
Attorneys General Act (Cal. Labor Code §
2698, *Et Seq.*) Settlement Agreement and
Award of Attorneys' Fees and Costs,
Enhancement Fee, and Settlement
Administration Costs; and [Revised
Proposed] Order and Judgment filed
concurrently herewith]

Date: August 6, 2021
Time: 9:00 a.m.
Department: CX104

Complaint Filed: May 25, 2018
Trial Date: None Set

FURTHER SUPPLEMENTAL DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwazian, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California and all United States District Courts in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiff Steven Zimmers ("Plaintiff"). The facts set forth in this declaration are within my personal knowledge or based on information and belief and, if called as a witness, I could and would competently testify thereto.

2. On May 21, 2021, Plaintiff filed a Motion for Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys' Fees and Costs, Enhancement Fee, and Settlement Administration Costs ("Motion for PAGA Approval") and supporting documents seeking approval of the settlement reached by Plaintiff and Defendant Pinnacle Property Management ("Defendant") (together, the "Parties").

3. On June 18, 2021, the Court issued a Minute Order continuing the hearing on Plaintiff's Motion for PAGA Approval and requesting further additional information in support of the Motion for PAGA Approval ("June 18, 2021 Minute Order"). A true and correct copy of the June 18, 2021 Minute Order is attached hereto as "**EXHIBIT A.**"

4. To address the Court's points of inquiry articulated in the June 18, 2021 Minute Order, the Parties met and conferred, negotiated, and are in the process of executing the Second Amended Private Attorney General Act Settlement Agreement and Release ("Second Amended Settlement Agreement"), a true and correct copy of which is attached hereto as "**EXHIBIT B.**" A redline version of the Second Amended Settlement Agreement showing how the terms of the First Amended Private Attorney General Act Settlement Agreement and Release have been revised, is attached hereto as "**EXHIBIT C.**"

5. Based on the Court's guidance, the Parties have also prepared a [Revised Proposed] Notice of Settlement of Private Attorneys General Act ("Revised Cover Letter"), which is attached hereto as "**EXHIBIT D.**" A redline version of the Revised Cover Letter showing how it has been revised, is attached hereto as "**EXHIBIT E.**"

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RELATED ACTIONS

6. As of this date, and after performing a search on the Department of Industrial Relations' PAGA database and meeting and conferring with Defendant's counsel, Plaintiff's Counsel confirms there are no related cases or actions to the above-captioned action. The Department of Industrial Relations' PAGA Database contains four (4) matters involving Defendant, which include the above-captioned action, and the *Hutchins* case, and two additional matters. A true and correct copy of the search results from the Department of Industrial Relations' PAGA database is attached hereto as "**EXHIBIT F**". Defendant represented that the *Jose Lopez* matter settled during prelitigation on November 4, 2020 and was dismissed based on that settlement. Defendant also represented that the *Stephanie Prasad* matter settled on an individual basis and, based on that settlement, the plaintiff is moving to dismiss individual claims and any claims under PAGA without prejudice. As of this date, Parties are not aware of any other actions besides the *Hutchins* case that are affected by the Settlement.

ADMINISTRATOR'S QUOTE

7. The Court requested a copy of the estimated quote provided by the Settlement Administrator for purposes of administration of the settlement, a true and correct copy of which is attached hereto as "**EXHIBIT G**".

SAMPLING

8. As set forth in the Declaration of Edwin Aiwazian in Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code § 2698 *Et Seq.*) filed on May 21, 2021 ("Declaration of Edwin Aiwazian"), and discussed in the Motion for PAGA Approval, both sides had the opportunity to interview witnesses, conducted significant formal and informal discovery and investigations into the facts of the case, and exchanged documents, information, and employee data, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data produced by Defendant and obtained from other sources. The volume of data and documents that Plaintiff's Counsel reviewed and analyzed included, but was not limited to, a sampling of time and pay data. The sampling included time data and pay data provided in Microsoft Excel spreadsheet format for eighty-seven (87)

randomly chosen employees, representing 28% of the 314 employees contemplated to comprise the PAGA group for the period March 19, 2017 to April 5, 2019. As represented by Defendant, the sampling was created by selecting the 87 employees' records using Microsoft Excel's randomization function . The pay data included unique employee identifier, job title, period start date, period end date, pay dates with hours (broken down in detail as current hours recorded, pay rate, rate factor (i.e., 1x, 1.5x, 2x), calculated rate, and current amount paid) and earnings (broken down in detail as Commissions, OT Bonus-Comm, Regular Wages, Report to Work, Overtime, Double Time, Retroactive Pay, Vacation, Holiday, and Sick California). The time data included, *inter alia*, unique employee identifier, employee group, and dates worked (broken down in detail with time punch in, time punch out, meal duration, shift type worked, and total hours worked), among other information

EXPERT CV

9. Plaintiff's Counsel retained expert Robert Parris to assist with claim valuation. The Court requested a copy of Curriculum Vita of Plaintiff's expert Robert Parris, a true and correct copy of which is attached hereto as "EXHIBIT H".

CLARIFICATION REGARDING VALUATION OF CLAIMS UNDER LABOR

CODE §§ 201-204

10. Based on data provided by Defendant prior to mediation and confirmed thereafter, the total number of Aggrieved Employees during the period from approximately March 19, 2017 to approximately May 31, 2019 ("one-year statutory period") was estimated to be four hundred and sixty-six (466) individuals, who worked approximately 11,130 pay periods. As of May 31, 2019, 235 of the 466 Aggrieved Employees had been terminated.

11. Plaintiff's valuation of the PAGA claims for failure to pay wages is not entirely based on the failure to pay wages upon termination. Plaintiff's quantification of the value of the claims under Labor Code §§ 201-204 is for both the alleged failure to timely pay all wages due upon termination (see Paragraph 57-58 of the Declaration of Edwin Aiwarzian, discussing what the law provides and that Defendant allegedly "failed to pay Plaintiff and the other Aggrieved Employees all wages due to them upon termination, within the time period permissible under

California law”) as well as the alleged failure to timely pay wages during employment in violation of § 204 (see Paragraph 55-56 of the Declaration of Edwin Aiwasian, discussing what the law provides and that Defendant allegedly “failed to pay Plaintiff and the Aggrieved Employees all wages due to them while they were employed by Defendant, within the time period permissible under California law”). To value these claims, it was assumed that a violation for which \$100 of civil penalties could be recovered, could be proven for each of the 466 individuals estimated to be Aggrieved Employees. It should be noted that, of the 466 Aggrieved Employees, only 235 had been terminated as of May 31, 2019, as such, all 466 Aggrieved Employees were not eligible for waiting time.

**REPRESENTATION OF PLAINTIFF AND WORK PERFORMED BY PLAINTIFF’S
COUNSEL**

12. Representation provided by Plaintiff’s Counsel in the above-captioned matter has been on a contingency basis; Plaintiff Zimmers agreed to a contingency fee and was not billed contemporaneously for his attorneys’ services. Plaintiff’s Counsel took on this matter without knowing whether it would obtain any recovery, and have undertaken multiple hours of work in connection with this case.

13. The Attorney Task and Time Chart provided to the Court on May 21, 2021, provides information regarding tasks performed. The chart is a business record that was prepared through extensive review of memoranda and case notes prepared by attorneys who worked on this case, correspondence to and from attorneys who worked on this matter, court filings, and other documents maintained in the firm’s physical and electronic files for this matter, including and not limited to, a large volume of documents. I have reviewed our firm’s records, the work performed by me, as well as the work performed by others at our firm, and hereby attest that the records submitted to the Court are accurate and that our firm has spent no less than 482.95 hours on the case over the course of this litigation.

14. By way of the chart, Lawyers for Justice, PC has produced its records regarding the work performed in the action.

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ADDITIONAL INFORMATION RE: SPECIFIC COST ITEMS

15. On April 16, 2019, the Parties participated in a full-day mediation conducted by the Honorable Louis M. Meisinger, (Ret.). The Parties split the mediation fee, and Lawyers *for* Justice, PC paid Plaintiff's 50% share of the mediation fee, i.e., \$9,450, as reflected in the Case Cost Detail attached to the Declaration of Edwin Aiwarzian as "Exhibit 3."

16. Malalai Anbari is an attorney who was employed by Lawyers *for* Justice, PC. On June 6, 2019, Ms. Anbari appeared for a Case Management Conference in this action, for which she incurred travel costs in the amount of \$56.12, as reflected in the Case Cost Detail attached to the Declaration of Edwin Aiwarzian as "Exhibit 3."

ENGLISH ONLY COVER LETTER

17. Based on Plaintiff's Counsel's investigations, and as confirmed by Defendant, Defendant conducts its business in English and Aggrieved Employees are believed to be proficient in English. The Parties have met and conferred and confirmed the Cover Letter will not need to be provided in any languages other than English.

18. Plaintiff's Counsel submits that the Settlement fulfills the purpose of the PAGA statute, is within the accepted range of recoveries for this type of litigation, is fair, reasonable, and adequate, and in the best interests of the State of California and other Aggrieved Employees given the substantial monetary benefits provided for by the Settlement, the strengths and weaknesses of this action, and the inherent delay, costs, risks, and uncertainty associated with continued litigation. As such the Court is respectfully asked to grant approval of the Settlement.

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

Executed this 30th day of July 2021, at Glendale, California.



Edwin Aiwarzian

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 06/18/2021

TIME: 09:00:00 AM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: Gus Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2018-00995413-CU-OE-CXC** CASE INIT.DATE: 05/25/2018

CASE TITLE: **Zimmers vs. Pinnacle Property Management Services, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73533085

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: Steve Zimmers

CAUSAL DOCUMENT/DATE FILED: Motion - Other for approval of paga settlement agreement,
05/21/2021

APPEARANCES

Plaintiff Steven Zimmer's Motion for Approval of Private Attorneys General Act (Cal. Labor Code 2698 Et. Seq.) Settlement Agreement and Award of Attorneys' Fees and Costs, Enhancement Fee, and Settlement Administration Costs (ROA# 123)

There are no appearances by any party.

Tentative Ruling posted on the Internet .

All parties telephonically submit on the Court's tentative ruling.

The Court confirms the tentative ruling. The Court's ruling is attached hereto and incorporated herein by reference.

Court orders clerk to give notice.

ZIMMERS v. PINNACLE PROPERTY MANAGEMENT SERVICES, LLC 18-995413

Plaintiff Steven Zimmers' motion for approval of PAGA settlement is CONTINUED to August 6, 2021 at 9:00 a.m. in Department CX104 to permit Zimmers and Defendant Pinnacle Property Management Services, LLC to respond to the items of concern discussed below. Any supplemental briefing shall be filed on or before July 26, 2021. If a revised settlement agreement and/or proposed notice is submitted, a redline version showing all changes, deletions and additions must be submitted as well. In addition, Zimmers must provide proof of service of any revised settlement agreement and supplemental papers on the LWDA.

Likewise, the motion for attorney fees brought by objector Mikhail Hutchins is continued from July 2, 2021 to August 6, 2021 at 9:00 a.m.

OBJECTIONS OF MIKHAIL HUTCHINS

Before turning to the items of concern Zimmers and Pinnacle must address before the Court will grant approval of the settlement, the Court first addresses an opposition filed by Objector Mikhail Hutchins. Hutchins is the plaintiff in *Hutchins v. Pinnacle Property Management Services, LLC*, No. 19-CV-003557, a PAGA case currently pending in Stanislaus County Superior Court. In essence, he argues that Pinnacle has reverse-auctioned this PAGA settlement by secretly resolving his PAGA claim as part of the present settlement without paying adequate consideration. In the event the Court nevertheless approves the settlement, he also objects to the scope of the release.

As an initial matter, Zimmers argues the Court cannot consider Hutchins' objections at all. Zimmers contends that PAGA is not a class action device, so Hutchins is not a party to this case and has no right to object or otherwise be heard. The Court disagrees. Approval of a PAGA settlement requires a finding that the settlement will be "fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) It is undisputed that Hutchins is among "those affected," for Pinnacle contends this settlement will extinguish Hutchins' claim. Because the Court must consider the fairness of the settlement to those affected,

and because Hutchins is among those affected, it follows that the Court may consider Hutchins' views the fairness of the settlement.

I. Reverse Auction Allegations

Hutchins makes a number of arguments supporting his allegation that the present settlement is a secretly negotiated reverse auction that improperly settles his PAGA claim without sufficient consideration. While the Court agrees that reverse auctions are a potential concern in many class action/representative cases, it is not persuaded by Hutchins' arguments here.

A. Duty to Inform

Hutchins argues that parties in class and PAGA cases have an obligation to inform the court of cases that might be affected by an approval motion, and the parties failed to do so here. The Court agrees that Zimmers or Pinnacle should have mentioned Hutchins' case in the moving papers, but this does not indicate collusion or a reverse auction. In the Court's experience, the vast majority of class and PAGA approval motions fail to say whether other cases exist that may be affected by the settlement. Likewise, parties often fail to file timely notices of related cases as required by CRC 3.300. For these reasons, the Court almost always has to ask the parties whether any such cases exist. The Court would prefer that parties include this information in their moving papers in the first instance, but the failure to do so is routine, not proof of a reverse auction.

B. Timing of Settlement, "Secret Settlement" Allegations

Hutchins argues that Pinnacle and Zimmers colluded to "sweep in" his claims through secret settlement negotiations. The procedural history of the two matters indicates otherwise.

Zimmers sent his pre-filing letter to the LWDA on March 19, 2018 (Supp. Aiwasian Decl., Ex. 1) and filed suit on May 25, 2018. Zimmers and Pinnacle went to mediation on April 16, 2019. (Aiwasian Decl., ¶ 12.) The case did not settle at mediation, but after several weeks of negotiation, Zimmers and Pinnacle settled in principle on May 30, 2019. (*Ibid.*) A notice of settlement was filed on May 31. (ROA 46.)

Hutchins' pre-filing letter was sent on April 16, 2019, the same day as the mediation. (Pimentel Decl., Ex. 1.) He filed suit in Stanislaus County on June 24, 2019. (*Id.*, Ex. 2.) At the time the present case first settled in principle, Hutchins had no PAGA claim in the first place, let alone one that could be secretly settled by Zimmers and Pinnacle.

For reasons not clear from the record, Zimmers and Pinnacle took nearly a year from their settlement in principle to come up with a fully executed settlement agreement. (See Supp. Aiwasian Decl., Ex. 3 [last signature dated April 27, 2020].) At a July 2020 status conference, the Court expressed concern with the PAGA period as defined in the agreement: the settlement amount was set at \$825,000 in May 2019, but the PAGA period extended through the settlement approval date. Because more than a year had passed from the date of the settlement, the effect of the settlement would be to wipe out an additional year of claims without compensation. (See Supp. Aiwasian Decl., ¶ 7.)

Based on the Court's comments, Zimmers and Pinnacle began renegotiating the settlement to have a set end date. At about the same time, Pinnacle's counsel discovered that the number of pay periods he represented were at issue during mediation—about 9,500—was incorrect. Rather, the true number was 11,130. (Kelly Decl., ¶ 7.) Zimmers took the position that the settlement amount was improperly low, as it had been based on about 9,500 pay periods. After further negotiation, including another mediation session, the parties reached a new settlement in principle: Pinnacle would pay \$910,000, and the PAGA period would end on May 31, 2019. (Kelly Decl., ¶ 8.) The new cutoff date is the same as the

date the parties originally filed their notice of settlement.

The new settlement was reached in February 2021. (*Ibid.*) Hutchins was set to mediate his case on February 24, 2021, but Pinnacle canceled the mediation at the last minute, taking the position that the settlement here extinguished Hutchins' claims. (Austin Decl., ¶¶ 6-7.) Hutchins' counsel states in his declaration that Pinnacle's counsel offered to go to mediation on the condition that Hutchins' wage statement claim be excluded from the mediation. (Pimentel Decl., ¶ 15.) Because Pinnacle has taken the position that Hutchins' claims are entirely barred by the settlement with Zimmer, this "conditional mediation" makes little sense. The Court therefore credits the testimony of Nathan Austin, the attorney who represents Pinnacle in the *Hutchins* case.

The facts set forth above do not correspond to an attempt to secretly settle Hutchins' claims. Again, at the time this case originally settled, Hutchins had not even filed suit. In response to concerns raised by the Court, the parties renegotiated the end date of the PAGA period. In response to new information about the number of pay periods at issue when the case was mediated, the parties renegotiated the settlement amount to reflect the correct number of pay periods. Nothing indicates an intent to resolve Hutchins' case without his involvement.

The Court additionally notes that Hutchins has known about this case since at least March 2020, when Pinnacle filed a notice of related case in *Hutchins*. (Austin Decl., Ex. 1 [showing proof of service on Pimentel].) Hutchins could have attempted to intervene in this case, coordinate/seek to reopen settlement negotiations with Zimmer, etc. There is no evidence he did so at any time in the 11 months between the notice of related case and the new settlement in *Zimmers*.

C. PAGA as Purely Retroactive

Hutchins argues the settlement improperly settles claims that Zimmers failed to exhaust in a pre-filing notice. Specifically, he argues that Zimmers failed to exhaust his claims because a PAGA notice operates *entirely retroactively*. That is, Zimmers' pre-filing letter to the LWDA, dated March 18, 2018, can only serve to prosecute (and settle) PAGA claims from March 18, 2017 to March 18, 2018.

This is not an argument the Court has seen before, and it does not accord with standard practice for PAGA settlements in California. Courts routinely approve PAGA settlements that cover time after the pre-filing letter, such as settlements that cover all claims through the date of settlement or settlements that cover all claims through the approval date. If Hutchins' position were the law, it would upend how virtually all PAGA claims are resolved every day.

The authority Hutchins cites for his position—*Esparza v. Safeway, Inc.* (2019) 36 Cal.App.5th 32 and *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824—do not support him. Both cases explained that PAGA has a one-year statute of limitations, and both held (with one exception in *Brown*) that the plaintiffs' PAGA claims, filed years after their original complaints, did not relate back for limitations purposes. They say nothing about whether PAGA allows a plaintiff to prosecute and settle claims arising from violations that occurred *after* his pre-filing notice. Absent binding authority that expressly adopts Hutchins' position, the Court is not inclined to interpret the operation of PAGA in a way that threatens to undo countless settlements throughout California.

Furthermore, Hutchins' argument contradicts the language of Zimmers' PAGA letter. Assuming for the sake of argument that, *in general*, a pre-filing letter only provides notice of retroactive violations, the specific letter here goes further. Zimmers' letter states, "Pinnacle has violated and/or *continues to violate*" the Labor Code. (Supp. Aiwazian Decl., Ex. 1, at p. 1 [emphasis added].) The LWDA thus had notice that Zimmers intended to pursue penalties on a prospective basis.

In short, the time period covered by the settlement—March 18, 2017 to May 31, 2019—is appropriate. Zimmers has not signed away claims he had no right to settle.

D. Additional Employees and Pay Periods

As discussed in some detail in the moving papers, there are 466 aggrieved employees and 11,130 pay periods at issue in the current settlement. Again, 11,130 is a corrected number substantially greater than the number originally used to value the case.

Even though the current version of the settlement agreement recites both of these figures (see Aiwazian Decl., Ex. 1, at § 3(a)(5)), Hutchins claims the settlement actually affects 823 employees and nearly 20,000 pay periods. He argues this is further proof of a reverse auction: the parties are colluding to silently extinguish the claims of hundreds more employees over thousands of pay periods. The Court disagrees since the evidence relied upon by Hutchins does not support his contentions.

As support for his numbers, Hutchins points to supplemental discovery responses served by Pinnacle in July 2020. (Pimentel Decl., Ex. 4.) These responses include a spreadsheet that indeed appears to list over 800 employees. It includes both their job title and the number of pay periods they worked in Hutchins' claimed PAGA period, which the Court does not doubt is nearly 20,000 pay periods. But a close examination of the job titles shows this group of employees is substantially broader than the aggrieved employees in Zimmers' settlement, which only includes non-exempt employees. The job titles in Hutchins' spreadsheet specifically note employees who are salaried, and thus exempt. It also includes employees with titles like "manager," "supervisor," or "director" who may reasonably be assumed to be exempt.

The discovery responses to which the spreadsheet is attached confirm that this list is overbroad compared to the aggrieved employees here. Special Interrogatory 17, for example, asks how many “*persons who were employed by you*” during the PAGA period received a wage statement with the wrong name of the employer. (Pimentel Decl., Ex. 4, at p. 4 [emphasis added].) It does not ask about *non-exempt employees*. The supplemental response from Defendant confirms as much: “After meeting and conferring with [Objector], Defendant has agreed to supplement this response with the names of *all of Defendant’s California employees* who received a wage statement.” (*Id.*, at p. 5 [emphasis added].) Absent proof that Zimmers’ settlement in fact covers hundreds more employees and thousands more pay periods than its recitals indicate, the Court finds there has been no attempt to “give away” additional employees and pay periods for free.

II. Scope of Release

Hutchins also raises two concerns with the scope of the release. The first concerns the identity of the released parties. The current settlement agreement releases “Defendant, including Defendant’s parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof.” (Agreement, § 8(a).) Hutchins argues Zimmers did not exhaust administrative remedies as to anyone other than Pinnacle itself because his pre-filing letter only mentions Pinnacle. This is simply incorrect. Zimmers’ letter refers to “Pinnacle Property Management Services, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as ‘Pinnacle’).” (Supp. Aiwasian Decl., Ex. 1, at p. 1.)

Second, Hutchins argues the release improperly extends beyond claims that were actually pled in the complaint or the pre-filing letter or claims that could have been pled based on the facts alleged therein. The Court agrees the language of the release can be confusing. It covers “any and all claims, known and unknown, asserted and unasserted, arising during [the PAGA period] for civil penalties under

[PAGA] as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the [complaint and pre-filing letter], including but not limited to [a number of claims listed by general description], and for violations of [a number of specific Labor Code sections or Wage Orders].”) (Agreement, § 8(a).)

Hutchins reads this provision to cover (1) all PAGA claims pled in the case or that could have been pled based on the facts alleged, *and separately* (2) all PAGA claims arising from the listed statutes or Wage Orders, regardless of whether they were pled or could have been pled here. The Court believes the release language is properly limited to claims that were pled or could have been pled in this action based on the facts alleged. For example, the specific reference to Labor Code section 226 in the release only covers wage statement violations that were pled in this case or could have been pled based on the facts alleged, not the entire universe of wage statement violations. To be clear, the Court will not permit the release of PAGA claims other than those that were pled or could have been pled based on the facts alleged.

That said, it appears what Hutchins really wants is a finding that his claims will survive this settlement. Zimmers forcefully argues otherwise in his reply, urging the Court to conclude that this settlement puts an end to Hitchens’ case. The Court believes it would be inappropriate to make any such finding here. Assuming this Court eventually approves this settlement, the question of whether the release bars Hitchens’ claims is properly decided in Stanislaus County, where his claims are currently pending.

ITEMS OF CONCERN

Before the Court can grant approval of Zimmers’ and Pinnacle’s settlement, the parties must address the following items of concern in further briefing.

As to the Settlement:

1. Other than the *Hutchins* case, are there any actions, whether in the pre-filing LWDA stage or pending in a court, that may be affected by this settlement?
2. Please submit a bid from CPT, the chosen administrator.
3. Please allow 180 days for aggrieved employees to cash their settlement checks.
4. The Court strongly prefers remitting any unclaimed funds to the State Controller's Unclaimed Property Fund. However, If the parties insist on using a cy pres, the Court requires a cy pres that bears some relationship to the subject matter of this case, or failing that, a cy pres focused on the provision of legal services to the indigent in Orange County. The parties and their counsel must disclose any connections they have to the chosen cy pres.
5. Instead of allowing a party to file a new action for enforcement if the settlement agreement is breached, the agreement should provide for continuing jurisdiction in this Court under CCP § 664.6.
6. How large a sample of the relevant time and pay data did Pinnacle provide to Zimmers? What steps did the parties take to ensure it was representative of all aggrieved employees across the entire PAGA period?
7. Counsel retained an expert to assist in claim valuation. Is this Robert Parris, the expert mentioned in the costs bill? Please provide a copy of

the expert's CV.

8. The Court is confused by the explanation of the valuation of PAGA claims arising from Labor Code §§ 201-204. It appears this is based entirely on waiting time under §§ 201-203, as the maximum valuation is \$46,600 based on one \$100 penalty for each of 466 aggrieved employees. Are all 466 even eligible for waiting time penalties in the first place? What about § 204, for timely pay during employment? Does this claim have any value?
9. Please submit contemporaneously made attorney billing records for a lodestar cross-check rather than a general "task and time" chart.
10. Regarding litigation costs, the Court has two questions. First, does the \$9,450 mediation fee reflect the entire mediation fee, or just Zimmers' share?
11. Second, who is Malalai Anbari, and what travel did he or she conduct on June 6, 2019 that should be reimbursed here?

As to the Notice:

1. Please clarify that the settlement releases only the aggrieved employees' claims under PAGA, not their other remedies (other Labor Code claims, UCL claims, etc.).
2. Please include the deadline for aggrieved employees to cash their settlement checks and advise them of what will happen to any unclaimed funds.

3. The notice should state that Pinnacle will not retaliate against current employees who cash their checks.
4. Should notice be given in any languages other than English?
5. If any changes are made to the settlement agreement, please make corresponding changes to the notice.
6. The font size in the actual notice may not be smaller than the font size in the proposed notice provided to the Court.

EXHIBIT B

**SECOND AMENDED PRIVATE ATTORNEY GENERAL ACT SETTLEMENT
AGREEMENT AND RELEASE**

This Private Attorney General Act Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Steven Zimmers (“Plaintiff”), for himself and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(6) below), on the one hand, and, on the other, Defendant Pinnacle Property Management Services LLC (Defendant), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately April 2016 to April 2017;

(b) On March 19, 2018, Plaintiff’s counsel, Lawyers for Justice, PC, submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) on behalf of Plaintiff, to notify the LWDA pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff’s intent to seek civil penalties under PAGA and all other remedies available under PAGA, including and not limited to under Labor Code section 558, for Defendant’s alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001, 5-2001, 7-2001, 9-2001, and 16-2001, in conformity with Labor Code section 2699.3 (the “PAGA Notice”);

(c) On May 25, 2018, Plaintiff filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §2698, Et Seq. (“Operative Complaint”), commencing a representative action under PAGA against Defendant, entitled *Steven Zimmers v. Pinnacle Property Management Services, LLC*, Orange County Superior Court Case No. 30-2018-00995413-CU-OE-CXC (the “Action”). The Operative Complaint asserts a single cause of action for penalties under PAGA, for violations of multiple provisions of the Labor Code and applicable Industrial Welfare Commission Wage Orders.

(e) On April 19, 2019, the Parties mediated the Action during a full-day mediation with Hon. Louis Meisinger (Ret.). The Parties were unable to reach a resolution that day and continued to negotiate for weeks thereafter until they reached an agreement in principal, with the assistance of the mediator’s evaluations, to resolve the Action;

(f) After executing the Private Attorney General Act Settlement Agreement and Release on or around April 27, 2020, Defendant informed Plaintiff’s counsel that the pay periods from March 19, 2017 to April 5, 2019 were 11,130 instead of 9,562 as previously represented. Thereafter, the Parties re-engaged mediator Hon. Louis Meisinger (Ret.) to resolve the dispute over the additional pay periods. With the aid of the mediator and additional settlement negotiations, the Parties reached the settlement described herein;

(g) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties

desire to resolve the Released Claims (as defined in Section 8(a) below) as of the date of execution of this Settlement Agreement.

2. **Nonadmission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendant shall pay the maximum gross sum of NINE HUNDRED TEN THOUSAND DOLLARS AND ZERO CENTS (\$910,000.00) (the "Total Settlement Amount") to resolve the Action and Released Claims, which will be paid as follows:

(1) Attorneys' fees of up to the amount of TWO HUNDRED EIGHTY EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$288,750.00) (which is 31.7% of the Total Settlement Amount) and reimbursement of litigation costs and expenses up to the amount of TWENTY THOUSAND DOLLARS (\$20,000)(collectively, "Attorneys' Fees and Costs") to Plaintiff's Counsel, which Defendant will not contest.

(2) An enhancement fee of up to the amount of FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000) ("Enhancement Fee") to Plaintiff, which Defendant will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of FOURTEEN THOUSAND DOLLARS AND ZERO CENTS (\$14,000) ("Settlement Administration Costs") to Phoenix Settlement Administrators (the "PAGA Settlement Administrator").

(4) The amounts stated in Paragraphs 1 – 3 above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the "Net Settlement Amount."

(5) Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment"); and the remaining twenty-five percent (25%) shall be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as former and current employees of Defendant who worked in California as non-exempt employees at any time during the period between March 19, 2017 through May 31, 2019 (the "Aggrieved Employees"). The Aggrieved Employees are estimated to consist of approximately 466 individuals who worked approximately 11,130 pay periods for the period March 19, 2017 to April 5, 2019. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the "Employees' Portion."

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, Enhancement Fee, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated

and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void.

5. **Disbursal of Settlement Funds/Dismissal of Action.**

(a) Subject to Section 4 above, Defendant shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement,.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator will notify the parties of distribution of the entire Total Settlement Amount, and within ten (10) business days of such notification, Plaintiff will seek dismissal of the Action in its entirety with prejudice.

6. **Approval and Implementation of the PAGA Settlement.**

(a) The Parties will cooperate in obtaining an order from the Court approving this Settlement Agreement and dismissal of the Action based thereon, as described herein. The Parties' further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court relating in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(b) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Joel P. Kelly of Jackson Lewis P.C. ("Defendant's Counsel") for review and approval prior to filing.

(c) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant dismissal of the action and closure of the case based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

7. **Payment of PAGA Settlement Sum / Notice to Recipients.**

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendant by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within fourteen (14) calendar days of the

Court's order granting approval of this Settlement Agreement. If the date by which payment by Defendant is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between March 19, 2017 through May 31, 2019 ("Compensable Pay Periods"), based on Defendant's payroll records. Specifically, to calculate each PAGA Settlement Member's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (1) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and will not be subject to local, state or federal payroll tax withholdings. All Aggrieved Employees who cash, deposit, or otherwise negotiate their Individual Settlement Share checks shall receive an IRS Form 1099 for their Individual Settlement Share as required by the IRS.

(c) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter agreed to by the Parties and approved by the Court, in the following manner:

(1) No later than seven (7) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) social security number; (v) Compensable Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Total Settlement Amount and Aggrieved Employee List, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be cancelled. If any Aggrieved Employee does not cash or deposit his/her settlement check within one hundred eighty (180) calendar days, the check will be void and the uncashed funds associated with

each settlement check will escheat to the State Controller to be deposited in the California Unclaimed Property Fund in the Aggrieved Employee's name.

(d) Also no later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

8. **Release of Claims by Plaintiff, Aggrieved Employees, and the State of California.**

(a) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims, known and unknown, asserted and unasserted, arising during the period from March 19, 2017 through May 31, 2019, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and in Plaintiff's March 19, 2018 PAGA letter, including but not limited to, for failure to pay minimum, regular, overtime, and on-call wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, failure to indemnify or reimburse for business expenses, and for violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001, 5-2001, 7-2001, 9-2001, and 16-2001, in conformity with Labor Code section 2699.3.

(b) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff, individually and on behalf of his heirs, executors, administrators, representatives, attorneys, successors and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, from any and all claims of every nature whatsoever, known or unknown, suspected or unsuspected, arising out of or related to Defendant's employment of Plaintiff, which Plaintiff has or may have as of the Effective Date. This broader release includes, but is not limited to, all claims arising directly or indirectly from Plaintiff's employment with Defendant and the termination of that employment, including without limitation claims arising under federal, state or local laws and claims for unpaid wages, penalties, liquidated damages, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, wrongful or retaliatory discharge, harassment, discrimination, defamation, impairment of economic opportunity, and violations of public policy, the Fair Labor Standards Act, the California Labor Code, the California Fair Employment and Housing Act, the California Business and Professions Code, the California Constitution, the Civil Rights Act of 1866,

Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.

9. **No Transfer/Assignment of Claims.** Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiff is solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Action of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

10. **Liens and Attorneys' Fees/Indemnification.**

Plaintiff solely is responsible for any liens made in connection with any services performed on Plaintiff's behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses. Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Action, except to the extent the Settlement Agreement provides for payment of Attorneys' Fees and Costs. Plaintiff will indemnify the Released Parties for any and all costs any of them incur as a result of any claims made by any of Plaintiff's attorneys, consultants, expert witnesses, or other third parties to recover monies from the amounts payable to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

11. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) After entry of judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement. Should any proceedings be necessary to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

12. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

13. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

(d) If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF AND DEENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: _____, 2021

STEVEN ZIMMERS

Individually and On Behalf of the State of California and
Aggrieved Employees

PINNACLE PROPERTY MANAGEMENT SERVICES,
LLC, a wholly owned subsidiary of CUSHMAN
WAKEFIELD US, INC.

Date: _____, 2021 By: _____

Ryan Lawrence

Deputy General Counsel

Approved as to form and content.

LAWYERS *FOR* JUSTICE, PC

Date: _____, 2021 By: _____
EDWIN AIWAZIAN
JOANNA GHOSH
Attorneys for Plaintiff STEVEN ZIMMERS

JACKSON LEWIS P.C.

Date: _____, 2021 By: _____
JOEL P. KELLY
ZOE YUZNA

Attorneys for Defendant PINNACLE PROPERTY
MANAGEMENT SERVICES, LLC

EXHIBIT C

**FIRSTSECOND AMENDED PRIVATE ATTORNEY GENERAL ACT SETTLEMENT
AGREEMENT AND RELEASE**

This Private Attorney General Act Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Steven Zimmers (“Plaintiff”), for himself and as a representative of the State of California and the Aggrieved Employees (as defined in Section 3(a)(6) below), on the one hand, and, on the other, Defendant Pinnacle Property Management Services LLC (Defendant), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately April 2016 to April 2017;

(b) On March 19, 2018, Plaintiff’s counsel, Lawyers for Justice, PC, submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) on behalf of Plaintiff, to notify the LWDA pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff’s intent to seek civil penalties under PAGA and all other remedies available under PAGA, including and not limited to under Labor Code section 558, for Defendant’s alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001, 5-2001, 7-2001, 9-2001, and 16-2001, in conformity with Labor Code section 2699.3 (the “PAGA Notice”);

(c) On May 25, 2018, Plaintiff filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §2698, Et Seq. (“Operative Complaint”), commencing a representative action under PAGA against Defendant, entitled *Steven Zimmers v. Pinnacle Property Management Services, LLC*, Orange County Superior Court Case No. 30-2018-00995413-CU-OE-CXC (the “Action”). The Operative Complaint asserts a single cause of action for penalties under PAGA, for violations of multiple provisions of the Labor Code and applicable Industrial Welfare Commission Wage Orders.

(e) On April 19, 2019, the Parties mediated the Action during a full-day mediation with Hon. Louis Meisinger (Ret.). The Parties were unable to reach a resolution that day and continued to negotiate for weeks thereafter until they reached an agreement in principal, with the assistance of the mediator’s evaluations, to resolve the Action;

(f) After executing the Private Attorney General Act Settlement Agreement and Release on or around April 27, 2020, Defendant informed Plaintiff’s counsel that the pay periods from March 19, 2017 to April 5, 2019 were 11,130 instead of 9,562 as previously represented. Thereafter, the Parties re-engaged mediator Hon. Louis Meisinger (Ret.) to resolve the dispute over the additional pay periods. With the aid of the mediator and additional settlement negotiations, the Parties reached the settlement described herein;

(g) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties

desire to resolve the Released Claims (as defined in Section 8(a) below) as of the date of execution of this Settlement Agreement.

2. **Nonadmission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendant shall pay the maximum gross sum of NINE HUNDRED TEN THOUSAND DOLLARS AND ZERO CENTS (\$910,000.00) (the "Total Settlement Amount") to resolve the Action and Released Claims, which will be paid as follows:

(1) Attorneys' fees of up to the amount of TWO HUNDRED EIGHTY EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$288,750.00) (which is 31.7% of the Total Settlement Amount) and reimbursement of litigation costs and expenses up to the amount of TWENTY THOUSAND DOLLARS (\$20,000)(collectively, "Attorneys' Fees and Costs") to Plaintiff's Counsel, which Defendant will not contest.

(2) An enhancement fee of up to the amount of FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000) ("Enhancement Fee") to Plaintiff, which Defendant will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of FOURTEEN THOUSAND DOLLARS AND ZERO CENTS (\$14,000) ("Settlement Administration Costs") to Phoenix Settlement Administrators CPT Group (the "PAGA Settlement Administrator").

(4) The amounts stated in Paragraphs 1 – 3 above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the "Net Settlement Amount."

(5) Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment"); and the remaining twenty-five percent (25%) shall be distributed to the Aggrieved Employees, defined solely for purposes of this Settlement as former and current employees of Defendant who worked in California as non-exempt employees at any time during the period between March 19, 2017 through May 31, 2019 (the "Aggrieved Employees"). The Aggrieved Employees are estimated to consist of approximately 466 individuals who worked approximately 11,130 pay periods for the period March 19, 2017 to April 5, 2019. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the "Employees' Portion."

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys' Fees and Costs, Enhancement Fee, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be treated

and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void.

5. **Disbursal of Settlement Funds/Dismissal of Action.**

(a) Subject to Section 4 above, Defendant shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement,.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the Settlement Administrator will notify the parties of distribution of the entire Total Settlement Amount, and within ten (10) business days of such notification, Plaintiff will seek dismissal of the Action in its entirety with prejudice.

6. **Approval and Implementation of the PAGA Settlement.**

(a) The Parties will cooperate in obtaining an order from the Court approving this Settlement Agreement and dismissal of the Action based thereon, as described herein. The Parties' further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court relating in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(b) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to Joel P. Kelly of Jackson Lewis P.C. ("Defendant's Counsel") for review and approval prior to filing.

(c) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant dismissal of the action and closure of the case based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

7. **Payment of PAGA Settlement Sum / Notice to Recipients.**

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendant by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within fourteen (14) calendar days of the

Court's order granting approval of this Settlement Agreement. If the date by which payment by Defendant is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between March 19, 2017 through May 31, 2019 ("Compensable Pay Periods"), based on Defendant's payroll records. Specifically, to calculate each PAGA Settlement Member's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (1) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and will not be subject to local, state or federal payroll tax withholdings. All Aggrieved Employees who cash, deposit, or otherwise negotiate their Individual Settlement Share checks shall receive an IRS Form 1099 for their Individual Settlement Share as required by the IRS.

(c) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter agreed to by the Parties and approved by the Court, in the following manner:

(1) No later than seven (7) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) social security number; (v) Compensable Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employee List.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator's receipt of the Total Settlement Amount and Aggrieved Employee List, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable, the PAGA Settlement Administrator shall promptly attempt to locate an alternate, updated address for the Aggrieved Employee at issue, by using an address refresher database and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ~~ninety (90)~~ one hundred eighty (180) calendar days, and thereafter, shall be cancelled. ~~Funds~~If any Aggrieved Employee does not cash or deposit his/her settlement check within one hundred eighty (180) calendar days, the check will be void and the uncashed

funds associated with ~~cancelled checks shall be transmitted~~ each settlement check will escheat to Family Promise (www.familypromise.org) or such other child advocacy program as approved by the Court, the State Controller to be deposited in the California Unclaimed Property Fund in the Aggrieved Employee's name.

(d) Also no later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

8. Release of Claims by Plaintiff, Aggrieved Employees, and the State of California.

(a) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and Aggrieved Employees, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns, and the State of California, on behalf of itself and its administrators, representatives, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Defendant, including Defendant's parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims, known and unknown, asserted and unasserted, arising during the period from March 19, 2017 through May 31, 2019, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and in Plaintiff's March 19, 2018 PAGA letter, including but not limited to, for failure to pay minimum, regular, overtime, and on-call wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, failure to indemnify or reimburse for business expenses, and for violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001, 5-2001, 7-2001, 9-2001, and 16-2001, in conformity with Labor Code section 2699.3.

(b) Upon the Effective Date, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff, individually and on behalf of his heirs, executors, administrators, representatives, attorneys, successors and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, from any and all claims of every nature whatsoever, known or unknown, suspected or unsuspected, arising out of or related to Defendant's employment of Plaintiff, which Plaintiff has or may have as of the Effective Date. This broader release includes, but is not limited to, all claims arising directly or indirectly from Plaintiff's employment with Defendant and the termination of that employment, including without limitation claims arising under federal, state or local laws and claims for unpaid wages, penalties, liquidated damages, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, wrongful or retaliatory discharge, harassment, discrimination, defamation, impairment of economic opportunity, and violations of public policy, the Fair Labor Standards Act, the

California Labor Code, the California Fair Employment and Housing Act, the California Business and Professions Code, the California Constitution, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.

9. **No Transfer/Assignment of Claims.** Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiff is solely responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the Action of any lien holder or any lien claimant or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

10. **Liens and Attorneys' Fees/Indemnification.**

Plaintiff solely is responsible for any liens made in connection with any services performed on Plaintiff's behalf by any attorney, consultants, or expert witnesses. Each Party solely is responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses. Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Action, except to the extent the Settlement Agreement provides for payment of Attorneys' Fees and Costs. Plaintiff will indemnify the Released Parties for any and all costs any of them incur as a result of any claims made by any of Plaintiff's attorneys, consultants, expert witnesses, or other third parties to recover monies from the amounts payable to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

11. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) ~~In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or~~ After entry of judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement. Should any proceedings be necessary to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party ~~in that action~~ shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

12. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

13. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

(d) If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF AND DEENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: _____, 2021

STEVEN ZIMMERS

Individually and On Behalf of the State of California and
Aggrieved Employees

PINNACLE PROPERTY MANAGEMENT SERVICES,
LLC, a wholly owned subsidiary of CUSHMAN
WAKEFIELD US, INC.

Date: _____, 2021 By:

Ryan Lawrence

**~~FIRST~~SECOND AMENDED PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AGREEMENT AND RELEASE**

Deputy General Counsel

Approved as to form and content.

LAWYERS FOR JUSTICE, PC

Date: _____, 2021 By: _____
EDWIN AIWAZIAN
JOANNA GHOSH
Attorneys for Plaintiff STEVEN ZIMMERS

JACKSON LEWIS P.C.

Date: _____, 2021 By: _____
JOEL P. KELLY
ZOE YUZNA
Attorneys for Defendant PINNACLE PROPERTY
MANAGEMENT SERVICES, LLC

EXHIBIT D

STEVEN ZIMMERS V. PINNACLE PROPERTY MANAGEMENT SERVICES, LLC
Orange County Superior Court Case No. 30-2018-00995413-CU-OE-CXC

NOTICE OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT

You are a member of a Court-approved PAGA settlement in the above matter against Pinnacle Property Management Services LLC (“Pinnacle”) The Plaintiff brought this lawsuit as a representative action under the PAGA, on behalf of the State of California and certain other current and former employees of Pinnacle who were employed at any time between March 19, 2017 to May 31, 2019. A PAGA action is an action for civil penalties in which the State of California receives 75% of the civil penalties collected. Plaintiff seeks penalties under PAGA for failure to pay minimum, regular, overtime, off-the-clock and on-call wages; failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, failure to indemnify or reimburse for employment related expenses, and for violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including inter alia Wage Orders 4-2001, 5-2001, 7-2001, 9-2001, and 16-2001, in conformity with Labor Code section 2699.3. Pinnacle strongly denies the claims in the Action and asserts that no civil penalties are due to the Plaintiff, the State of California, or other allegedly “aggrieved employees.” The Court has made no determination on the merits of the Action, but the Parties have decided to resolve this case through settlement, with the approval of the Court.

The PAGA settlement provides for a payment to current and former was non-exempt employees who worked for Pinnacle at any time from March 19, 2017 to May 31, 2019. The Parties have agreed that a portion of the settlement proceeds would be distributed to the allegedly aggrieved employees, including you, after certain portions of the penalties collected are paid to the State of California according to California law.

The enclosed check represents your portion of the settlement payment, which is based on your share of the total settlement proceeds that the parties have agreed to be paid to the allegedly aggrieved employees. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the Parties, or the Court. Your check will remain valid for one hundred eighty (180) calendar days, and thereafter, will be cancelled. If you do not cash or deposit your settlement check within one hundred eighty (180) calendar days, the check will be void and the uncashed funds associated with it will be transmitted to the State Controller to be deposited in the California Unclaimed Property Fund in your name. Pinnacle will not retaliate against you for cashing your settlement check.

This settlement releases claims for civil penalties under PAGA, which relate to failure to pay minimum wages and overtime wages, provide meal breaks and rest breaks and associated premiums, provide accurate itemized wage statements, provide timely payment of wages during employment and following separation, maintain requisite payroll records and reimburse business expenses. There is no right to opt out of the PAGA settlement.

According to Pinnacle’s records, you have been credited with [MERGED] pay periods for purposes of calculating your individual settlement payment.

If you have questions about this notice, please contact the PAGA Settlement Administrator, Phoenix Settlement Administrators at **[INSERT CONTACT INFO]**.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING. PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE.

EXHIBIT E

STEVEN ZIMMERS V. PINNACLE PROPERTY MANAGEMENT SERVICES, LLC
Orange County Superior Court Case No. 30-2018-00995413-CU-OE-CXC

NOTICE OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT

You are a member of a Court-approved PAGA settlement in the above matter against Pinnacle Property Management Services LLC (“Pinnacle”). The Plaintiff brought this lawsuit as a representative action under the PAGA, on behalf of the State of California and certain other current and former employees of Pinnacle who were employed at any time between March 19, 2017 to May 31, 2019. A PAGA action is an action for civil penalties in which the State of California receives 75% of the civil penalties collected. Plaintiff seeks penalties under PAGA for failure to pay minimum, regular, overtime, off-the-clock and on-call wages; failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, failure to indemnify or reimburse for employment related expenses, and for violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including inter alia Wage Orders 4-2001, 5-2001, 7-2001, 9-2001, and 16-2001, in conformity with Labor Code section 2699.3. Pinnacle strongly denies the claims in the Action and asserts that no civil penalties are due to the Plaintiff, the State of California, or other allegedly “aggrieved employees.” The Court has made no determination on the merits of the Action, but the Parties have decided to resolve this case through settlement, with the approval of the Court.

The PAGA settlement provides for a payment to current and former was non-exempt employees who worked for Pinnacle at any time from March 19, 2017 to May 31, 2019. The Parties have agreed that a portion of the settlement proceeds would be distributed to the allegedly aggrieved employees, including you, after certain portions of the penalties collected are paid to the State of California according to California law.

The enclosed check represents your portion of the settlement payment, which is based on your share of the total settlement proceeds that the parties have agreed to be paid to the allegedly aggrieved employees. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the Parties, or the Court. Your check will remain valid for one hundred eighty (180) calendar days, and thereafter, will be cancelled. If you do not cash or deposit your settlement check within one hundred eighty (180) calendar days, the check will be void and the uncashed funds associated with it will be transmitted to the State Controller to be deposited in the California Unclaimed Property Fund in your name. Pinnacle will not retaliate against you for cashing your settlement check.

This settlement releases claims for civil penalties under PAGA, ~~-which relating relate~~ to failure to pay minimum wages ~~and~~, overtime wages, provide meal breaks, ~~and rest breaks and associated premiums, sick pay, and~~ provide accurate itemized wage statements, ~~and provide~~ timely payment of wages during employment and following separation, maintain requisite payroll records and reimburse business expenses of employment. There is no right to opt out of the PAGA settlement.

According to Pinnacle’s records, you have been credited with **[MERGED]** pay periods for purposes of calculating your individual settlement payment.

If you have questions about this notice, please contact the PAGA Settlement Administrator,
Phoenix Settlement Administrators~~CPT Group, Inc.~~ at **[INSERT CONTACT INFO]**.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE
MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING.
PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE.

EXHIBIT F

PAGA NOTICE PUBLIC SEARCH

LWDA #	Plaintiff for PAGA Case	Employer Name	Employer City	Employer Postal Code	Filer/Attorney for PAGA Case	Law Firm for PAGA Plaintiff	Employer Filer	Employer Filer Firm	Court Case #	Submission Date
LWDA-CM-782599-20	Jose Lopez	Pinnacle Property Management Services, LLC			Anthony Orshansky	CounselOne, P.C.				04/10/20
LWDA-CM-685733-19	Mikhail Hutchins	Pinnacle Property Management Services, LLC			Gabriel J. Pimentel	Pimentel Law, P.C.			CV-19-003557	04/16/19
LWDA-CM-483083-18	Steven Zimmers	Pinnacle Property Management Services, LLC			Edwin Alwazian	LAWYERS for JUSTICE			30-2018-00995413	03/19/18
LWDA-CM-416304-18	Stephanie Prasad	Pinnacle Property Management Services, LLC			Alec Segarich	Lohr Ripamonti & Segarich LLP				01/17/18

EXHIBIT G



CASE ASSUMPTIONS

Class Members	390
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	390
Subtotal Admin Only	\$6,342.78

Not-to-Exceed Total \$4,000.00

For 390 Class Members

Pricing Good for Scope of Estimate Only

December 12, 2019

Case: SZ-Pinnacle-5413, PAGA Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: Stephanie S. Ponck
 Firm: Lawyers for Justice, PC
 Contact Number: (818) 265-1020
 Email: stephanie@lfjpc.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 **390** 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*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.50	56		\$140.00
NCOA (USPS)	\$100.00	1		\$100.00
Total				\$590.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Data Merge & Duplication Scrub	\$0.09	390		\$35.10
Notice and Check Packet	\$0.85	390		\$331.50
Estimated Postage (up to 1 oz.)*	\$0.50	390		\$195.00
Total				\$661.60

* 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	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	98		\$73.13
Remail Notice Packets	\$0.50	95		\$47.25
Estimated Postage	\$0.49	95		\$46.31
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$381.68

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Dispute Processing	\$100.00	1		\$100.00
Case Associate	\$55.00	6		\$330.00
Case Manager	\$85.00	4		\$340.00
			Total	\$920.00

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

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	4		\$540.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	2		\$270.00
			Total	\$1,445.00

* 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	\$115.00	3		\$345.00
Remail Undeliverable Checks (Postage Included)	\$1.50	63		\$94.50
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	3		\$255.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$400.00	1		\$400.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Contolers Office Estimated <u>19</u> Total Class Members	\$1,000.00	1		TBD
Total				\$2,344.50

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

Estimate Total: \$6,342.78



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

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 H



**ROBERT A. PARRIS
DECLARATION**

STEVEN ZIMMERS V. PINNACLE PROPERTY MANAGEMENT SERVICES, LLC

I, Robert A. Parris, declare as follows:

I am an attorney duly licensed to practice before all courts of the State of California and the District of Columbia. I was a partner with the Parris Law firm for 23 years, where I actively litigated numerous wage and hour class actions and complex litigation matters. Since 2015 I have been of counsel for the Parris Law firm and have my own law firm, Robert A. Parris, P.C.

1. I have practiced law in California since June of 1992, and have handled, as class counsel, numerous significant wage-and-hour class action and catastrophic injury cases.

2. During the time I was a partner at the Parris Law Firm, the firm certified numerous class action.

3. As a partner at the Parris Law Firm I specialized in complex class action litigation and catastrophic personal injury and wrongful death matters.

4. I have been involved with the certification of numerous wage-and-hour class actions in the in the Superior Courts of Los Angeles County, San Francisco County, Orange County, and Kern County Superior Courts, as well as the United States District Court for the Central and Northern Districts of California. As a partner with the Parris Law Firm, I have experience in appellate practice and have settled numerous class actions on behalf of tens of thousands of California employees. The Parris firm has been court-appointed class counsel in multiple cases in California state and federal courts.

5. While a partner at the Parris Law Firm I personally participated in hundreds of class action mediations and settlements which resulted in over \$500 million dollars in settlements.

6. Currently, I work as a mediator and expert consultant on a wide range of litigated matters specializing in wage-and-hour and catastrophic personal injury cases.

7. I am a certified mediator and have received hundreds of hours of training from many prestigious law schools, including, Harvard, Pepperdine Straus Institute and Loyola Law School. Additionally, I have received training from the United States District Court ADR Program, Ken Cloke Center for Dispute Resolution and Los Angeles County Superior Court ADR VSC Orientation. I was on the Los Angeles County Superior Court Alternate Dispute Resolution Voluntary Settlement Conference Panel. I was appointed to the Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel and Civil Neutral Evaluation Panel. Additionally, I was appointed to the Mediation Panel for the United States District Court of California in 2012 where I currently mediate dozens of cases per year.

ROBERT A. PARRIS

DECLARATION

STEVEN ZIMMERS V. PINNACLE PROPERTY MANAGEMENT SERVICES, LLC

Page 2

8. I have worked as an expert consultant on over two hundred wage-and-hour cases. I am an expert on whether a class action case will likely be certified and the valuation of wage-and-hour class action cases.

9. I was retained by Lawyers for Justice, PC to perform services in the action entitled *Steven Zimmers v. Pinnacle Property Management Services, LLC*, Orange County Superior Court Case No. 30-2018-00995413-CU-OE-CXC. My assignment was to review hundreds of pages of documents that were produced in the case in preparation for mediation/settlement negotiations. I also reviewed a statistical analysis of the violation rates and damages in order to assess the manageability, individual issues, and potential settlement values for this case. I then participated in the mediation with Lawyers for Justice, P.C.

10. Attached as Exhibit "A" is a list of significant wage-and-hour cases I assisted with litigating and settlement negotiations as a partner with the Parris Law Firm.

11. Attached as Exhibit "B" is my current Curriculum Vitae.

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

Executed on this 22nd day of July 2021 at Lancaster, California.



Robert A. Parris

Exhibit A

PARRIS LAW FIRM – SELECTED CLASS ACTION EXPERIENCE

- ***Gutierrez vs. State Farm***, Los Angeles Superior Court Case No. BC 236552
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2004 for **\$135,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***Sekly vs. Allstate Insurance Company***, Los Angeles Superior Court Case No. BC240813
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2005 for **\$120,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***CNA Class Action Litigation***, Los Angeles Superior Court Case No. BC242487, Orange County Superior Court Case No. 01CC08868
 - Plaintiffs' counsel in class action misclassification case seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$33,000,000.00**, with Final Approval granted and no objections filed.
- ***Parris v. Lowe's Home Improvement***, Los Angeles Superior Court Case No. BC260702
 - Plaintiffs' counsel in class action seeking payment of "off the clock" hours worked by all hourly employees of Lowe's in the State of California. Class certification ordered by the Court of Appeal. Case settled in 2009 for **\$29,500,000.00**, with Final Approval granted and no objections filed.
- ***Chavoya v. Southern California Edison Company***, Los Angeles County Superior Court Case No. BC366032 and BC425358
 - Plaintiffs' counsel in class action seeking overtime compensation for employees that were reclassified in February 2006 that were not employed at Edison's San Onofre Nuclear Generator facility. Class certification granted, in part, by the trial court. Class was provisionally certified for settlement purposes. Case settled in 2010 for **\$29,000,000.00**, with Final Approval granted and no objections filed.
- ***Roberts vs. Coast National Insurance***, Orange County Superior Court Case No 01CC08478
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then the matter was tried in binding arbitration. Case settled for in excess of **\$18,000,000.00** during arbitration.
- ***Dotson vs. Royal Sun Alliance***, Orange County Superior Court Case No. 02CC01787
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$12,300,000.00** with Final Approval granted and no objections filed.
- ***Ingalls v. Hallmark***, Central District of California Case Nos. CV08-04342-VBF (Ex) C/W; CV08-05330-VBF (FFMx)
 - Plaintiffs' counsel in class action seeking payment of "off the clock" hours worked by all hourly employees of Hallmark in the State of California. Class was provisionally certified. Case settled in 2009 for **\$5,625,000.00**, with Final Approval granted and no objections filed.

- ***Rodriguez v. Pacific Bell Telephone Company***, Los Angeles County Superior Court Case No. BC415309
 - Plaintiffs' counsel in class action seeking overtime compensation for employees employed by defendant in the State of California that were reclassified in May 2009. Class was provisionally certified. Case settled in 2010 for **\$5,500,000.00**, with Final Approval granted and no objections filed.
- ***Kim v. Jamison Services, Inc.***, Los Angeles County Superior Court Case No. BC400414
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt employees (except for high-level management and Receptionists) employed by defendant in the State of California. Class was provisionally certified. Case settled in 2009 for **\$2,797,861.24**, with Final Approval granted and no objections filed.
- ***Lippold v. Godiva Chocolatier, Inc.***, Northern District of California Case No. CV-10-00421-SI
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt Store Managers employed by Godiva in the State of California. Class was provisionally certified. Case settled in 2010 for **\$1,000,000.00**, with Final Approval granted and no objections filed.

Exhibit B

Robert A. Parris, Curriculum Vitae



43364 10th Street West
Lancaster, CA 93534
(661) 382-2262

Work Experience:

Currently I am self-employed with the Robert A. Parris, Professional Corporation, working as an attorney, mediator, wage and hour and catastrophic injury valuation expert consultant. I have been an attorney for approximately 30 years, working as a partner for the Parris Law firm for 23 years, and presently serving of counsel. Before becoming an attorney, I was a sworn member of the California Highway Patrol (CHP), and completed my career at the rank of Captain. Upon leaving the CHP I became a sworn member of the Los Angeles County Sheriff's Department Reserve Forces retiring in 2016.

Education:

- J.D. (December 1991) – Loyola Law School, Los Angeles, California
- University of California Davis School of Law (August 1987-June 1988)
- B.S. in Criminal Justice (December 1982) (*Magna Cum Laude*) – California Polytechnic State University at San Luis Obispo
- A.A. in General Education (June 1975) – Antelope Valley College, Lancaster, California

Professional Licenses:

Admitted to Practice – Bar of the District of Columbia Court of Appeals (2020), United States District Court (1998), California Superior Court (1992) and California State Bar (1991).

Professional Memberships:

- Mediator, United States District Court for the Central District of California (2012-present)
- Volunteer Judge Pro Tempore – L.A. County Superior (2006 – 2010)
- Mediator, Los Angeles County Superior Court Alternate Dispute Resolution (2009-2011)
- Mediator, Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel and Civil Neutral Evaluation Panel (2012-2013)
- Southern California Mediation Association (2013)
- Designated Mediator, The Mediator Registry (2013)

Robert A. Parris, Curriculum Vitae

Community Involvement:

- Member of the Board of Directors (Division 5) - Antelope Valley-East Kern Water Agency (2014- Present)
- Chairman of the Antelope Valley Water Master Board (2016- Present)
- Chairman of the Antelope Valley State Water Contractors Board (2018-Present)
- Chairman of the Board of Directors – Friends of the Antelope Valley Fair (1998-Present)
- Chairman of the Board of Directors – Antelope Valley Fair Joint Powers Authority (2018-2019)
- Member – City of Santa Clarita Planning Commission (2002-2004)
- Member of the Board of Directors – Grace Resource Center (2010-2014)
- L.A. County Sheriff's Reserve Deputy (1994-2016) (retired)
- Member – California Highway Patrol (1978-1993) (retired as captain)
- Past President and Board Member – Antelope Valley Bar Association (1994-1999)

Dispute Resolution Training:

- May 2018: Association of California Water Agencies: 2018 Spring Conference Attorney Programs: Groundwater Adjudications and SGMA training; Water transfer and SGMA
- November 2017: Association of California Water Agencies: CLE Workshop for Water professionals
- June 2017: Straus Institute: Professional Skills Program in Conflict Resolution Consulting
- June 2016; Advanced Mediation Workshop: Mediating Complex Disputes, Program on Negotiation, Harvard Law School
- June 2014; Straus Institute: Professional Skills Program in Dispute Resolution
- December 12, 2013 – United States District Court: ADR Program – Analyzing Interests to Facilitate Settlement
- November 16, 2013 – CAOC Annual Convention – Mediation: Maximizing Your Client's Settlement
- June 2013; Straus Institute: Professional Skills Program in Dispute Resolution
- May 15, 2013; United States District Court: ADR Program – Advanced Mediation Training
- Fall 2012; Kenneth Cloke's Center for Dispute Resolution: Mediation Training
- November 9, 2012; United States District Court: Cross-Cultural Challenges in Mediation
- November 2, 2012; Straus Institute: Apology, Forgiveness and Reconciliation
- September 21, 2012; United States District Court: ADR Program – Mediation Training
- June 2009; Straus Institute: Negotiating the Litigated Case I&II
- March 3, 2009 - Los Angeles Superior Court: ADR VSC Orientation
- June 2004 - Straus Institute: Mediating the Litigated Case
- September 11, 1993 - California Bar CLE: Effective Legal Negotiation

Awards and Honors:

- Super Lawyers (2014 -Present)
- Consumer Attorneys of California's Consumer Attorney of the Year Finalist (2013)
- Antelope Valley Fair Association's Distinguished Director Award (2012)
- Appointed by California Governor Pete Wilson to the 50th District Agricultural Association as President (1999-2000) and Member of the Board of Directors (1994-2000)
- Los Angeles County Sheriff's Reserve Deputy of the Year – Lancaster Station (1999)
- Bachelor's Degree in Criminal Justice awarded *Magna Cum Laude* (1982)

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

Edwin Aiwarzian (SBN 232943)
Arby Aiwarzian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff David DeBar and Proposed Plaintiff Johnny Lim

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

DAVID DEBAR, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

vs.

OPTIMA TAX RELIEF, LLC, an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2018-00972771-CU-OE-CXC

Honorable William D. Cluster
Department CX104

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFFS'
RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Plaintiffs' Renewed Motion for Preliminary
Approval of Class Action Settlement;
Declarations of Proposed Class Representatives
(David DeBar and Johnny Lim); Declaration of
Kristen M. Bemis; and [Proposed] Order filed
concurrently herewith]

Reservation No.: 73657446
Date: January 14, 2022
Time: 9:00 a.m.
Department: CX104

Complaint Filed: February 7, 2018
FAC Filed: May 7, 2018
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwazian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff David DeBar and Proposed Plaintiff Johnny Lim (together, "Plaintiffs"). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

ADEQUACY OF LAWYERS *for* JUSTICE, PC

2. I, Edwin Aiwazian, am the Managing Member of Lawyers *for* Justice, PC. I received a Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles County Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the UCLA Extension Program. During the summer of 2000, I studied Legal Writing at Harvard University. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the Ninth Circuit. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by Girardi & Keese. At Girardi & Keese, my practice focused on class actions and other complex cases involving toxic torts and products liability. In addition, I gained substantial experience on cases involving insurance bad faith, premises liability, and medical negligence. While employed by Girardi & Keese, I argued approximately one hundred (100) motions, took or defended approximately one hundred fifty (150) depositions, and prepared dozens of expert witnesses for deposition or trial. Since in or around October of 2008, through my work at

1 Lawyers for Justice, PC, I have almost exclusively focused on the prosecution of consumer and
2 employment class actions, involving wage-and-hour claims, race discrimination, unfair business
3 practices or consumer fraud. While employed by Lawyers for Justice PC, I have argued over one
4 hundred (100) motions, taken or defended over one hundred fifty (150) depositions, prepared
5 dozens of expert witnesses for deposition or trial, and attended over one hundred seventy-five
6 (175) mediations. Together with Arby Aiwarzian and other attorneys at the firm, and in many cases
7 in conjunction with co-counsel, I have successfully litigated cases involving the executive,
8 administrative, and other overtime exemptions to the State of California and federal overtime
9 compensation requirements. During this relatively short time, in association with other law firms,
10 we have recovered millions of dollars on behalf of thousands of individuals in California. At the
11 time of this declaration, Arby Aiwarzian, Joanna Ghosh, and myself are the attorneys of record in
12 over a dozen employment-related putative class actions in both state and federal courts throughout
13 the State of California, and have litigated, collectively, at least two hundred and fifty (250) putative
14 class and/or representative actions before these courts. I have been appointed as class counsel in
15 more than seventy-five (75) cases since June 2011. In the last two (2) years, I have obtained class
16 certification and have been appointed as class counsel, by way of contested motions, in no less
17 than seven (7) separate cases.

18 3. Arby Aiwarzian is the Shareholder of Lawyers for Justice, PC. He received his
19 Bachelor of Arts degree from University of California, Los Angeles and graduated *magna cum*
20 *laude*. He earned a Juris Doctor degree, cum laude, from Southwestern Law School. From
21 approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the
22 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
23 From approximately August 2008 to approximately December 2008 he served as a Judicial Extern
24 to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit.
25 He was admitted to practice law in California in 2010. He is admitted to practice before all courts
26 of the State of California and all United States District Courts in the State of California. His
27 practice focuses on wage-and-hour class actions and representative actions. He has worked on
28 many class action cases, and has taken the lead in litigating multiple matters, including and not

1 limited to undertaking depositions, arguing motions, and attending mediations. He has played an
2 integral role in preparing matters for class certification, including and not limited to, successful
3 certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No.
4 BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No.
5 BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No.
6 RG13680477). Under his supervision, dozens of class action or representative cases have resulted
7 in settlements that have been granted final approval, including and not limited to, those listed in
8 this declaration. He has worked on over one hundred (100) class action or representative action
9 cases which have resulted in settlement, and over sixty (60) of these matters have been granted
10 final approval, with dozens pending final approval. He has been appointed as class counsel in no
11 less than one hundred and thirty-seven (137) cases since June 2011.

12 4. Joanna Ghosh is a Senior Member of Lawyers for Justice, PC. She exclusively
13 advocates for workers in class and complex wage-and-hour matters, in state and federal courts.
14 She received a Bachelor of Arts degree from California State University, Los Angeles in 2006, a
15 Master of Science degree from London School of Economics in 2007, and a Juris Doctor degree
16 from Georgetown University Law Center in 2010. She is admitted to practice in California (since
17 2010) and in New York (since 2013), and is also admitted to practice in all U.S. District Courts in
18 California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme
19 Court. She has taken and defended dozens of depositions, successfully opposed multiple motions
20 to compel arbitration, engaged in successful complex motion practice relating to coordination and
21 intervention, certified dozens of class action cases for settlement by way of the court approval
22 process, and successfully obtained recovery for class members despite multi-jurisdictional
23 employer bankruptcy proceedings. She manages the firm's briefing and litigation strategy for
24 major appeals and writs, with an emphasis on developing the law so that it is in favor of employees,
25 obtaining notable decisions regarding the Private Attorneys General Act and employer efforts to
26 compel arbitration, e.g., *Betancourt v. Prudential Overall Supply*, 9 Cal.App.5th 439 (Cal. Ct.
27 App., Mar. 7, 2017), cert. denied (Cal., May 24, 2017), cert. denied (U.S., Dec. 11, 2017) and *ZB,*
28 *N.A. v. Superior Court*, 8 Cal.5th175 (2019). She is responsible for all settlement approval and

1 related stipulated class certification motions in class action and other complex wage-and-hour
2 matters at the firm, having done so for no less than one hundred and fifty (150) matters in various
3 industries (e.g., Agricultural, Banking, Gas, Hospitality, Manufacturing, Mercantile, Residential,
4 Retail, Service, and Transportation industries). She has been appointed as class counsel in no less
5 than twenty-seven (27) cases since September 2016. She is a member of the California
6 Employment Lawyers Association.

7 5. Since its inception, in or around October of 2008, Lawyers *for* Justice, PC has almost
8 exclusively focused on the prosecution of consumer and employment class actions, involving
9 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
10 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
11 in both state and federal courts in the State of California. Our firm has successfully litigated cases
12 involving the executive, administrative, and other overtime exemptions to the State of California
13 and federal overtime compensation requirements. During this relatively short time, in association
14 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
15 in California.

16 ***EXAMPLES OF RESULTS IN WAGE-AND-HOUR COMPLEX AND CLASS ACTION***
17 ***CASES***

18 6. What follows are just a few examples of the type of results we have achieved on
19 behalf of our clients:

20 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
21 and-hour class and representative action against a major property management company involving
22 allegations of misclassification of various “manager” positions. On September 20, 2010, the court
23 granted final approval of the class and representative action settlement. The Los Angeles County
24 Superior Court Case Number is BC400414.

25 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
26 and-hour class action against a national retailer involving allegations of misclassification of the
27 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the
28 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

1 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a national property management company
3 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,
4 the court granted final approval of the class and representative action settlement. The Los Angeles
5 County Superior Court Case Number is BC430918.

6 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action against a national retailer involving allegations of misclassification of the
8 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
9 certification. On August 26, 2013, the court granted final approval of the class action settlement.
10 The Los Angeles County Superior Court Case Number is BC424012.

11 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a bank, involving allegations of misclassification
13 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval
14 of the class and representative action settlement. The Kern County Superior Court Case Number
15 is S-1500-CV-273194-LHB.

16 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class and representative action against a national wholesale distributor of plumbing and
18 builder supplies, involving allegations of misclassification of multiple salaried “manager”
19 positions. On May 22, 2014, the court granted final approval of the class and representative action
20 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

21 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
22 and-hour class action involving allegations of misclassification of the “Operations Manager”
23 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The
24 Los Angeles County Superior Court Case Number is BC478769.

25 ///

26 ///

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28

1 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a national retailer of household items, on behalf
3 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of
4 the class and representative action settlement. The San Francisco County Superior Court Case
5 Number is CGC-13-532344.

6 i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action involving allegations of misclassification of the salaried residential
8 “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for
9 class certification. The Los Angeles County Superior Court Case Number is BC474784.

10 j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
11 and-hour class and representative action against a national retailer of upscale hardware and home
12 furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final
13 approval of the class and representative action settlement. The Los Angeles County Superior
14 Court Case Number is JCCP4794.

15 k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
16 and-hour class and representative action against a national retailer of apparel and fashion
17 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final
18 approval of the class and representative action settlement. The Los Angeles County Superior
19 Court Case Number is BC488069.

20 l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
21 and-hour class action against a national retailer of apparel, accessories, and home products,
22 involving allegations of misclassification of the “Department Manager” position. On August 12,
23 2016, the court granted plaintiffs’ motion for class certification in part and certified a class. The
24 Alameda County Superior Court Case Number is RG13680477.

25 m) Our firm represented the plaintiff in a representative action under the Private
26 Attorneys General Act, against a real estate and property management company, on behalf of non-
27 exempt employees. On November 4, 2016, the Court granted approval of the settlement. The
28 Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

1 n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class action against a full-service bank, on behalf of non-exempt employees. On
3 November 18, 2016, the court granted final approval of the class action settlement. The San
4 Francisco County Superior Court Case Number is CJC-13-004839.

5 o) Our firm represented the plaintiffs in a wage-and-hour class and
6 representative action against a foodservice distributor, on behalf of non-exempt employees. On
7 January 26, 2017, the court granted final approval of the class and representative action settlement.
8 The San Bernardino County Superior Court Case Number is CIVDS1507260.

9 p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative
10 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
11 employer's motion to compel arbitration, which resulted in a published opinion by the California
12 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9
13 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme
14 Court Docket No. 17-254).

15 q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
16 and-hour class and representative action against a consumer packaging company, on behalf of non-
17 exempt employees. On March 10, 2017, the court granted final approval of the class and
18 representative action settlement. The Los Angeles County Superior Court Case Number is
19 BC590429.

20 r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
21 and-hour class action and representative action against a manufacturer of food service industry
22 supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval
23 of the class and representative action settlement. The Orange County Superior Court Case Number
24 is 30-2015-00810013-CU-OE-CXC.

25 s) Our firm represented the plaintiff in a wage-and-hour class and
26 representative action against a property management company, on behalf of non-exempt
27 employees. On June 14, 2017, the court granted final approval of the class and representative
28 action settlement. The Los Angeles County Superior Court Case Number is BC586234.

1 t) Our firm represented the plaintiffs in a wage-and-hour class action and
2 representative action against a food company on behalf of non-exempt employees. On June 30,
3 2017, the court granted final approval of the class and representative action settlement. The
4 Sacramento County Superior Court Case Number is 34-2015-00175871.

5 u) Our firm represented the plaintiffs in a wage-and-hour class action and
6 representative action against a chocolate company on behalf of non-exempt employees. On July
7 19, 2017, the court granted final approval of the class and representative action settlement. The
8 Alameda County Superior Court Case Number is RG15764300.

9 v) Our firm represented the plaintiffs in a wage-and-hour class action and
10 representative action against a manufacturer of plastic containers on behalf of non-exempt
11 employees. On October 31, 2017, the court granted final approval of the class and representative
12 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

13 w) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
14 and-hour class action and representative action against a property management company on behalf
15 of hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order
16 granting final approval of the class and representative action settlement. The Los Angeles County
17 Superior Court Case Number is JCCP 4819.

18 x) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class action and representative action against a global provider of flexible office space
20 solutions. On February 15, 2018, the court entered an order granting final approval of the class
21 and representative action settlement. The Los Angeles County Superior Court Case Number is
22 BC498401.

23 y) Our firm, in association with co-counsel, represented the plaintiff in a wage-
24 and-hour class action against a container manufacturer, on behalf of non-exempt employees. On
25 October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
26 County Superior Court Case Number is VCU264528.

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28 ///

1 z) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a behavioral health service provider on behalf of non-exempt
3 employees. On November 13, 2018, the court granted final approval of the class and
4 representative action settlement. The Alameda County Superior Court Case Number is
5 RG16811450.

6 aa) Our firm, in association with co-counsel, represented the plaintiff in a
7 representative action under the Private Attorneys General Act, against a global provider of
8 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.
9 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior
10 Court Case Number is S-1500-CV-280215-SDC.

11 bb) Our firm represented the plaintiff in a wage-and-hour class action against a
12 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
13 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
14 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
15 JCCP 4886.

16 cc) Our firm, in association with other counsel, on behalf of the plaintiff and
17 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
18 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
19 notable decision from the California Supreme Court clarifying the law and finding, in part, that
20 employer arbitration agreements are unenforceable where they block a PAGA claim from
21 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

22 dd) Our firm represented the plaintiffs in a wage-and-hour class and
23 representative action against a bank on behalf of non-exempt employees. On September 27, 2019,
24 the court granted the plaintiffs' motion for class certification in part and certified a class. The
25 Alameda County Superior Court Case Number is RG15757606 and the Judicial Council
26 Coordination Proceeding Number is JCCP 4921.

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1 ee) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a national retailer of apparel and fashion accessories, on behalf of
3 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
4 certification in part and certified a class. The Sacramento County Superior Court Case Number is
5 34-2015-00175330-CU-OE-GDS.

6 ff) Our firm represented the plaintiff in a wage-and-hour class and
7 representative action against a medical equipment supplier on behalf of non-exempt employees.
8 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified
9 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

10 gg) Our firm, in association with other counsel, represented the plaintiff in a
11 wage-and-hour class and PAGA representative action against a large national drug testing
12 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
13 plaintiff's motion for class certification and certified a class. The San Diego County Superior
14 Court Case Number is 37-2018-00019611-CU-OE-CTL.

15 hh) Our firm represented the plaintiffs in a wage-and-hour class and
16 representative action against a national retailer of sportswear, footwear, and camping equipment
17 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's
18 motion for class certification and certified a class. The Riverside County Superior Court Case
19 Number is RICJCCP4930.

20 ii) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
21 representative action against a plastic packaging company on behalf of non-exempt employees.
22 On June 8, 2020, the court granted in part the plaintiffs' motion for class certification and certified
23 a class. The San Bernardino County Superior Court Case Number is CIVDS1507361.

24 jj) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
25 and-hour class action against manufacturer and supplier of power products and services on behalf
26 of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for
27 class certification and certified a class. The San Diego County Superior Court Case Number is
28 37-2015-00025968-CU-OE-CTL.

PRELIMINARY APPROVAL

7. On August 5, 2020, Plaintiff David DeBar filed a Motion for Preliminary Approval of Class Action Settlement (“Original Motion for Preliminary Approval”) and supporting documents seeking approval of the Joint Stipulation of Class Action Settlement (“Original Agreement”) entered into by and between Plaintiff David DeBar and Proposed Plaintiff Johnny Lim, individually and on behalf of all others similarly situated, on the one hand, and Defendant Optima Tax Relief, LLC (“Defendant”), on the other hand (collectively, the “Parties”).

8. On September 18, 2020, the Court issued a Minute Order raising several points of inquiry in connection with the Original Motion for Preliminary Approval (“September 18, 2020 Minute Order”). Attached hereto as “**EXHIBIT A**” is a true and correct copy of the September 18, 2020 Minute Order. To address the Court’s points of inquiry in the September 18, 2020 Minute Order, the Parties met and conferred, negotiated and executed Amendment No. 1 to Joint Stipulation of Class Action Settlement (“Amendment No. 1”) and prepared a revised Notice of Class Action Settlement.

9. On October 23, 2020, Plaintiff David DeBar filed supplemental papers to address the Court’s points of inquiry raised in the September 18, 2020 Minute Order. On October 30, 2020, the Court issued a Minute Order raising additional points of inquiry in connection with the Original Motion for Preliminary Approval and denied the Original Motion for Preliminary Approval without prejudice (“October 30, 2020 Minute Order”). Attached hereto as “**EXHIBIT B**” is a true and correct copy of the October 30, 2020 Minute Order.

10. Based on the Court’s guidance, the Parties engaged in an extensive meet and confer process, exchanged additional information, data, and documents, and ultimately negotiated and executed the Amended Joint Stipulation of Class Action Settlement on or about November 8, 2021 (“Settlement,” “Agreement,” or “Settlement Agreement”), a true and correct copy of which is attached hereto as “**EXHIBIT C**.” The Parties and their counsel have also prepared revised versions of the proposed Notice of Class Action Settlement (“Class Notice”), Covered Workweeks Dispute Form (“Dispute Form”), and Request for Exclusion Form (“Exclusion Form”), which are attached as “Exhibit A,” “Exhibit B,” and “Exhibit C” to the Settlement Agreement filed

1 concurrently herewith, and respectfully request that the Court approve them as well. For the
2 Court's ease of reference, redline versions of the Settlement Agreement, Class Notice, Dispute
3 Form, and Exclusion Form, reflecting how the original versions were revised to prepare the
4 amended versions, are attached hereto as "EXHIBIT D."

5 11. The Parties have also drafted and agreed to the form and content of the proposed
6 Second Amended Class Action Complaint for Damages ("Second Amended Complaint"), which
7 is attached as "Exhibit A" to the [Proposed] Order Granting Preliminary Approval of Class Action
8 Settlement, filed concurrently herewith. As part of the Settlement, the Parties agreed to amend the
9 complaint to, *inter alia*, add Johnny Lim as a named plaintiff. Class Counsel respectfully requests
10 that the Court grant leave to file the Second Amended Complaint so that the terms of the Settlement
11 Agreement and the intent of the Parties may be effectuated.

12 12. Based on information provided by Defendant in approximately July, October, and
13 November 2021, for the period February 4, 2017 to December 31, 2019, the Class is estimated to
14 consist of approximately seven hundred nine (709) individuals, of which five hundred and ninety-
15 nine (599) individuals are considered to be Pre-January 2019 Class Members and one hundred and
16 ten (110) individuals are considered to be Post-January 2019 Class Members, as defined in the
17 Settlement Agreement.

18 13. The effectiveness of Lawyers for Justice, PC ("Class Counsel") in prosecuting this
19 matter has translated into tangible monetary benefits for the Class Members in the following
20 respects: (1) Class Members recover over a reasonably short period of time as opposed to waiting
21 additional years for the same, or possibly worse, result; (2) a guaranteed result that compares
22 favorably with other similar class action settlements of this type given the strengths and
23 weaknesses of the case; and (3) significant savings in Class Counsel's fees and/or costs that would
24 have only increased significantly had the case progressed through certification, trial, and/or
25 appeals.

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1 14. Class Counsel has litigated the case since February 7, 2018 and was actively
2 preparing the matter for class certification and trial. The Parties have engaged in extensive
3 settlement negotiations, participating in two (2) formal, full-day mediations conducted by Jeffrey
4 Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment
5 matters, as well as extensive follow-up settlement negotiations after the Court denied the Original
6 Motion for Preliminary Approval. Prior to and during the mediations and settlement discussions,
7 the Parties exchanged class information and engaged in an extensive discussion regarding their
8 evaluations of the case and various aspects of the case, including but not limited to, the risks and
9 delays of further litigation, the risks to the Parties of proceeding with class certification, the law
10 relating to off-the-clock theory, regular rate theory, meal and rest periods, and wage-and-hour
11 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among
12 other things. During all settlement discussions, the Parties conducted their negotiations at arm's
13 length in an adversarial position. Arriving at a settlement that was acceptable to all Parties was
14 not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at
15 certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class
16 certification and prevail at trial. After conducting investigations, formal and informal discovery,
17 and exchange of information, extensive settlement negotiations, and with the aid of the mediator's
18 evaluation and original proposal, the Parties have agreed that the matter is well-suited for
19 settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and
20 risks to both sides that would attend further litigation. The Settlement is a fair, reasonable, and
21 adequate resolution of the Released Claims of Plaintiffs and Settlement Class Members, against
22 the Released Parties.

23 15. The Parties used the pre-settlement and post-settlement time to investigate the
24 veracity, strength, and scope of the claims, and Class Counsel was preparing the action for class
25 certification and trial. Prior to and after engaging in the mediation sessions, Plaintiffs conducted
26 significant investigation and formal and informal discovery regarding the facts of the case,
27 including and not limited to, the exchange, review, and analysis of a large volume of documents
28 and data obtained from Defendant and other sources. The volume of data and documents that

1 Class Counsel reviewed and analyzed included and was not limited to: employment records of
2 Plaintiffs and other Class Members, a sampling of Class Members' time and pay data (Defendant
3 produced a twenty-five percent (25%) random sampling of time and pay data for the time period
4 of November 12, 2015 through October 22, 2018, representing ninety-three employees and
5 containing, *inter alia*, clock in and clock out times, regular hours, overtime hours, and the total
6 hours paid), Employment Handbook and Policy Manual, Case Analyst Compensation Overview,
7 Compliance Specialist Compensation Overview, Tax Preparer Compensation Overview,
8 agreements (including confidentiality and non-competition agreement), checklists, company
9 policy acknowledgements, internal memoranda, job descriptions, Attendance Summary,
10 Breaks/Time Off document, Meal and Rest Period Policy, Stratustime Meal Violation Report,
11 Defendant's employment policies, practices, and procedures, and information regarding changes
12 to Defendant's employee trainings and onboarding process, changes to handbook policies,
13 scheduling to expand coverage, design and implementation of automated timekeeping system
14 notification pop-ups, internal time card audits and investigation, financial circumstances, and
15 workforce down-sizing from approximately 2019 to present, among other information and
16 documents. Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to
17 identify potential witnesses. Class Counsel propounded multiple sets of formal written discovery
18 requests onto Defendant, reviewed Defendant's responses and supplemental responses thereto,
19 noticed the depositions of Defendant's Person Most Knowledgeable designees regarding
20 organizational structure and job duties, took the deposition of Defendant's Person Most
21 Knowledgeable designee (its Chief Executive Officer), worked with Plaintiff David DeBar to
22 provide responses to multiple sets of discovery requests that were propounded by Defendant, and
23 prepared for and defended the deposition of Plaintiff David DeBar. Counsel for the Parties also
24 met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings,
25 discovery, the production of documents and data prior to the mediations, the Court's rulings on
26 the Original Motion for Preliminary Approval, the production of additional information,
27 documents, and data to facilitate continued settlement negotiations to reach a settlement that
28 addresses the Court's concerns raised in connection with the Original Motion for Preliminary

1 Approval. Class Counsel also drafted pleadings, mediation briefs, Plaintiffs' Original Motion for
2 Preliminary Approval and supplemental papers in support thereof, settlement papers, and prepared
3 for and attended court proceedings, two (2) mediations, and settlement negotiations, among other
4 tasks.

5 16. Counsel for the Parties have also invested time researching and investigating the
6 applicable law, which is constantly evolving as it relates to certification, off-the-clock theory,
7 regular rate theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims and
8 damages, and Defendant's defenses thereto, as well as facts discovered. Based on our analysis, I
9 submit that the result achieved in this litigation is fair, adequate, and reasonable.

10 17. The Settlement provides for a Gross Settlement Amount of One Million Eight
11 Hundred Sixty-Three Thousand Five Hundred Eighty-Two Dollars (\$1,863,582.00). The Net
12 Settlement Amount is the Gross Settlement Amount less the following amounts subject to approval
13 by the Court: Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Awards to
14 Plaintiffs, and Settlement Administration Fees to Settlement Administrator. Assuming that the
15 amounts allocated under the Settlement toward these payments are awarded by the Court, the Net
16 Settlement Amount is currently estimated to be One Million Ninety-Two Thousand Eighty-Two
17 Dollars (\$1,092,082.00). The Gross Settlement Amount will be fully distributed in accordance
18 with the terms of the Settlement and there is no reversion to Defendant.

19 18. The Parties have agreed to retain Rust Consulting, Inc. ("Rust" or "Settlement
20 Administrator") to handle the notice and settlement administration. The Parties respectfully
21 request that the Court appoint Rust to handle these procedures and serve as the Settlement
22 Administrator. Defendant will provide Rust with a list of Class Members that Defendant will
23 compile from its records, which will include each Class Member's last known full name, last
24 known address, last known telephone number, Social Security number and employee ID number,
25 start and end dates of employment as a non-exempt or hourly-paid employee of Defendant in
26 California during the Class Period, Covered Workweeks, and such other information as may be
27 necessary to independently review the Covered Workweeks attributed to each Class Member
28 ("Class Data"), and Rust will calculate each Settlement Class Member's estimated share of the

1 Net Settlement Amount (“Settlement Share”). Rust will also receive Exclusion Forms and
2 requests for exclusion from the Settlement (both of which are referred to as a “Request for
3 Exclusion”), objections to the Settlement (“Objections”), and Dispute Forms and disputes
4 regarding Covered Workweeks (both of which are referred to as a “Covered Workweeks
5 Dispute”); provide necessary reports and declarations; calculate, subtract, and transmit necessary
6 taxes and withholdings; prepare and submit informational and other tax filings and documents;
7 issue and transmit all payments provided for by the Settlement, including and not limited to,
8 mailing Individual Settlement Payment checks to the Settlement Class Members; and perform any
9 other usual and customary duties for administering a class action settlement. Settlement
10 Administration Fees are currently estimated not to exceed Twenty Thousand Dollars (\$20,000.00)
11 and will be paid out of the Gross Settlement Amount, subject to approval of the Court.

12 19. Based on investigation and information discovered, Class Counsel believes that
13 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
14 that Defendant, with respect to Plaintiffs and the Class Members, *inter alia*, failed to properly pay
15 overtime and minimum wages and associated premium pay, failed to provide compliant meal and
16 rest periods and to pay associated premium pay, failed to timely pay wages during employment
17 and upon termination of employment, failed to provide compliant wage statements, failed to
18 maintain requisite payroll records, and failed to reimburse necessary business expenses, and
19 thereby engaged in unfair business practices. Plaintiffs also asserted that Class Members were
20 subject to the same or similar operations and employment policies, practices, and procedures.
21 Additionally, Plaintiffs asserted that Defendant’s recordkeeping practices with respect to Plaintiffs
22 and the Class Members were substantially the same during the time period at issue. As a result,
23 Plaintiffs claim that the Class Members, were not paid all of the compensation that was owed to
24 them by Defendant since February 7, 2014. Thus, in Class Counsel’s view, it is clear that the
25 outcome of this litigation would be determined by Defendant’s uniform operations and
26 employment practices, policies, and procedures that Plaintiffs allege applied across its hourly-paid
27 or non-exempt employees in California in the positions of Case Manager, Case Summary, Client
28 Relations, Closing Team, Collections and Recovery, Compliance, Customer Service, Documents,

1 Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales, Opp Servicing,
2 Payments, POA, Quality Assurance, Resolution Support, Retention, Risk Management, Support,
3 Tax Prep and Transcripts since February 7, 2014.

4 20. Class Counsel is aware of the defenses and position of Defendant but believes that
5 Plaintiffs could potentially obtain class certification despite many obstacles. Plaintiffs have also
6 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties
7 and delays inherent in such litigation, including those involved in class certification. Plaintiffs
8 further recognize the burdens of proof necessary to establish liability for the claims asserted in the
9 lawsuit, Defendant's defenses, and the difficulties and expenses involved in both establishing
10 entitlement to monetary recovery and collecting on any judgment. Plaintiffs have also considered
11 the Parties' settlement discussions, as well as the evaluations of the mediator, who is experienced
12 and well-regarded in complex labor and employment matters.

13 21. Defendant, on the other hand, denied and continues to deny any liability and
14 wrongdoing of any kind associated with the claims alleged in the lawsuit, and further denies that
15 the lawsuit is appropriate for class treatment for any purpose other than this Settlement. Defendant
16 believes that it would ultimately succeed in the matter. Both sides have also had the opportunity
17 to interview witnesses and review documents and information relating to Plaintiffs' and Class
18 Members' employment with Defendant, and Defendant's operations and employment policies,
19 practices, and procedures. The Parties also reviewed and analyzed a large volume of documents
20 and data, including but not limited to a detailed sampling of Class Members' time and pay
21 information, to determine the potential value and strength of the claims. The available information
22 enabled Class Counsel to estimate the potential claims of the Class and prepare damages/valuation
23 models. Accordingly, the Parties have conducted adequate investigation and discovery to be
24 sufficiently informed of the nature and extent of the Class Members' claims, and to enable both
25 sides to fully evaluate the Settlement for its fairness, adequacy, and reasonableness. The Parties
26 have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs'
27 principal claims, as well as the costs and risks to both sides that would attend further litigation.
28 The Settlement takes into account the strengths and weaknesses of each side's position and the

1 uncertainty of how the case might have concluded at certification, trial, and/or appeals.

2 22. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
3 in an amount not to exceed Six Hundred Eighty-Four Thousand Dollars (\$684,000.00) of the Gross
4 Settlement Amount and expenses and costs in an amount not to exceed Forty-Five Thousand
5 Dollars (\$45,000.00), which will be paid out of the Gross Settlement Amount, subject to approval
6 by the Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation
7 and will not receive any compensation until recovery is obtained. It should also be noted that,
8 although the monetary amount recovered on behalf of the Class has increased (as compared to the
9 original settlement), the amount of attorneys' fees provided under the Settlement remains
10 unchanged (as compared to the original settlement).

11 23. The Settlement Agreement provides for payment of up to Fifteen Thousand Dollars
12 (\$15,000.00) to Plaintiff David DeBar and Seven Thousand Five Hundred Dollars (\$7,500.00) to
13 Plaintiff Johnny Lim as Enhancement Awards (for a combined total of \$22,500), to be paid out of
14 the Gross Settlement Amount subject to approval by the Court. Plaintiffs spent considerable time
15 and effort to produce relevant documents and past employment records and to provide the facts
16 and evidence necessary to attempt to prove the allegations. Plaintiff David DeBar provided
17 responses to discovery requests that were propounded by Defendant and prepared and appeared
18 for a full-day deposition on October 10, 2018. Plaintiffs were available whenever Class Counsel
19 needed them and actively tried to obtain information that would benefit the Class. Accordingly,
20 it is appropriate and just for Plaintiffs to each receive Enhancement Awards, in addition to their
21 Individual Settlement Payments, for their services on behalf of the Class.

22 **OVERLAPPING ACTION**

23 24. Other than *Dulce Garcia v. Optima Tax Relief, LLC*, Orange County Superior Court
24 Case No. 30-2019-01082473-CU-OE-CX ("*Garcia* Action"), I am not aware of any actions
25 pending against Defendant (whether individual, class, or PAGA, including PAGA actions in the
26 pre-filing LWDA stage) asserting overlapping or similar wage and hour claims. Furthermore, the
27 *Garcia* Action will not be affected by the Settlement in this case because, on July 31, 2020,
28 Honorable Judge William Claster approved the resolution of the *Garcia* Action and entered an

Order Granting Approval of PAGA Settlement and Final Judgment (Related to ROA #40). Attached hereto as “**EXHIBIT E**” is the Order Granting Approval of PAGA Settlement and Final Judgment (Related to ROA #40) entered on July 31, 2020 in *Dulce Garcia v. Optima Tax Relief, LLC*, Orange County Superior Court Case No. 30-2019-01082473-CU-OE-CX.

CLASS DEFINITION, TIME PERIODS FOR CLASS AND RELEASE, AND TIME PERIODS FOR COVERED WORKWEEKS

25. To address the Court’s concern that putative class members who worked for Defendant in 2019 should be included in the Settlement, the definition of the “Class” has been modified. The Settlement now provides that the Class is comprised of the following two subclasses (collectively, the “Class”):

- a. One subclass consisting of all current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time between February 7, 2014 and December 31, 2018 in the positions of Case Manager, Case Summary, Client Relations, Closing Team, Collections and Recovery, Compliance, Customer Service, Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales, Opp Servicing, Payments, POA, Quality Assurance, Resolution Support, Retention, Risk Management, Support, Tax Prep and Transcripts (“Pre-January 2019 Class”)—this subclass correlates with the original class covered by the original settlement. To the extent members of the Pre-January 2019 Class worked for Defendant during the period January 1, 2019 to December 31, 2019, their Post-January 2019 Workweeks will be factored into their recovery under the Settlement.
- b. Another subclass consisting of all current and former hourly-paid or non-exempt employees who began working for and worked for Defendant in California at any time between January 1, 2019 and December 31, 2019 in the positions of Case Manager, Case Summary, Client Relations, Closing Team, Collections and Recovery, Compliance, Customer Service, Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales, Opp Servicing,

Payments, POA, Quality Assurance, Resolution Support, Retention, Risk Management, Support, Tax Prep and Transcripts (“Post-January 2019 Class”).

26. Furthermore, to account for Defendant’s changed practices and improved wage-and-hour compliance in the post-January 2019 time period, under the Settlement, the value of a Pre-January 2019 Workweek is calculated as eighty-five percent (85%) of the Net Settlement Amount divided by all Pre-January 2019 Workweeks (“Pre-January 2019 Workweek Value”), and the value of a Post-January 2019 Workweek is calculated as fifteen percent (15%) of the Net Settlement Amount divided by all Post-January 2019 Workweeks (“Post-January 2019 Workweek Value”).

ESCALATOR CLAUSE

27. Under the terms of the original settlement, if the Covered Workweeks during the period February 7, 2014 to July 3, 2019 exceeded 51,700, the Gross Settlement Amount was subject to increase on a *pro rata* basis for each Covered Workweek above 51,700. Ultimately, it was determined that this escalator clause was triggered because the Covered Workweeks for the period February 7, 2014 to July 3, 2019 were determined to be 52,699 (i.e., 999 Covered Workweeks in excess of the 51,700-threshold). As a result, under the original settlement, the Gross Settlement Amount was actually \$1,834,781.43 instead of \$1,800,000.

28. The escalator clause has been further modified to account for the number of Covered Workweeks for the entire Class during the entire Class Period, which breaks down as: 45,046 Pre-January 2019 Workweeks worked by the Class (namely, the Pre-January 2019 Class Members) during the period from February 7, 2014 to December 31, 2018 and 14,996 Post-January 2019 Workweeks worked by the Class (namely, the Pre-January 2019 Class Members and Post-January 2019 Class Members) during the period January 1, 2019 to December 31, 2019 (14,996), based on class data provided by Defendant. Under the modified escalator clause, if the number of Covered Workweeks for the entire Class for the Class Period are determined to be more than 66,047 (i.e., more than ten percent (10%) higher), the Gross Settlement Amount will be increased on a *pro rata* basis for each Covered Workweek above the 66,047-threshold.

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USE OF AN EXPERT

29. Lawyers for Justice, PC engaged Robert A. Parris, Esq. as a consulting expert during mediation. Mr. Parris is a leading class action attorney, specifically on certification of a class, damages, and evaluation of class claims. Mr. Parris works as a mediator and expert consultant on a wide range of litigated matters, including complex wage-and-hour cases. He was a partner with Parris Law firm for twenty-three (23) years, where he participated in hundreds of class action mediations resulting in settlements totaling over \$500 million dollars, and since 2015, is of counsel for Parris Law firm and manages his own firm, Robert A. Parris, P.C. During his time as partner for the Parris Law firm, the firm certified numerous wage-and-hour class actions and was appointed class counsel in multiple cases in California and federal courts. His attendance and participation in the mediation as an expert allowed him to immediately consider and provide persuasive, strategic, and authoritative input on issues relating to certification and valuation, and having an expert at mediation provided Plaintiffs a strategic advantage in the negotiation process. The Curriculum Vitae and Selected Class Action Experience of Robert A. Parris is attached hereto as “**EXHIBIT F.**”

LITIGATION COSTS

30. To date, the litigation costs incurred by Class Counsel are approximately \$35,639.90. This case has involved multiple mediations, multiple depositions, extensive settlement negotiations and expert costs, and numerous court proceedings. Additional evidence as to the costs incurred by Class Counsel will be provided at the time of filing Plaintiffs’ motion for final approval of the Settlement, wherein Class Counsel will move the Court for an award of Litigation Costs.

PLAINTIFFS’ EFFORTS, THEIR ADEQUACY AS CLASS REPRESENTATIVES,

AND THE REASONABLENESS OF ENHANCEMENT PAYMENTS

31. In class action litigation, multiple individuals may be appointed to represent the interests of all members of the Class. Defendant contended and Plaintiff David DeBar disputed that the claims of Plaintiff David DeBar were individualized and were not appropriate for class-wide adjudication. Proposed Plaintiff Johnny Lim has provided additional valuable facts and

1 information relating to his and other Class Members' experiences with Defendant, as well as
2 information relating to Defendant's operations that may affect litigation, to show that the claims
3 alleged in the action arise from the same course of conduct that give rise to claims of other Class
4 Members and that the issues in this case were not individualized to Plaintiff David DeBar.
5 Proposed Plaintiff Johnny Lim has been involved with the litigation of this matter since well-
6 before to the first session of mediation, and his persistency and assistance in the investigation of
7 the claims has been instrumental in obtaining an excellent resolution of the case and recovery for
8 the Class. During his employment with Defendant, Proposed Plaintiff Johnny Lim had different
9 supervisors and worked for Defendant after Plaintiff David DeBar's employment with Defendant
10 had ended, and provided information that the same policies, practices, and procedures that applied
11 to Plaintiff David DeBar and other Class Members, applied to him as well.

12 32. Plaintiffs have spent numerous hours speaking with Class Counsel about their
13 claims, describing their work experiences with Defendant, and gathering and reviewing
14 documents. Both Plaintiff David DeBar and Proposed Plaintiff Johnny Lim have been in constant
15 communication with Class Counsel and the information that they have provided throughout the
16 pendency of this action has been essential to the litigation, preparing a discovery plan, preparing
17 for class certification, and eventual settlement of the case.

18 33. Plaintiff David DeBar spent numerous hours working with Class Counsel to review
19 and provide responses to multiple sets of discovery requests propounded on him by Defendant.
20 Plaintiff David DeBar also spent multiple hours preparing for and traveling for his deposition
21 (traveling from South Carolina to Los Angeles, California for his deposition—at the time of his
22 deposition, he was in the process of moving to South Carolina).

23 34. Plaintiff David DeBar and Proposed Plaintiff Johnny Lim have both demonstrated
24 their ability to advocate for the interests of the proposed Class by spending a substantial amount
25 of time and effort maintaining regular contact with counsel regarding the lawsuit, producing
26 relevant documents and past employment records, providing the facts and evidence necessary to
27 attempt to prove the allegations in the case, being available whenever counsel needed them, and
28 actively trying to obtain and provide additional information that would benefit the Class.

35. In recognition of their efforts and work in the case, the Settlement provides for an Enhancement Award in the amount of \$15,000 to Plaintiff David DeBar and an Enhancement Award in the amount of \$7,500 to Proposed Plaintiff Johnny Lim. It is fair and appropriate for Plaintiffs to each receive a reasonable enhancement payment, in addition to their Individual Settlement Payments, for their services on behalf of the Class.

ESTIMATE OF THE VALUE OF THE CLAIMS

36. Plaintiffs allege that Defendant has violated the California Labor Code and applicable Industrial Welfare Commission Wage Orders by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiffs and the Class Members, including, *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages and associated waiting-time penalties, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices under the California Business and Professions Code.

37. Based on information provided by Defendant in approximately July, October, and November 2021, it was determined that a total of approximately 709 individuals are members of the Class, of which 599 individuals are Pre-January 2019 Class Members (i.e., Class Members who worked for Defendant during the period February 7, 2014 to December 31, 2018) who worked approximately 57,749 workweeks during the Class Period (i.e., February 7, 2014 to December 31, 2019), and 110 individuals are Post-January 2019 Class Members (i.e., Class Members who began working for and worked for Defendant during the period January 1, 2019 to December 31, 2019) who worked approximately 2,293 workweeks during the Class Period.

A. Failure to Pay Overtime and Minimum Wages

38. Plaintiffs allege that Defendant failed to pay overtime and minimum wages. Plaintiffs contended that Defendant's uniform policies, practices, and procedures required putative class members to perform work duties (including, and not limited to, checking phones and email messages, completing phone calls, and preparing tax returns) during meal periods and before clocking-in and after clocking-out. For example, Plaintiffs contended that they and other putative

1 class members were pressured to perform job duties off-the-clock due to heavy workloads and in
2 order to meet monthly quotas, and that they were discouraged from working overtime hours.
3 Further, Plaintiffs and other putative class members were required to work off-the-clock in order
4 to be at their workstations and ready to work by their scheduled start time. Plaintiffs also
5 contended that Defendant failed to include non-discretionary bonuses, commissions, and
6 incentives into its regular rate calculations for purposes of paying overtime and that Defendant
7 failed to properly compensate Plaintiffs and putative class members at their applicable minimum,
8 regular, or overtime rates for all of the hours that they worked.

9 39. California Labor Code section 510 provides that when an employee works more than
10 eight (8) hours in any workday, more than forty (40) hours in any workweek and/or more than six
11 (6) days in a workweek, the employer must pay the employee at least one and one-half times the
12 employee's regular rate of pay for all overtime hours worked. The employer must pay the
13 employee no less than twice his or her regular rate of pay for hours worked in excess of twelve
14 (12) hours in one day or in excess of eight (8) hours on the seventh consecutive day of work.
15 California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC")
16 Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate
17 of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
18 number of hours worked by the person on a daily or weekly basis.

19 40. California Labor Code section 1197 provides that it is unlawful to pay employees at
20 a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
21 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action, as
22 well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
23 thereon. California Labor Code section 1197.1 provides for civil penalties, which, arguably, may
24 only be recovered by the Labor Commissioner during a one-year statute of limitations period.

25 41. Defendant contended, *inter alia*, that its overtime policies and practices comply with
26 the law, and that it paid putative class members over the minimum wage for all hours worked.
27 Defendant contended that it correctly calculated and paid overtime, that various bonuses were
28 discretionary, and also produced wage statements reflecting overtime compensation paid to many

1 of the putative class members (including, and not limited to, Plaintiffs). Based on Class Counsel's
2 investigations, Plaintiffs and putative class members reported that they clocked and received
3 significant overtime pay at one-and-a-half (1.5) times the regular rate, which was further evidenced
4 by records obtained from Defendant. For example, Plaintiff David DeBar's employment records
5 reflected that he was able to record in the range of .02 and 2.80 hours of overtime weekly.
6 Defendant further contended that all employees were required to record all time worked and were
7 given the opportunity to make any necessary revisions or changes to their time, and that Defendant
8 was not aware that any work had been performed off-the-clock. Defendant also argued that
9 individual liability issues predominate, including: (a) whether each employee worked off-the-
10 clock; (b) whether Defendant knew or should have known about each employee's off-the-clock
11 work; (c) whether each employee worked overtime; (d) whether Defendant knew or should have
12 known that each employee performed overtime work; and (e) whether any bonus, incentive pay,
13 or commission was non-discretionary. Defendant also contended that the putative class members
14 held different job titles, had different job duties, and had different supervisors and that these
15 circumstances would raise highly individualized questions of fact and would pose challenges to
16 certification and the merits of the claims for overtime and minimum wages. Defendant also
17 contended, and provided information to support its contention, that, from approximately 2019 to
18 present, it updated and modified employee trainings, onboarding process, handbook policies, and
19 scheduling (to expand coverage for meal and rest breaks), designed and implemented automated
20 timekeeping system notification pop-ups reminding and instructing employees to take meal and
21 rest breaks, corrected the regular rate calculation for purposes of paying overtime, and undertook
22 internal audits and investigation. Defendant also provided information regarding its financial
23 circumstances and workforce down-sizing from approximately 2019 to present.

24 42. Class Counsel considered information obtained through investigations and from
25 Plaintiffs and other putative class members, as well as class data and information provided by
26 Defendant, and created damages/valuation models. Based thereon, it was determined that one (1)
27 hour of unpaid overtime wages was at issue every workweek and that the incorrect regular rate
28 calculation was at issue for one (1) hour every workweek, during the relevant time period. For the

1 Pre-January 2019 Class, the potential value of this claim was estimated to be \$1,897,632.14
2 [(57,749 workweeks x 1 hour of unpaid overtime wages x overtime hourly rate of \$22.86, which
3 is based on the average hourly rate of \$15.24) + (57,749 workweeks x 2 hours of overtime wages
4 (rounded up to the nearest integer and based on 1 hour of unpaid overtime wages for off-the-clock
5 work plus the average recorded and paid weekly overtime of .82 for the Class) x \$5 unpaid
6 overtime premium amount associated with non-inclusion of bonuses, commission, and incentive
7 pay into the regular rate of pay calculation)]. For the Post-January 2019 Class, the potential value
8 of this claim was estimated to be \$63,882.98 [(2,293 workweeks x 1 hour of unpaid overtime
9 wages x overtime hourly rate of \$22.86, which is based on the average hourly rate of \$15.24) +
10 (2,293 workweeks x 2 hours of overtime wages (rounded up to the nearest integer and based on 1
11 hour of unpaid overtime wages for off-the-clock work plus the average recorded and paid weekly
12 overtime of .82 for the Class) x \$5 unpaid overtime premium amount associated with non-inclusion
13 of bonuses, commission, and incentive pay into the regular rate of pay calculation)]. It was also
14 determined that one (1) hour of minimum wages were at issue every workweek during the relevant
15 time period. For the Pre-January 2019 Class, the potential value of this claim was estimated to be
16 \$880,094.76 (57,749 workweeks x 1 hour of unpaid minimum wages x average hourly rate of
17 \$15.24). For the Post-January 2019 Class, the potential value of this claim was estimated to be
18 \$34,945.32 (2,293 workweeks x 1 hour of unpaid minimum wages x average hourly rate of
19 \$15.24).

20 43. However, this assumes an exposure based on a class having been certified and
21 Plaintiffs having proven all elements of the overtime and minimum wage claims, despite risks
22 associated with obtaining and maintaining certification, risks to establishing liability, and
23 significant additional costs that would have to be incurred in order to certify a class and establish
24 liability. Plaintiffs also faced the risk of the Court finding that individualized issues predominate,
25 such that class treatment is not suitable. While Class Counsel disagrees with Defendant's
26 arguments and factual contentions, Class Counsel recognizes the circumstances and realities of
27 the case, applicable case law and regulations, the costs and expenses of further litigation and
28 certification, and risks to recovery, and applied appropriate discounts for them. With respect to

1 the Pre-January 2019 Class, for the overtime claim, a discount of 20% was applied to account for
2 the risks associated with obtaining and maintaining certification (bringing the value of the claim
3 closer to \$1,518,105.71), a discount of 30% was applied to account for the risks associated with
4 succeeding on the merits and establishing liability (bringing the value of the claim closer to
5 \$1,062,674), and a discount of 30% was applied to account for the risks associated with proving
6 the extent of damages and obtaining and recovering an award thereof (bringing the value of the
7 claim closer to \$743,871.80). With respect to the Post-January 2019 Class, for the overtime claim,
8 a discount of 50% was applied to account for the risks associated with obtaining and maintaining
9 certification (bringing the value of the claim closer to \$31,941.49), a discount of 60% was applied
10 to account for the risks associated with succeeding on the merits and establishing liability (bringing
11 the value of the claim closer to \$12,776.60), and a discount of 60% was applied to account for the
12 risks associated with proving the extent of damages and obtaining and recovering an award thereof
13 (bringing the value of the claim closer to \$5,110.64). Also, with respect to the Pre-January 2019
14 Class, for the minimum wage claim, a discount of 40% was applied to account for the risks
15 associated with obtaining and maintaining certification (bringing the value of the claim closer to
16 \$528,056.86), a discount of 50% was applied to account for the risks associated with succeeding
17 on the merits and establishing liability (bringing the value of the claim closer to \$264,028.43), and
18 a discount of 50% was applied to account for the risks associated with proving the extent of
19 damages and obtaining and recovering an award thereof (bringing the value of the claim closer to
20 \$132,014.22). With respect to the Post-January 2019 Class, for the minimum wage claim, a
21 discount of 50% was applied to account for the risks associated with obtaining and maintaining
22 certification (bringing the value of the claim closer to \$17,472.66), a discount of 60% was applied
23 to account for the risks associated with succeeding on the merits and establishing liability (bringing
24 the value of the claim closer to \$6,989.06), and a discount of 70% was applied to account for the
25 risks associated with proving the extent of damages and obtaining and recovering an award thereof
26 (bringing the value of the claim closer to \$2,096.72).

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1 **B. Failure to Provide Complaint Meal Periods and Associated Premiums**

2 44. Plaintiffs' theory of liability was also based on Defendant's failure to provide timely,
3 full, and/or uninterrupted meal periods. Plaintiffs contended, *inter alia*, that Defendant's policies,
4 practices, and procedures required employees to perform job duties during their meal periods to
5 meet productivity quotas and prevented them from regularly receiving compliant meal periods.
6 Plaintiffs further contended that Defendant failed to pay meal period premiums for missed, late,
7 short, or interrupted meal periods in every instance that one was due.

8 45. Under California law, an employer must provide an employee with uninterrupted
9 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
10 hours, except that if the total work period per day of the employee is no more than six (6) hours,
11 the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab.
12 Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an employee
13 works more than ten (10) hours per day, except that if the total hours worked is no more than
14 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
15 employee only if the first meal period was not waived. *Id.* An "on-duty" meal period may be
16 agreed to only if "the nature of the work prevents an employee from being relieved of all duty and
17 when by written agreement between the parties an on-the-job paid meal period is agreed to." IWC
18 Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An employer must pay each
19 employee to whom it fails to "provide" a meal period one hour of wages at his or her regular rate
20 of pay "for each work day that the meal or rest period is not provided." Cal. Lab.

21 46. Based on review and analysis of the sampling of time and pay records, it was
22 observed that 97.66% of shifts were eligible for a meal, of which approximately 51.57% of eligible
23 shifts showed a recorded meal break of exactly 30 minutes, approximately 3.62% of eligible shifts
24 showed a recorded meal break of exactly 60 minutes, and approximately 33.46% of eligible shifts
25 showed a recorded meal violation. It was also observed that approximately .74% of shifts were
26 eligible for a second meal period, and approximately 98% of those eligible shifts showed a missed
27 second meal period.

28 ///

1 47. Defendant contended that it had practices, policies, and procedures to provide meal
2 periods every workday to its employees that fully complied with the law. To the extent that
3 putative class members failed to take their meal periods or took a short or late meal period,
4 Defendant contended that they did so voluntarily and that all applicable breaks were still provided
5 to them. Thus, Defendant argued that it did not act unlawfully to deprive putative class members
6 of meal breaks. Defendant also contended that there were multiple individual issues that would
7 pose challenges to certification, including and not limited to, (a) whether any meal periods were
8 non-compliant, and (b) why they were non-compliant. Defendant also contended that the putative
9 class members held different job titles, had different job duties, and had different supervisors, and
10 that as a result, there was variation to the circumstances that could allegedly cause the employees
11 to be deprived of the opportunity to take legally-compliant, duty-free meal periods, and this
12 variation in circumstances raised highly individualized questions of fact. Defendant also
13 contended, and provided information to support its contention, that, from approximately 2019 to
14 present, it updated and modified employee trainings, onboarding process, handbook policies, and
15 scheduling (to expand coverage for meal breaks), designed and implemented automated
16 timekeeping system notification pop-ups reminding and instructing employees to take meal
17 breaks, corrected the regular rate calculation, and undertook internal audits and investigation.
18 Defendant also provided information regarding its financial circumstances and workforce down-
19 sizing from approximately 2019 to present.

20 48. Class Counsel considered information obtained through investigations and from
21 Plaintiffs and other putative class members, as well as data and information provided by
22 Defendant, and created damages/valuation models. Based thereon, it was determined that, for the
23 Pre-January 2019 Class, three (3) meal period violations were at issue for each pay period during
24 the relevant time period, and the potential value of this claim was \$1,320,142.14 [(57,749
25 workweeks ÷ 2) x 3 meal period premiums x average hourly rate of \$15.24]. It was also
26 determined that, for the Post-January 2019 Class, two (2) meal period violation were at issue for
27 each pay period during the relevant time period, and the potential value of this claim was
28 \$34,945.32 [(2,293 workweeks ÷ 2) x 2 meal period premiums x average hourly rate of \$15.24].

49. Class Counsel also considered the risk of further litigating the case, including the significant additional costs that will be incurred by both sides if the case does not settle, as litigating a class action through class certification, trial, and/or appeals is very expensive. Moreover, litigating meal period claims is inherently difficult as an employer's records, as is the case here, do not usually indicate when a meal period is interrupted. While Class Counsel disagreed with Defendant's arguments and factual contentions, Class Counsel recognizes the circumstances and realities of the case, applicable case law and regulations, costs and expenses of further litigation and certification, and risks to recovery, and applied appropriate discounts for them. With respect to the Pre-January 2019 Class, for this claim, a discount of 40% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$792,085.28), a discount of 40% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$475,251.17), and a discount of 40% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$285,150.70). With respect to the Post-January 2019 Class, for this claim, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$17,472.66), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$6,989.06), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$2,795.62).

C. Failure to Provide Complaint Rest Periods and Associated Premiums

50. Plaintiffs' theory of liability was also based on Defendant's failure to provide its employees with timely, full, and/or uninterrupted rest periods. Plaintiffs contended that Defendant's employment policies, practices, and procedures required employees to perform job duties during their rest periods and prevented them from regularly receiving compliant rest periods. Plaintiffs further contended that Plaintiffs and putative class members were not authorized to leave the premises during their rest breaks and that Defendant failed to pay rest

1 period premiums.

2 51. California law requires an employer to provide rest periods to all employees at the
3 rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code
4 § 226.7. When an employer fails to provide a compliant rest period, the employer is required to
5 either (a) provide another rest period or (b) pay one additional hour of pay at the regular rate of
6 pay “for each work day that the meal or rest period is not provided.” *Augustus v. ABM Security*
7 *Services, Inc.* (2016) 2 Cal.5th 257, 271-272; Cal. Lab. Code § 226.7(b). However, employees are
8 exempt from the rest breaks law, if their duties and responsibilities qualify for one or more of the
9 exemptions under California or federal law. See Cal. Lab. Code § 226.7(e); see e.g., 49 CFR
10 § 395.

11 52. Defendant contended that it had methods, policies, and procedures to provide all
12 applicable rest periods every workday to putative class members that fully complied with the law
13 and that putative class members were free to leave the premises during rest periods. Defendant
14 argued that the reasons why a putative class member failed to receive a compliant rest period raised
15 individual issues that could not be certified. Defendant also contended, and provided information
16 to support its contention, that, from approximately 2019 to present, it updated and modified
17 employee trainings, onboarding process, handbook policies, and scheduling (to expand coverage
18 for rest breaks), designed and implemented automated timekeeping system notification pop-ups
19 reminding and instructing employees to take rest breaks, corrected the regular rate calculation, and
20 undertook internal audits and investigation. Defendant also provided information regarding its
21 financial circumstances and workforce down-sizing from approximately 2019 to present.

22 53. Class Counsel considered information obtained through investigations and from
23 Plaintiffs and other putative class members, as well as data and information provided by
24 Defendant, and created damages/valuation models. Based thereon, it was determined that one (1)
25 rest period violation was at issue every workweek during the relevant time period. With respect
26 to the Pre-January 2019 Class, the potential value of this claim was estimated to be \$880,094.76
27 (57,749 workweeks x 1 rest period premium x average hourly rate of \$15.24). With respect to the
28 Post-January 2019 Class, the potential value of this claim was estimated to be \$34,945.32 (2,293

workweeks x 1 rest period premium x average hourly rate of \$15.24).

54. Class Counsel also considered the risk of further litigating the case, as well as significant additional costs that will be incurred by both sides if the case does not settle, as litigating a class action through class certification, trial, and/or appeals is very expensive. Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely. While Class Counsel disagreed with Defendant's arguments and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses associate with further litigation and certification, and risks to recovery, and applied appropriate discounts for them. With respect to the Pre-January 2019 Class, for this claim, a discount of 40% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$528,056.86), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$264,028.43), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$132,014.22). With respect to the Post-January 2019 Class, for this claim, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$17,472.66), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$6,989.06), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$2,096.72).

D. Failure to Timely Provide Wages Upon Termination

55. California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. If an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours of quitting, unless the employee has given seventy-

two (72) hours of notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

56. California Labor Code section 203 provides that if an employer fails to pay an employee all wages due at termination or within seventy-two (72) hours of resignation, in accordance with sections 201 and 202, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. California Labor Code section 203 further provides that the statute of limitations to recover the penalty is the same as the statute of limitations for recovery of the unpaid wages from which the penalties arise, i.e. three years.

57. Plaintiffs alleged that Defendant intentionally and willfully failed to pay Plaintiffs and the other putative class members all wages due to them upon termination, within the time period permissible under California law. For example, Plaintiffs alleged that putative class members are entitled to unpaid wages arising from, *inter alia*, off-the-clock work, as well as meal and rest period premiums, thereby triggering waiting-time penalties under California Labor Code section 203.

58. Based on information and data provided by Defendant, it was determined that, with respect to the Pre-January 2019 Class, approximately two hundred ninety-two (325) putative class members had been terminated during the three-year statutory period (i.e., from February 7, 2015 to December 31, 2019), and if these individuals were not timely paid all wages due to them upon termination, the potential value of waiting-time penalties claim was \$1,188,720 (325 individuals x [30 days x hourly rate of \$15.24 x 8 hours]), or approximately \$3,657.60 per individual. It was determined that, with respect to the Post-January 2019 Class, approximately eighty-one (81) putative class members had been terminated during the three-year statutory time period (i.e., from February 7, 2015 to December 31, 2019), and if these individuals were not timely paid all wages due to them upon termination, the potential value of waiting-time penalties claim was \$296,265.60 (81 individuals x [30 days x hourly rate of \$15.24 x 8 hours]), or approximately \$3,657.60 per individual. However, this presumes that Plaintiffs would prevail on the underlying California Labor Code claims, which is necessary to show that Defendant failed to timely pay wages that

1 were due to the putative class members upon termination.

2 59. Defendant was adamant that no waiting-time penalties should be awarded.
3 Defendant pointed out that waiting-time penalties are derivative of each and every other
4 underlying alleged California Labor Code violation and contended that it paid the terminated
5 employees all wages due and owing. Moreover, Defendant emphasized that, under California
6 Labor Code section 203, employers are only obligated to pay waiting-time penalties if they
7 “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title 8,
8 California Code of Regulations, section 13520 states,

9 A willful failure to pay wages within the meaning of Labor Code Section 203
10 occurs when an employer intentionally fails to pay wages to an employee when
11 those wages are due. However, a good faith dispute that any wages are due will
12 preclude imposition of waiting time penalties under Section 203.

13 A “good faith dispute” that any wages are due occurs when an employer presents
14 a defense, based in law or fact, which, if successful, would preclude any
15 recovery on the part of the employee. The fact that a defense is ultimately
16 unsuccessful will not preclude a finding that a good faith dispute did exist.
17 Defenses presented which, under all the circumstances, are unsupported by any
18 evidence, are unreasonable, or are presented in bad faith, will preclude a finding
19 of a “good faith dispute.”

20 60. Defendant also emphasized, and provided information to support its contention, that,
21 from approximately 2019 to present, it updated and modified employee trainings, onboarding
22 process, handbook policies, and scheduling (to expand coverage for meal and rest breaks),
23 designed and implemented automated timekeeping system notification pop-ups reminding and
24 instructing employees to take meal and rest breaks, corrected the regular rate calculation, and
25 undertook internal audits and investigation. Defendant also provided information regarding its
26 financial circumstances and workforce down-sizing from approximately 2019 to present.

27 61. Accordingly, to assess the likely recovery of waiting-time penalties, Class Counsel
28 also took into consideration the chances of prevailing on each of the underlying causes of action,
as well as the additional hurdles of prevailing on the claim for waiting-time penalties, including
the inherent difficulty in proving the “willful” prong of section 203, applicable case law, costs and
expenses associated with further litigation and certification, the circumstances and realities of the

case, and risks to recovery, and applied appropriate discounts for them. With respect to the Pre-January 2019 Class, for this claim, a discount of 40% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$713,232), a discount of 40% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$427,939.20), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$213,969.60). With respect to the Post-January 2019 Class, for this claim, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$148,132.80), a discount of 80% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$29,626.56), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$8,887.97).

E. Wage Statement Violations

62. Plaintiffs also alleged that Defendant violated California Labor Code section 226(a) which states that an employer must provide an accurate and itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). See Cal. Lab. Code § 226(e). Arguably, actual damages may be sought, under a three-year statute of limitations, or, statutory penalties may be sought, under a one-year statute of limitations.

63. Based on information and data provided by Defendant, with respect to the Pre-January 2019 Class, it was determined that approximately six hundred forty (640) putative class members worked during the one-year statutory period (i.e., from February 7, 2017 to December 31, 2019), and if a wage statement violation occurred for each pay period during the one-year statutory period for each of these putative class members, the potential value of this claim was

1 \$1,476,700 ([\$50 initial penalty x 640 initial violations] + [\$100 subsequent penalty x (15,087
2 estimated pay periods – 640) subsequent violations]). It was determined that, with respect to the
3 Post-January 2019 Class, approximately one hundred ten (110) putative class members worked
4 during the one-year statutory period (i.e., from February 7, 2017 to December 31, 2019), and if a
5 wage statement violation occurred for each pay period during the one-year statutory period for
6 each of these putative class members, the potential value of this claim was \$109,200 ([\$50 initial
7 penalty x 110 initial violations] + [\$100 subsequent penalty x (1,147 estimated pay periods – 110)
8 subsequent violations]).

9 64. Defendant contended that Plaintiffs and putative class members suffered no actual
10 injury from the alleged wage statement violations. Defendant also contended that this alleged
11 violation is entirely derivative of the foregoing allegations. In other words, Plaintiffs would have
12 to prove, for example, that off-the-clock work occurred, that overtime was worked, that all hours
13 of work had not been properly recorded and compensated, and/or that non-compliant meal and rest
14 periods occurred and that Defendant did not pay premiums, etc., to demonstrate that the wage
15 statements were inaccurate. Defendant further contended, *inter alia*, that if off-the-clock and/or
16 overtime work occurred and was not reflected in the wage statements, it was because the work
17 was hidden from Defendant. Defendant also contended that no actual injury could be shown.
18 Defendant also emphasized, and provided information to support its contention, that, from
19 approximately 2019 to present, it updated and modified employee trainings, onboarding process,
20 handbook policies, and scheduling (to expand coverage for meal and rest breaks), designed and
21 implemented automated timekeeping system notification pop-ups reminding and instructing
22 employees to take meal and rest breaks, corrected the regular rate calculation, and undertook
23 internal audits and investigation. Defendant also provided information regarding its financial
24 circumstances and workforce down-sizing from approximately 2019 to present.

25 65. When assessing the value of this claim, Class Counsel considered these factors, the
26 derivative nature of this alleged violation, the chances of prevailing on each of the underlying
27 causes of action, applicable case law and regulations, costs and expenses associated with further
28 litigation and certification, realities of the case, and risks to recovery, and applied appropriate

discounts for them. With respect to the Pre-January 2019 Class, for this claim, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$738,350), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$295,340), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$118,136). With respect to the Post-January 2019 Class, for this claim, a discount of 60% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$43,680), a discount of 80% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$8,736), and a discount of 80% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$1,747.20).

F. Failure to Maintain Requisite Payroll Records

66. Plaintiffs alleged that Defendant had intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiffs and the putative class members. Plaintiffs also alleged that Defendant's intentional and willful failure to keep accurate payroll records violated the statutorily-protected right to accurate and complete payrolls records, and that Plaintiffs and the putative class members have suffered injury and damage as a result.

67. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the Labor Commissioner, but in any case, shall be kept on file for not less than three years. Under California Labor Code section 1174.5, a willful violation of the employer's recordkeeping obligations set forth in Labor Code 1174(d) is subject to a civil penalty of \$500.

1 Arguably, this civil penalty would only be recoverable by the Labor Commissioner.

2 68. Defendant contended that Plaintiffs and putative class members suffered no actual
3 injury or damage from the alleged recordkeeping violations. Moreover, Defendant challenged
4 certification of the recordkeeping issue on the basis that individual liability issues predominated,
5 including (a) whether each putative class member's payroll records were not maintained properly,
6 and (b) whether Defendant's alleged failure to keep requisite payroll records was "willful." Like
7 the wage statement violations, this cause of action is entirely derivative of the causes of action for
8 failure to pay overtime, minimum, and failure to provide compliant meal or rest periods.

9 69. If a \$500 penalty could be recovered for each putative class members, the potential
10 value of this claim would be \$299,500 (599 individuals x \$500 penalty) for the Pre-January 2019
11 Class and \$55,000 (110 individuals x \$500 penalty) for the Post-January 2019 Class. However,
12 the valuation of this claim assumed that Plaintiffs would be able to prove that all hours of work
13 had not been recorded and compensated properly and accurately, that non-compliant meal and rest
14 breaks did occur, but Defendant did not provide premium pay for them, etc., in order to
15 demonstrate that Defendant failed to maintain accurate and complete payroll records. As
16 discussed above, Defendant emphasized, and provided information to support its contention, that,
17 from approximately 2019 to present, it updated and modified employee trainings, onboarding
18 process, handbook policies, and scheduling (to expand coverage for meal and rest breaks),
19 designed and implemented automated timekeeping system notification pop-ups reminding and
20 instructing employees to take meal and rest breaks, corrected the regular rate calculation, and
21 undertook internal audits and investigation. Defendant also provided information regarding its
22 financial circumstances and workforce down-sizing from approximately 2019 to present.

23 70. As such, when assessing the value of this claim, Class Counsel took the foregoing
24 factors into account, as well as Defendant's defenses and contentions, the derivative nature of this
25 cause of action, the chances of prevailing on the other causes of action, the inherent difficulty in
26 proving the "willful" prong of California Labor Code section 1174.5, applicable case law, costs
27 and expenses of further litigation and certification, and risks to recovery and applied appropriate
28 discounts for settlement purposes. With respect to the Pre-January 2019 Class, for this claim, a

discount of 50% was applied to account for the risks associated with obtaining certification (bringing the value of this claim closer to \$149,750), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$74,875), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$37,437.50). With respect to the Post-January 2019 Class, for this claim, a discount of 60% was applied to account for the risks associated with obtaining certification (bringing the value of this claim closer to \$22,000), a discount of 80% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$4,400), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$1,320).

G. Unreimbursed Business Expenses

71. Plaintiffs contended that Defendant failed to reimburse Plaintiffs and other putative class members for necessary business expenses, including but not limited to, costs associated with purchasing clothes to comply with Defendant's dress code, the usage of personal cell phones for work duties, and the costs incurred from purchasing office supplies.

72. California Labor Code section 2802 requires an employer to indemnify its employees for all necessary expenditures made by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

73. Defendant contended that it has a policy and practice of reimbursing employees for necessary business-related expenses. Defendant also contended that, with respect to the alleged expenses for which Plaintiffs and other putative class members never requested reimbursement from Defendant, Defendant did not know and had no reason to know that the alleged business-related expenses were incurred. Defendant further contended that the reason for why a putative class member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses while not others, would raise individual issues that could not be certified.

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74. Defendant also contended that the California Labor Code only requires reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. See, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary, would depend, in part, on the reasonableness of the employee’s choice, and whether or not an expense was incurred, would have to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137.

75. Based on Class Counsel’s investigations, putative class members reported spending approximately \$100 per year to purchase clothing to comply with Defendant’s dress code, approximately \$50 per year to purchase office supplies, and approximately \$100 per year to use their personal cell phones for work duties, which worked out to unreimbursed expenses of approximately \$5 per week. If Plaintiffs proved that Defendant willfully failed to reimburse necessary business-related expenses to putative class members in the amount of five dollars (\$5) each per workweek during the relevant time period, the potential value of this claim would be \$288,745 (57,749 total workweeks x \$5 business expenses) for the Pre-January 2019 Class and \$11,465 (2,293 total workweeks x \$5 business expenses) for the Post-January 2019 Class.

76. Class Counsel took into consideration that, not only would it have to be established that expenses were incurred, but also that the nature of the expenses were such that Defendant was required to reimburse them. Class Counsel also considered information regarding Defendant’s financial circumstances and workforce down-sizing from approximately 2019 to present. While Class Counsel disagreed with Defendant’s arguments and factual contentions, Class Counsel considered Defendant’s arguments, applicable case law and regulations, the costs and expenses associated with further litigation and certification, the circumstances and realities of the case, and risks to recovery, and applied appropriate discounts for them. With respect to the Pre-January 2019 Class, for this claim, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$144,372.50), a

discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$72,186.25), and a discount of 40% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$43,311.75). With respect to the Post-January 2019 Class, for this claim, a discount of 60% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$4,586), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$1,834.40), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining and recovering an award thereof (bringing the value of the claim closer to \$917.20).

H. Unfair Business Practices

77. Plaintiffs' cause of action for Defendant's alleged violation of California's Unfair Competition Law, Business and Professions sections 17200, *et seq.* ("UCL") which prohibits any "unlawful, unfair or fraudulent business practices." A violation of the UCL may be predicated on the violation of any law.

78. Arguably, California Business and Professions Code section 17208 extends the statute of limitations on Plaintiffs' other allegations, which qualify as unfair business practices, to four (4) years. However, claims brought under the UCL are equitable actions for injunctive or restitutionary relief, and a court may take into consideration equitable defenses when fashioning equitable remedies. Restitution under the UCL is limited to returning to Plaintiffs and putative class members monies unlawfully withheld, such as unpaid wages or unpaid meal or rest period premiums, or restitutionary disgorgement.

79. Plaintiffs contended that each of Defendant's alleged violations of the California Labor Code constitute business practices that are either unlawful (i.e., is forbidden by law) and/or unfair (i.e., harm to victim outweighs any benefit). In order to prevail on the UCL cause of action, Plaintiffs would have to prove that Defendant violated the predicate provisions of law, and that the violations constitute unlawful and/or unfair business acts and practices in violation of

1 California Business and Professions Code sections 17200, *et seq.* Plaintiffs would have to prove
2 that Defendant's conduct throughout the time period at issue has been unfair, unlawful, harmful,
3 and injurious to Plaintiffs and putative class members. With respect to the UCL's standing
4 requirement, Plaintiffs would also have to prove that they suffered an economic injury as a result
5 of Defendant's conduct.

6 80. As discussed above, Defendant vigorously challenged the likelihood of Plaintiffs'
7 success in establishing that any of provisions of the California Labor Code, on which the UCL
8 claim is predicated, were violated and that such violations were injurious. Throughout this
9 litigation, Defendant also relentlessly challenged Plaintiffs' standing and adequacy to assert class
10 claims and contended that there were individualized issues that would pose challenges to
11 certification. Defendant also provided multiple reasons why its exposure for the alleged California
12 Labor Code violations were limited and emphasized circumstances that posed challenges to
13 obtaining a recovery. When assessing the likelihood of prevailing on this cause of action, Class
14 Counsel considered all of the above, as well as Defendant's factual contentions and legal
15 arguments, the chances of prevailing on the other causes of action, costs and expenses associated
16 with further litigation and certification, and risks to recovery, and applied appropriate discounts
17 for settlement purposes.

18 **I. Summary**

19 81. The foregoing discussion confirms that the amount of the Settlement is adequate in
20 light of the merits of this case, Plaintiffs' allegations and causes of action, the evidence at issue
21 with respect to those allegations and causes of action, and legal and factual arguments and
22 circumstances which pose challenges to monetary recovery. The conclusion to be drawn from the
23 foregoing analysis is that neither class certification, liability, nor the ability to adjudicate and/or
24 recover monetary relief on a class-wide basis is clear-cut, which is why the Parties elected to settle
25 this matter. Class Counsel recognized the circumstances and realities of the case, applicable case
26 law and regulations, the costs and expenses of further litigation and certification, and risks to
27 recovery and applied appropriate discounts as discussed above. This Settlement involves highly
28 disputed claims and, like most other settlements, is the product of compromise.

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


Edwin Aiwanian

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 09/18/2020 TIME: 09:00:00 AM DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: Gus Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2018-00972771-CU-OE-CXC** CASE INIT.DATE: 02/07/2018

CASE TITLE: **Debar vs. Optima Tax Relief, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73353498

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: David Debar

CAUSAL DOCUMENT/DATE FILED: Motion - Other For preliminary approval of class action,
08/05/2020

APPEARANCES

Plaintiff David Debar's Motion for Preliminary Approval of Class Action Settlement

There are no appearances by any party.

Tentative Ruling posted on the Internet .

All parties telephonically submit on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

The motion for preliminary approval of class action settlement is CONTINUED to October 30, 2020 at 9:00 a.m. in Department CX104 to permit the parties to respond to the following items of concern. Any supplemental briefing shall be filed on or before October 21, 2020. If a revised settlement agreement and/or class notice is submitted, a redline showing all changes, deletions and additions must be submitted as well.

As to the Settlement:

1. Other than Garcia v. Optima Tax Relief, LLC, No. 19-01082473, are there any actions pending against Defendant (whether individual, class, or PAGA, including PAGA actions in the pre-filing LWDA stage) that could be affected by this settlement?

2. The Court is confused by the use of three separate dates as cutoffs for class membership, the class period and the escalator clause. The Court understands that the "Class," as defined, includes employees with specific job titles from February 7, 2014 through December 31, 2018. The "Class Period," as defined, extends from February 7, 2014 through preliminary approval. The escalator clause is triggered if there are more than 51,700 total workweeks from February 7, 2014 through July 3, 2019. The Court has

several questions. First, why don't all three time periods simply have the same end date?

3. Second, the classwide release provides that the Class releases claims for the entire Class Period. That is, persons whose employment began no later than December 2018 release claims through sometime in the fall of 2020 (assuming preliminary approval is granted later this year). Suppose the alleged Labor Code violations are ongoing to this day. If an employee was hired on December 31, 2018, he is a Class Member, and the release covers all claims related to the ongoing violations. However, if an employee was hired on January 1, 2019, he is not a Class Member, and he may bring suit for the ongoing violations. What justifies defining the Class differently from the Class Period, such that some employees release two years' worth of claims while others do not?

4. Third, along these lines, this case was settled in September 2019. By the time preliminary approval occurs, it will at least 13 months since settlement. The Court is not inclined to release post-mediation claims that were not in play at the time of the mediation.

5. Presumably, the fact that the escalator clause is calculated in reference to workweeks through July 3, 2019 instead of workweeks through preliminary approval confirms that the release does not extend beyond July, 2019. (Note that in situations where claims are to be released through preliminary approval, then the escalator should be based on workweeks through preliminary approval.)

6. Because a portion of the individual settlement payment is considered wages owed, the Court's strong preference is to send unclaimed funds to the State Controller's Unclaimed Property Fund. If the parties wish to use a cy pres, however, the Court will require a cy pres whose work is focused in the Southern California area, as this suit is pending in Orange County, where Defendant is based and the alleged Labor Code violations took place. In addition, all parties and their counsel must disclose any connections they have to the designated cy pres.

7. How large a sample of the relevant time and payroll data did counsel review? What steps were taken to ensure the sample was randomized and representative of the entire class?

8. Was an expert retained to value the case? If so, what are his or her qualifications?

9. The Court will not grant preliminary approval of the settlement until counsel provides a full valuation of the claims to be settled. For each claim, this includes an explanation of the basis for the claim and the strengths of Plaintiff's case, an explanation of Defendant's expected defenses thereto, a maximum exposure for the claim (and how that maximum exposure was calculated), and a realistic exposure that takes into account the expected defenses and the risks of litigation. All of this information is required in order for the Court to "independently satisfy[] itself that the consideration being received for the release of the class members' claims is reasonable." (Kullar v. Foot Locker Co. (2008) 168 Cal.App.4th 116, 129.) Given Plaintiff's law firm's many previous settlements before this Court, the lack of any valuation is surprising.

10. Please provide qualifications for proposed class counsel Arby Aiwarzian and Joanna Ghosh.

11. Counsel will seek up to \$45,000 in litigation costs. Are there really \$45,000 in litigation costs in a matter with fewer than 150 docket entries (as of this time)?

12. Plaintiff DeBar states that he traveled 16 hours round trip for his deposition. (DeBar Decl., ¶ 5.) Where did he travel from? Per the first paragraph of his declaration, he resides in California.

13. What is the purpose of amending the complaint to add Proposed Plaintiff Lim? What would his presence as a named plaintiff add that is missing from the case as it currently stands? For example, is DeBar an inadequate or atypical representative of some portion of the Class?

14. The class release covers Defendant's "heirs." Can an LLC have an heir?

15. The class release also covers claims for conversion based on the facts alleged in the operative complaint. What is the factual basis for the potential conversion claim? Note that in *Voris v. Lampert* (2019) 7 Cal.5th 1141, which was decided before this case settled, the Supreme Court ruled that failure to pay wages owed did not give rise to a conversion claim.

16. The class release also covers claims for punitive damages based on the facts alleged in the operative complaint. It does not appear that the proposed SAC seeks punitive damages. Does counsel believe there is a factual basis for classwide recovery of punitive damages? If punitive damages are to be released on a classwide basis, they must be accounted for in the Kullar analysis described above.

17. At final approval, please submit billing records for attorney's fees and costs. The Court will not be inclined to award an amount of fees and costs greater than the amount stated in the notice.

18. At final approval, please submit billing records for administrative costs. The Court will not be inclined to award administrative costs in an amount greater than the amount stated in the notice.

19. The Court will not give its approval to the provision in section VII-C of the settlement calling for the Settlement Administrator to purchase an annuity with the award of attorney fees and costs. While Plaintiff's counsel and the Administrator may choose to agree to this arrangement on their own, the Court will not formally approve it.

20. At final approval, Plaintiffs are to provide declarations addressing the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, including the amount of time and effort spent on the litigation, to the extent these factors have not already been addressed by the DeBar and Lim declarations already on file. In addition, the administrator is to provide a high, low, and average for individual settlement payments, along with the DeBar and Lim's net individual payouts.

As to the Notice:

1. Include opt-out and workweek dispute forms with the notice.

2. Should the notice be printed in languages other than English?

3. If any changes are made to the settlement agreement, please make corresponding changes to the notice.

4. The font size in the actual notice may not be smaller than the font size in the proposed notice provided to the Court.

Court orders clerk to give notice.

EXHIBIT B

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 10/30/2020

TIME: 09:00:00 AM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: Gus Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2018-00972771-CU-OE-CXC** CASE INIT.DATE: 02/07/2018

CASE TITLE: **Debar vs. Optima Tax Relief, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73376416

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: David Debar

CAUSAL DOCUMENT/DATE FILED: Motion - Other For preliminary approval of class action, 08/05/2020

APPEARANCES

Plaintiff David Debar's Motion for Preliminary Approval of Class Action Settlement

There are no appearances by any party.

Tentative Ruling posted on the Internet .

All parties telephonically submit on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

The motion for preliminary approval of class action settlement is DENIED WITHOUT PREJUDICE. Following review of the supplemental briefing, it appears to the Court that the settlement agreement as drafted (and currently amended) cannot be approved, nor can it be saved through slight tweaks and another round of briefing.

I. Class Definition Issues

The Court's most serious concern—and the primary reason for denying the motion—is the difference between the definitions of “Class” and “Class Period.” The “Class” consists of employees who worked for Defendant through December 31, 2018, while the “Class Period” (i.e., the release period) extends through December 31, 2019. That is, employees hired on January 1, 2019 or later are not covered by this settlement, even though the conduct at issue apparently extends through at least December 31, 2019.

In the supplemental briefing, Plaintiff explains that 2018 was chosen as the cutoff for class membership because some of the practices complained of—those relating to the inclusion of bonuses, etc. in the overtime rate—ceased on December 31, 2018. Other practices complained of—off-the-clock work, meal and rest break violations, etc.—continued after that date, so the parties agreed that persons in the class

at the time the overtime rate issue was fixed would release their claims through December 31, 2019. The effect of this arrangement is that employees hired in 2019 receive nothing from this settlement, even though Plaintiff and his counsel contend that Labor Code violations affecting all similarly situated employees continued through at least the end of 2019.

Furthermore, in every version of the operative complaint—including the proposed SAC Plaintiff now seeks leave to file, post-settlement—the “Class” extends through entry of judgment. Employees hired in 2019 have always been part of the class as pled. Only in the settlement agreement are they left out.

Most Labor Code violations have a three-year statute of limitations, so this would not necessarily cause problems: an employee who suffers wage-and-hour violations in 2019 has until 2022 to sue. Here, however, Plaintiff brings a cause of action for wage statement violations, derivative of the substantive underlying claims. Wage statement claims have a one-year limitation period. Employees hired in 2019 who suffer derivative wage statement violations in 2019 (i.e., those not part of the settlement class) have until 2020 to sue. The parties settled this case in principle in September 2019, but for reasons unknown to the Court, they waited until August 2020 to move for approval. As a result of this delay, employees hired in 2019 lost eight months’ worth of wage statement claims, with the total time lost increasing by the day. These employees have always been part of the class as pled, so they have always had reason to assume counsel—having made them part of the putative class—would protect their interests. Despite this, the current settlement pays them nothing for the loss of their wage statement claims.

The Court will not approve a settlement that results in 2019 hires forfeiting their wage statement claims without compensation. Exactly how to compensate the 2019 hires is a matter for the parties to negotiate, but the Court will look skeptically at an agreement that purports to settle additional claims (whether wage statement claims or others) without a corresponding increase in the GSA.

II. Escalator

The explanation of the escalator in the supplemental briefing makes little sense. Counsel states the parties “fully contemplated the number of workweeks would increase during the period from July 3, 2019 through preliminary approval” (Supp. Aiwazian Decl., ¶ 8), but the escalator is nonetheless limited to workweeks through July 3, 2019 rather than preliminary approval (or December 31, 2019, the amended cutoff date). If the parties contemplated an increase in workweeks after July 3, 2019, then why is the escalator calculated in reference to that date? Armed with knowledge of the number of workweeks through July 3, the parties could easily have estimated the number of workweeks through some future date. The Court expects that any escalator will be tied to the end of the release period, not an arbitrary date before the release period ends.

III. Valuation

In reviewing Plaintiff’s valuation analysis, the Court noted the lack of foundation for many of the assumptions underlying the valuation. For example, what is the basis for using 1 hour of overtime per week as the amount of overtime owed? Or 3 missed meal periods per week? Or \$5 per week in reimbursements? The valuation is based on Plaintiff proving these amounts at trial, but the supplemental papers provide little or no explanation why counsel chose these numbers as benchmarks.

Furthermore, how can counsel value claims through December 31, 2019 when counsel and the expert only reviewed time and pay data through October 2018?

A Status Conference is scheduled for 01/28/2021 at 08:30 AM in Department CX104.

A Joint Status Conference Statement is to be filed on or before 01/21/2021.

Court orders clerk to give notice.

EXHIBIT C

1 **AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Amended Joint Stipulation of Class Action Settlement (“Settlement,” “Agreement,” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff David DeBar (“Plaintiff
4 DeBar”) and Plaintiff Johnny Lim (“Plaintiff Lim”), individually and on behalf of all others similarly
5 situated, and Defendant Optima Tax Relief, LLC (“Defendant”) (collectively, with Plaintiffs, the
6 “Parties”), pursuant to section XIII.N of the Joint Stipulation of Class Action Settlement entered into by
7 the Parties on or around April 9, 2020.

8 The Parties agree to supplant the Joint Stipulation of Class Action Settlement entered into by the
9 Parties on or around April 9, 2020 and Amendment No. 1 to Joint Stipulation of Class Action Settlement
10 entered into by the Parties on or around October 22, 2020 with this Amended Joint Stipulation of Class
11 Action Settlement.

12 NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set
13 forth herein, the Parties agree, subject to the Court’s approval, that this case and the Released Claims
14 shall be settled and compromised as between the Class and Defendant, subject to the terms and
15 conditions set forth herein.

16 **I. DEFINITIONS**

17 A. “Action” refers to the above-captioned putative class action entitled *David DeBar v.*
18 *Optima Tax Relief, LLC*, Orange County Superior Court Case No. 30-2018-00972771.

19 B. “Class Counsel” or “Plaintiffs’ Counsel” refers to Edwin Aiwazian, Esq., Arby
20 Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers *for* Justice, PC.

21 C. “Class” or “Class Member” refers collectively to the individuals who belong to the Pre-
22 January 2019 Class and Post-January 2019 Class as follows:

- 23 a. “Pre-January 2019 Class” refers to all current and former hourly-paid or non-exempt
24 employees who worked for Defendant in California at any time between February 7,
25 2014 and December 31, 2018 in the positions of Case Manager, Case Summary, Client
26 Relations, Closing Team, Collections and Recovery, Compliance, Customer Service,
27 Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales,
28 Opp Servicing, Payments, POA, Quality Assurance, Resolution Support, Retention,

Risk Management, Support, Tax Prep and Transcripts. “Pre-January 2019 Class Member” shall mean individuals who belong to the Pre-January 2019 Class. To the extent members of the Pre-January 2019 Class worked for Defendant during the period January 1, 2019 to December 31, 2019, their Post-January 2019 Workweeks will be factored into their recovery under the Settlement, according to the methodology set forth in Section VIII.B.

- b. “Post-January 2019 Class” refers to all current and former hourly-paid or non-exempt employees who began working for and worked for Defendant in California at any time between January 1, 2019 and December 31, 2019 in the positions of Case Manager, Case Summary, Client Relations, Closing Team, Collections and Recovery, Compliance, Customer Service, Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales, Opp Servicing, Payments, POA, Quality Assurance, Resolution Support, Retention, Risk Management, Support, Tax Prep and Transcripts. “Post-January 2019 Class Member” shall mean individuals who belong to the Post-January 2019 Class.

D. “Class Data” refers to the compilation of the following information for each Class Member: last known full name, last known address, last known telephone number, Social Security number and employee ID number, start and end dates of employment as a non-exempt or hourly-paid employee of Defendant in California during the Class Period, Covered Workweeks, and such other information as may be necessary to independently review the Covered Workweeks attributed to each Class Member.

E. “Class Notice” refers to the Notice of Class Action Settlement that is to be mailed to the Class Members, substantially in the form attached hereto as “**Exhibit A**,” as ordered by the Court, subject to edits that the Parties may jointly agree upon which are in conformity with the Court’s orders and this Agreement.

F. “Class Period” for purposes of this Settlement is from and including February 7, 2014 through December 31, 2019.

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1 G. "Court" refers to the court having jurisdiction over the Action, at any stage of the
2 Action, presently the Superior Court of the County of Orange.

3 H. "Covered Workweek(s)" means the total number of Pre-January 2019 Workweeks and
4 Post-January 2019 Workweeks a Class Member worked for Defendant as a non-exempt or hourly-paid
5 employee in California during the Class Period, which will be calculated by Defendant, based on the
6 Class Member's start and end dates of employment during the Class Period as a non-exempt or
7 hourly-paid employee of Defendant in California less any period of extended leave.

8 I. "Defendant" refers to Defendant Optima Tax Relief, LLC.

9 J. "Defendant's Counsel" refers to Dean A. Rocco of Wilson, Elser, Moskowitz, Edelman
10 & Dicker LLP.

11 K. "Dispute Form" refers to the Covered Workweeks Dispute Form that is to be mailed to
12 the Class Members, substantially in the form attached hereto as "**Exhibit B**," as ordered by the Court,
13 subject to edits that the Parties may jointly agree upon which are in conformity with the Court's orders
14 and this Agreement.

15 L. "Effective Date" refers to the date upon which the terms of this Settlement Agreement
16 shall become effective, which is the date on which all of the following events have occurred: (i) this
17 Settlement Agreement has been executed by all Parties and their respective counsel; (ii) the Court has
18 preliminarily approved the Settlement; (iii) the Notice Packet has been given to the Class, providing
19 them with an opportunity to dispute their Covered Workweeks as stated in their Class Notice, to opt
20 out of the Settlement, or to object to the Settlement; (iv) the Court has held a Final Approval Hearing
21 and entered the contemplated Final Approval Order and Judgment, certifying the Class and approving
22 this Settlement; and (v) the later of the following events: (1) if there is no objection to the Settlement,
23 or if there is an objection but it is withdrawn, then, the date of the notice of entry of the Final
24 Approval Order and Judgment; (2) if there is an objection to the Settlement that is not withdrawn, but
25 no appeal is commenced thereafter, then, sixty-five (65) calendar days following notice of entry of the
26 Final Approval Order and Judgment; or (3) if there is an objection to the Settlement, that is not
27 withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed
28 within sixty-five (65) calendar days following notice of entry of the Final Approval Order and

Judgment, then when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Final Approval Order and Judgment is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

M. “Exclusion Form” refers to the Request for Exclusion Form that is to be mailed to the Class Members, substantially in the form attached hereto as “**Exhibit C**,” as ordered by the Court, subject to edits that the Parties may jointly agree upon which are in conformity with the Court’s orders and this Agreement.

N. “Final Approval Order and Judgment” refers to the order of the Court granting final approval of this Settlement and entering a judgment approving this Settlement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

O. “Gross Settlement Amount” is the maximum amount which Defendant is obligated to pay under this Agreement, which is One Million Eight Hundred Sixty-Three Thousand Five Hundred Eighty-Two Dollars (\$1,863,582.00), subject to increase as provided in Section V(A)(2). The Gross Settlement Amount is exclusive of Defendant’s employer-share of payroll taxes in connection with the wages portion of Settlement Shares (“Employer Taxes”), payment of which it is responsible for separately and in addition to the Gross Settlement Amount.

P. “Plaintiffs” refers to David DeBar and Johnny Lim.

Q. “Pre-January 2019 Workweeks” means the number of weeks a Class Member worked for Defendant as a non-exempt or hourly-paid employee in California during the period from February 7, 2014 to December 31, 2018, which will be calculated by Defendant, based on the Class Member’s start and end dates of employment during the period from February 7, 2014 to December 31, 2018 as a non-exempt or hourly-paid employee of Defendant in California less any period of extended leave.

R. “Pre-January 2019 Workweek Value” refers to the value of a Pre-January 2019 Workweek, calculated as eighty-five percent (85%) of the Net Settlement Amount divided by all Pre-January 2019 Workweeks.

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1 S. "Post-January 2019 Workweeks" means the number of weeks a Class Member worked
2 for Defendant as a non-exempt or hourly-paid employee during the period from January 1, 2019 to
3 December 31, 2019 which will be calculated by Defendant, based on the Class Member's start and end
4 dates of employment during the period from January 1, 2019 to December 31, 2019 as a non-exempt
5 or hourly-paid employee of Defendant in California less any period of extended leave.

6 T. "Post-January 2019 Workweek Value" refers to the value of a Post-January 2019
7 Workweek, calculated as fifteen percent (15%) of the Net Settlement Amount divided by all Post-
8 January 2019 Workweeks.

9 U. "Net Settlement Amount" refers to the Gross Settlement Amount, less (1) Attorneys'
10 Fees and Litigation Costs to Class Counsel, (2) Enhancement Awards to Plaintiffs as approved by the
11 Court, and (3) Settlement Administration Fees as approved by the Court, as defined in Section V.B
12 herein.

13 V. "Notice Packet" refers to the Class Notice, Dispute Form, and Exclusion Form,
14 attached hereto as **Exhibit A**, **Exhibit B**, and **Exhibit C**.

15 W. "Parties" collectively refers to Plaintiffs and Defendant, who are also individually
16 referred to as "Party."

17 X. "Preliminary Approval" refers to the date on which the Court grants preliminary
18 approval of the Settlement.

19 Y. "Preliminary Approval Order" refers to the order of the Court granting preliminary
20 approval of the Settlement set forth herein.

21 Z. "Response Deadline" means the date sixty (60) calendar days after the Settlement
22 Administrator mails the Notice Packet to Class Members and the last date on which Class Members
23 may submit a Request for Exclusion, Covered Workweeks Dispute, and/or Objection to the
24 Settlement. If a second mailing to any Class Member is required as a result of the initial mailing
25 being returned as undeliverable prior to or on the original Response Deadline, the Response Deadline
26 for those Class Members only, who shall be sent a second mailing, will be extended for fifteen (15)
27 calendar days (i.e., such Class Members shall have seventy-five (75) calendar days from the first
28 mailing to submit a Request for Exclusion, Covered Workweeks Dispute, or an Objection to the

Settlement) irrespective of when the first mailing was returned as undeliverable.

AA. “Settlement Administrator” refers to Rust Consulting the third-party administrator that the Parties have mutually selected to handle the administration of the Settlement set forth in this Agreement.

BB. “Settlement Administration Fees” refers to the fees, costs, and expenses paid to the Settlement Administrator for undertaking the administration of the Settlement Agreement.

CC. “Settlement Class” or “Settlement Class Members” refers to each Class Member who has not submitted a valid and timely Request for Exclusion.

DD. “Settlement Share” refers to the individual share of the Net Settlement Amount, calculated in accordance with the methodology provided herein, that a Class Member may be eligible to receive in accordance with the terms set forth herein.

II. RELEVANT PROCEDURAL HISTORY

A. On February 7, 2018, Plaintiff DeBar commenced the Action against Defendant, in the Superior Court of California for the County of Orange, by filing the Class Action Complaint for Damages. On May 7, 2018, Plaintiff DeBar filed the First Amended Class Action Complaint for Damages.

B. Plaintiff will file the Second Amended Class Action Complaint for Damages (“Operative Complaint”) in the Action, adding Plaintiff Lim as a named plaintiff in the Action. Plaintiffs seek to represent a class of current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time from February 7, 2014 to final judgment.

C. The Operative Complaint alleges that Defendant has failed to properly pay minimum and overtime wages in conformity with California Labor Code sections 510, 1194, 1197, 1197.1, and 1198, failed to provide compliant meal breaks and associated premiums in conformity with California Labor Code sections 226.7 and 512(a), failed to provide compliant rest breaks and associated premiums in conformity with California Labor Code section 226.7, failed to timely pay final wages and associated waiting-time penalties in conformity with California Labor Code sections 201 and 202, failed to timely pay wages during employment in conformity California Labor Code section 204, failed to provide accurate wage statements in conformity California Labor Code section 226(a), failed to maintain payroll

1 records in conformity California Labor Code section 1174(d), and failed to reimburse business expenses
2 in conformity California Labor Code sections 2800 and 2802, and thereby engaged in unfair business
3 practices in violation of California Business & Professions Code section 17200, *et seq.*

4 D. The Action was extensively litigated and the Parties engaged in multiple mediation
5 sessions with mediator Jeffrey Krivis, Esq. Following the mediation sessions, with the assistance of the
6 mediator, the Parties reached the agreement reflected in this Settlement, subject to Court approval.

7 **III. INADMISSIBILITY OF SETTLEMENT AGREEMENT/DENIAL OF LIABILITY**

8 A. This Settlement Agreement is the result of a good-faith compromise of disputed claims,
9 and neither it nor any statement or conduct in furtherance of the Settlement shall be offered or
10 construed to be an admission or concession of any kind by any Party. In particular, but without
11 limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as
12 an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever by Defendant,
13 who expressly denies any liability, wrongdoing, impropriety, responsibility, or fault whatsoever. In
14 addition, and also without limiting the generality of the foregoing, nothing about this Settlement shall
15 be offered or construed as an admission or evidence of the propriety or feasibility of certifying a class
16 in the Action or any other action for adversarial, rather than settlement purposes. The Parties further
17 agree that if, for any reason, the Settlement is not approved, the certification will have no force or
18 effect and will be immediately revoked.

19 B. Defendant further denies that, for any purpose other than settling this lawsuit, the action
20 is appropriate for class or representative treatment. With respect to Plaintiffs' claims, Defendant
21 contends, among other things, that Plaintiffs and the Class Members have been paid proper wages,
22 have been provided all required meal and rest periods and associated premium payments, have been
23 paid timely wages and associated waiting-time penalties, have been provided with accurate itemized
24 wage statements, and have been reimbursed for their business expenses or are not due any
25 reimbursements. Defendant also contends, among other things, that it maintained accurate payroll
26 records and has complied at all times with the California Labor Code and applicable Wage Orders of
27 the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that
28 it has complied at all times with the California Business & Professions Code, the Labor Code, and all

1 other directly applicable laws and/or regulations.

2 C. Class Counsel have conducted a thorough investigation into the facts of this class action
3 case, including an extensive review of relevant documents, and has diligently pursued an investigation
4 of the claims of the Class against Defendant. Based on its own independent investigation and
5 evaluation, Class Counsel are of the opinion that the Settlement with Defendant for the consideration
6 and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the
7 best interest of the Class in light of all known facts and circumstances, including the risk of significant
8 delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and
9 numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the
10 Settlement is fair and in the best interest of the Class.

11 **IV. CLASS CERTIFICATION**

12 A. Solely for purposes of settling this case, the Parties and their respective counsel
13 stipulate that the requisites for class certification with respect to the Class Members are met, and that
14 the Class should be certified.

15 B. The Parties stipulate that certification for settlement purposes under the lenient standard
16 applied to settlements is in no way an admission that class certification is proper under the more
17 stringent standard applied for litigation purposes, and that evidence of this limited stipulation for
18 settlement purposes will not be deemed admissible in this or any other proceeding. More specifically,
19 the Parties stipulate that, solely for settlement purposes:

20 1. The Class is ascertainable and so numerous as to make it impracticable to join
21 all Class Members;

22 2. With respect to the Class, common questions of law and fact predominate over
23 questions affecting any individual member in the Class, including, but not limited to: whether
24 Defendant paid proper wages to the Class; whether Defendant provided compliant meal periods and
25 associated premium pay to the Class; whether Defendant provided compliant rest periods and
26 associated premium pay to the Class; whether Defendant timely paid compensation and associated
27 waiting-time penalties; whether Defendant provided accurate itemized wage statements to the Class;
28 whether Defendant properly reimbursed the Class for their business expenses; whether Defendant

maintained accurate payroll records with respect to the Class; whether Defendant engaged in unlawful or unfair business practices affecting the Class in violation of the California Business & Professions Code; and whether Plaintiffs and the Class are entitled to injunctive and/or declaratory relief;

3. Plaintiffs' claims are typical of the claims of the Class Members;

4. Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Class; and,

5. A class action is superior to other available means for the fair and efficient adjudication of the controversy, as the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

V. SETTLEMENT AMOUNT

A. Gross Settlement Amount:

1. In consideration for the resolution and release of claims provided for by this Settlement, Defendant shall pay the amount of One Million Eight Hundred Sixty-Three Thousand Five Hundred Eighty-Two Dollars (\$1,863,582.00), subject to increase as provided in Section V(A)(2) below ("Gross Settlement Amount"), on a non-reversionary basis, which includes the Net Settlement Amount (to be distributed to Settlement Class Members on a *pro rata* basis, according to a specified formula based on Covered Workweeks), all Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Fees to the Settlement Administrator. Under no circumstances will Defendant's total obligation under this Settlement exceed the Gross Settlement Amount, except that Defendant shall be responsible for the Employer Taxes separately and in addition to the Gross Settlement Amount.

2. The Gross Settlement Amount specifically contemplates the number of Pre-January 2019 Workweeks for the Pre-January 2019 Class for the period February 7, 2014 to December 31, 2018 were approximately 45,046 and the number of Post-January 2019 Workweeks for the Pre-January 2019 Class and Post-January 2019 Class for the period January 1, 2019 to December 31, 2019 were approximately 14,996, for a total of 60,042 Covered Workweeks during the Class Period. If the number of Covered Workweeks for the Class Period are determined to be more than 66,047 (i.e., more

than ten percent (10%) higher), the Gross Settlement Amount will be increased on a *pro rata* basis for each Covered Workweek above 66,047 Covered Workweeks.

B. **Net Settlement Amount:** The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount the following sums, as approved by the Court: (1) attorneys' fees in an amount not to exceed \$684,000 and reimbursement of litigation costs and expenses in an amount not to exceed \$45,000 (collectively, "Attorneys' Fees and Litigation Costs") to Class Counsel; (2) enhancement awards in the amount not to exceed \$15,000.00 to Plaintiff DeBar and the amount not to exceed \$7,500 to Plaintiff Lim ("Enhancement Awards"), which will be paid in addition to whatever payment they are otherwise entitled to as Settlement Class Members; and (3) fees and expenses of the Settlement Administrator in an amount that is estimated not to exceed \$20,000 ("Settlement Administration Fees").

C. **Settlement Shares:** The Settlement Share for each Class Member will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth herein.

D. **Settlement Administration:** The Parties have mutually agreed to engage Rust Consulting to serve as Settlement Administrator, subject to approval by the Court. The Settlement Administrator's fees, costs, and expenses for undertaking the administration of the Settlement (i.e., Settlement Administration Fees) are estimated not to exceed Twenty Thousand Dollars (\$20,000). All Settlement Administration Fees will be paid from the Gross Settlement Amount.

E. **Notice to Class Members:**

1. Each Class Member will be provided with pre-printed information, in substantially the same form as the Notice of Class Action Settlement attached hereto as **Exhibit A** based on Defendant's records. The Class Notice shall state, among other things, the Class Member's Covered Workweeks and his or her estimated individual Settlement Share. The pre-printed information based on Defendant's records shall be presumed to be correct. The Class Notice shall be sent by the Settlement Administrator to the Class Members by first class mail.

2. Within ten (10) calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator the Class Data. This Class Data shall be based on Defendant's payroll and other business records and shall be provided in a

1 format reasonably acceptable to the Settlement Administrator. Defendant agrees to consult with the
2 Settlement Administrator prior to the production date of the Class Data, to ensure that the format will
3 be reasonably acceptable to the Settlement Administrator.

4 3. The Settlement Administrator will run a check of the Class Members' addresses,
5 as reflected in the Class Data list provided by Defendant, against those on file with the U.S. Postal
6 Service's National Change of Address List; this check will be performed only once per Class Member
7 by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court
8 order, the Settlement Administrator will keep the Class Data List and any database prepared based
9 thereon confidential and use them only for the purposes described herein.

10 4. Within fifteen (15) calendar days after the Class Data is provided to the
11 Settlement Administrator, the Settlement Administrator will mail the Notice Packet to the Class
12 Members by first class United States mail.

13 5. Notice Packets returned to the Settlement Administrator as non-deliverable
14 before the Response Deadline (based on the postmark) shall be resent to the forwarding address, if
15 any, on the returned envelope within two business days of receipt. A returned Notice Packet will be
16 forwarded only once per Class Member by the Settlement Administrator. If there is no forwarding
17 address, the Settlement Administrator will do a skip-trace search for a new address using the Class
18 Member's Social Security number, and the return Notice Packet will be resent to any new address that
19 is located by way of skip-trace, if any within three business days of receipt; this search and re-mailing
20 will be performed only once per Class Member by the Settlement Administrator.

21 6. Upon completion of these steps by the Settlement Administrator, Defendant and
22 the Settlement Administrator shall be deemed to have satisfied their obligation to provide the Notice
23 Packet to the affected Class Member. The affected Class Member shall remain a member of the Class
24 and shall be bound by all the terms of the Settlement and the Court's order granting final approval of
25 the Settlement and judgment based thereon.

26 7. Class Counsel shall provide to the Court, at least five (5) calendar days prior to
27 the Final Approval Hearing, a declaration by the Settlement Administrator of due diligence and proof
28 of mailing with regard to the mailing of the Notice Packet to the Class Members.

1 F. **Resolution of Covered Workweeks Disputes:** A Class Member may dispute the pre-
2 printed information in the Class Notice as to his or her Covered Workweeks by submitting a Dispute
3 Form or written dispute to the Settlement Administrator (“Covered Workweeks Dispute”). A valid
4 and timely Covered Workweeks Dispute must: (1) list the Class Member’s full name, current address,
5 current telephone number, last four digits of his or her Social Security number or employee ID
6 number, and signature; (2) contain the case name and number of the Action; (3) clearly state the basis
7 for his or her dispute of the number of Covered Workweeks, Pre-January 2019 Workweeks, and/or
8 Post-January 2019 Workweeks credited to him or her; (4) attach any documentation that he or she has
9 to support the dispute; and (5) be mailed to the Settlement Administrator no later than the applicable
10 Response Deadline (based on the postmark). Unless a disputing Class Member submits documentary
11 evidence in support of his or her Covered Workweeks Dispute, the records of the Defendant will be
12 determinative. If the Parties’ counsel cannot resolve the Covered Workweeks Dispute informally, the
13 matter will be referred to the Settlement Administrator. The Settlement Administrator will review
14 Defendant’s records and any information or documents submitted by the Class Member and issue a
15 non-appealable decision regarding the Covered Workweeks Dispute. No Covered Workweeks
16 Disputes will be honored if they are postmarked after the Response Deadline, unless the Parties
17 mutually agree to accept the untimely Covered Workweeks Dispute. Each Class Member is
18 responsible to maintain a photocopy of all documents sent to the Settlement Administrator and a
19 record of proof of mailing.

20 G. **Right of Class Member to Request Exclusion from the Settlement:** Any Class
21 Member may request to be excluded from the Settlement by mailing an Exclusion Form or written
22 request (both of which are referred to as a “Request for Exclusion”) on or before the Response
23 Deadline (based on postmark) to the Settlement Administrator. A valid and timely Request for
24 Exclusion must: (1) list the Class Member’s full name, current address, current telephone number, last
25 four digits of his or her Social Security number or employee ID number, and signature; (2) contain the
26 case name and number of the Action; (3) clearly state that he or she seeks exclusion from the
27 Settlement; and (4) be mailed to the Settlement Administrator no later than the applicable Response
28 Deadline. Any Class Member who timely submits a Request for Exclusion in compliance with these

requirements shall not have any right under this Settlement, shall not have standing to object to the Settlement; shall not be entitled to receive any Settlement Share under this Settlement, and shall not be bound by this Settlement or the Court's order granting final approval of the Settlement and judgment based thereon.

H. **Right of Class Member to Object to the Settlement:** Any Class Member may object to the Settlement by submitting a written objection ("Objection"), as long as he or she has not submitted a valid and timely Request for Exclusion. A valid and timely Objection must: (1) be filed with the Court and serve a copy of the Objection onto to the Settlement Administrator by mail on or before the Response Deadline (based on the file stamp and postmark); (2) the Class Member's full name, current address, current telephone number, last four digits of his or her Social Security number or employee ID number, and signature; (3) contain the case name and number of the Action; (4) clearly state his or her objection(s) to the Settlement; and (5) contain a statement indicating whether or not the Class Member is represented by counsel and identifying any such legal counsel, and indicating whether the Class Member intends to appear at the Final Approval Hearing to present his or her objection(s). Class Members who fail to file and serve a timely Objections in the manner specified above, and as set forth in the Class Notice, shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, unless otherwise ordered by the Court. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the Final Approval Hearing, file a response to any Objections submitted to the Court.

VI. SETTLEMENT ADMINISTRATOR'S DUTIES AND FEES

A. The Settlement Administrator will calculate the number of Covered Workweeks to attribute to each Class Member by Defendant and will calculate the amounts due to each Class Member in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form, the substance of its findings to the Parties. The Parties will cooperate to provide to the Settlement Administrator relevant records in order to perform its duties.

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1 B. In accordance with the terms of this Settlement, and upon receipt of funds from
2 Defendant, the Settlement Administrator will issue and send out the Individual Settlement Payment
3 checks to the Settlement Class Members. All disputes relating to the Settlement Administrator's
4 performance of its duties shall be referred to the Court, if necessary, which will have continuing
5 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
6 contemplated by this Settlement have been fully carried out.

7 **VII. FUNDING AND DISTRIBUTION OF SETTLEMENT**

8 A. Within thirty (30) business days of the Effective Date, Defendant shall fund the Gross
9 Settlement Amount plus an amount sufficient to cover Employer Taxes, into a settlement account to be
10 established by the Settlement Administrator.

11 B. Within ten (10) business days after Defendant transmits the Gross Settlement Amount to
12 the settlement account established by the Settlement Administrator, the Settlement Administrator shall
13 distribute the Individual Settlement Payments to Settlement Class Members, Attorneys' Fees and
14 Litigation Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration
15 Fees to itself.

16 **VIII. INDIVIDUAL SETTLEMENT PAYMENTS TO SETTLEMENT CLASS MEMBERS**

17 A. Each Class Member who does not submit a timely and valid Request for Exclusion (i.e.,
18 Settlement Class Member) will be entitled to a share of the Net Settlement Amount (i.e., Settlement
19 Share), as calculated by the Settlement Administrator.

20 B. The Settlement Administrator will determine the Settlement Share of each Class Member,
21 using the Class Data (as independently reviewed by the Settlement Administrator) according to the
22 following methodology: each Class Member's Settlement Share will equal the total of his or her
23 individual number of Pre-January 2019 Workweeks multiplied by the Pre-January 2019 Workweek
24 Value and his or her individual number of Post-January 2019 Workweeks multiplied by the Post-January
25 2019 Workweek Value.

26 C. The Parties have agreed that all Settlement Shares will be allocated as follows: fifty
27 percent (50%) as wages, twenty-five percent (25%) as interest and the remaining twenty-five percent
28 (25%) as penalties and other non-wage damages. The wages portion of each Settlement Share will be

1 reported on an IRS Form W-2 and the interest and penalties portions will be reported on an IRS Form
2 1099. Settlement Class Members are solely responsible to pay appropriate taxes due on any amount
3 paid to them under the Settlement. To the extent required by law, IRS Forms 1099 and W-2 will be
4 issued to each Settlement Class Member with respect to such payments.

5 D. Settlement Class Members will be paid their respective Settlement Share, subject to
6 reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion
7 of his or her Settlement Share (the net payment is their "Individual Settlement Payment"). Individual
8 Settlement Payments shall be distributed by the Settlement Administrator, by way of check that is
9 mailed to the Settlement Class Members at the last known address that the Settlement Administrator has
10 on file.

11 E. All payments made to Plaintiffs and Settlement Class Members under this Settlement,
12 shall be deemed to be paid to such Settlement Class Member solely in the year in which such payments
13 actually are received by Plaintiffs and Settlement Class Members. It is expressly understood and agreed
14 that the receipt of payment under this Settlement will not entitle Plaintiffs or any Settlement Class
15 Member to additional compensation or benefits under any company bonus, contest, or other
16 compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will
17 it entitle Plaintiffs or any Settlement Class Member to any increased retirement, 401(k) benefits,
18 matching benefits, or deferred compensation benefits. It is the intent that the payments provided for in
19 this Settlement are the sole payments to be made by Defendant to Plaintiffs and Settlement Class
20 Members, and that Plaintiffs and Settlement Class Members are not entitled to any new or additional
21 compensation or benefits as a result of having received the payments under the Settlement
22 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
23 might have been in effect during the period covered by this Settlement).

24 F. All payees under this Settlement Agreement remain responsible for payment of their
25 respective income taxes (if any).

26 G. Individual Settlement Payment checks shall remain valid and negotiable for one hundred
27 and eighty (180) calendar days from the date of their issuance, and if not cashed, deposited, or otherwise
28 negotiated within the 180-day deadline, shall be cancelled, however, the funds associated with such

cancelled checks will be transmitted to the State Controller's Unclaimed Property Fund in the name of the Settlement Class Members whose checks are cancelled.

H. Upon completion of its calculation of Settlement Shares and Individual Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amount of all payments to be made to each Settlement Class Member. Proof of payment will be provided to Class Counsel and Defendant's Counsel (without disclosing or identifying information of the Settlement Class Members), and filed with the Court as ordered by the Court.

IX. ATTORNEYS' FEES AND LITIGATION COSTS/EXPENSES

In consideration for resolving this matter and in exchange for the release of all claims by the Class Members, and subject to approval by the Court, Defendant will not object to Class Counsel's application for attorneys' fees in an amount not to exceed \$684,000 and reasonable litigation costs and expenses actually incurred with respect to the Action in an amount not to exceed Forty-Five Thousand Dollars (\$45,000) (i.e., Attorneys' Fees and Litigation Costs). The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in connection with obtaining the approval by the Court of this Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court awards a lesser amount(s) for Attorneys' Fees and Litigation Costs, the difference between the lesser amount(s) and the maximum amount set forth above shall be part of the Net Settlement Amount, and shall not affect the total Gross Settlement Amount to be paid by Defendant. The Settlement Administrator will issue an IRS Form 1099 to Class Counsel for the payment of Attorneys' Fees and Costs.

X. ENHANCEMENT AWARDS FOR CLASS REPRESENTATIVES

Subject to approval by the Court, Defendant will not object to Plaintiffs' application for a payment of up to Fifteen Thousand Dollars (\$15,000.00) for Plaintiff DeBar and a payment of up to Seven Thousand Five Hundred Dollars (\$7,500) for Plaintiff Lim, for their service as the Class Representatives ("Enhancement Awards"). It is understood that these Enhancement Awards are in addition to the Settlement Share to which Plaintiffs are entitled to as Settlement Class Members. The Settlement Administrator will issue an IRS Form 1099 to Plaintiffs for the Enhancement Awards. Plaintiffs will be individually responsible for correctly characterizing the Enhancement Awards on their

individual personal income tax returns for tax purposes and for paying any taxes on the amount received. Should the Court approve Enhancement Awards to Plaintiffs in amounts that are less than the amounts set forth above, the difference between the lesser amounts that are approved by the Court and the Enhancement Award amounts that are set forth above shall be a part of the Net Settlement Amount.

XI. RELEASE OF CLAIMS

A. **Release of Claims by the Settlement Class Members:** Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement, Plaintiffs and each Class Member who has not submitted a valid and timely Request for Exclusion (i.e. Settlement Class Members) each fully release and discharge Defendant, its past or present officers, managers, members, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the “Released Parties”) from all claims and/or causes of action that were pled or that could have been pled based on the factual allegations in the Operative Complaint, arising at any time during the Class Period, under California state law, including and not limited to the California Labor Code (excluding the Private Attorneys General Act, California Labor Code section 2698, *et seq.*), Industrial Welfare Commission Wage Orders, and California Business & Professions Code section 17200, *et seq.*, including but not limited to, claims for the failure to properly pay minimum wages, failure to properly pay overtime wages, the failure to provide meal periods and pay associated premiums, the failure to provide rest periods and pay associated premiums, the failure to pay waiting-time penalties, the failure to timely pay wages during employment and at termination of employment, the failure to keep and maintain accurate payroll records, the failure to provide accurate itemized wage statements, the failure to reimburse business expenses, unfair business practices, restitution and other equitable relief, liquidated damages, and penalties (collectively the “Released Claims”).

B. **Release of Claims by the Class Representatives:**

1. Class Representatives agree that, in exchange for the consideration set forth in this Settlement Agreement, and upon the Effective Date, each of them shall and hereby does fully, finally, and forever compromise, release, resolve, relinquish, discharge, and settle, on behalf of

1 themselves and each of their heirs, representative, successors, assigns, and attorneys, any and all
2 claims of any nature whatsoever, each of them has or may have against the Released Parties, based on
3 their employment with Defendant, for any act occurring on or before the date of final approval of the
4 Settlement. Class Representatives shall not institute any action or cause of action (in law, in equity, or
5 administratively), suit, debt, lien, or claim, known or unknown, fixed or contingent, for the claims
6 described in Section XI, in state or federal court, or with any state, federal, or local government
7 agency, except the EEOC or DFEH, or with any administrative or advisory body.

8 2. Class Representatives may hereafter discover facts in addition to or different
9 from those which they now knows or believes to be true, but they nevertheless stipulate and agree that,
10 upon the Effective Date, each of them shall and hereby do fully, finally, and forever settle and release
11 any and all of their individual claims whether known or unknown, suspected or unsuspected,
12 contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have
13 existed, upon any theory of law or equity and without regard to the subsequent discovery or existence
14 of such different or additional facts. With respect to the release of their individual claims, as set forth
15 in this section, Class Representatives specifically acknowledge that they are each aware of and
16 familiar with the provisions of California Civil Code section 1542, which provides as follows:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
18 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
19 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
20 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
 DEBTOR OR RELEASED PARTY.

21 Class Representatives, being aware of California Civil Code section 1542, hereby expressly waive and
22 relinquish all rights and benefits that they may have under the section as well as any other statute or
23 common law principle of a similar effect, with respect to the release of his individual claims.

24 **XII. APPROVAL OF THE SETTLEMENT**

25 C. **Seeking Preliminary Approval:** This Settlement Agreement shall be submitted to the
26 Court in support of Plaintiffs' motion for preliminary approval for determination by the Court as to its
27 fairness, adequacy, and reasonableness. In conjunction with the motion, Plaintiffs will submit a
28 proposed order to the Court, in a form agreed upon by the Parties, providing for the following:

1. Scheduling of a hearing (“Final Approval Hearing”) on the question of whether the Settlement should be finally approved as fair, reasonable, and adequate as to the members of the Class, and whether to award payment of Attorneys’ Fees and Litigation Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Fees to the Settlement Administrator;
2. Conditional certification of the Class for settlement purposes only;
3. Preliminary appointment of Plaintiffs as representatives of the Class and Plaintiffs’ Counsel as counsel for the Class;
4. Approval as to form and content the proposed Class Notice;
5. Directing the mailing of the Class Notice; and
6. Preliminary approval of the Settlement subject only to the Objections of Settlement Class Members and final review by the Court.

D. **Seeking Final Approval of the Settlement:** Class Counsel shall file a motion for final approval of the Settlement, and in conjunction with the motion, Class Counsel will submit a proposed order granting final approval of the Settlement and judgment based thereon, in a form that is to be agreed upon by the Parties, providing for the following:

1. Making final the conditional certification of the Class for settlement purposes only;
2. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
3. Approval of Class Counsel’s application for an award of Attorneys’ Fees and Litigation Costs;
4. Approval of the Enhancement Awards to Plaintiffs; and
5. Entry of judgment in the Action with continuing jurisdiction of the Court in conformity with California Rules of Court Rule 3.769.

XIII. MISCELLANEOUS

A. **Entire Agreement:** This Settlement Agreement and its associated Exhibit set forth the entire agreement of the Parties with respect to their subject matter and supersede any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement,

whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise, or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement have been made.

B. **No Additional Contribution by Defendant:** Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount and Employer Taxes.

C. **Interim Stay of Proceedings:** Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the Settlement itself.

D. **Termination/Nullification of the Settlement:** This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the amount awarded for Attorneys' Fees and Litigation Costs to Class Counsel and/or Enhancement Awards to Plaintiffs; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

1. If ten percent (10%) or more of the Class Members submit a timely and valid Request for Exclusion, then Defendant in its sole discretion may, but is not obligated to, terminate, nullify, and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this section, Defendant's Counsel must give Class Counsel written notice no later than seven (7) business days after being provided with a final count of opt-outs by the Settlement Administrator. If Defendant exercises this option, Defendant shall pay the Settlement Administrator's fees incurred as of that date.

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2. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void *ab initio*, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court; and (iv) this Settlement shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Settlement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, and any other analogous rules of evidence that are applicable.

E. **Mutual Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other effort that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

F. **No Prior Assignments:** The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

G. **Binding on Assigns:** This Settlement shall be binding upon the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

H. **No Admissions With Respect to Liability:** Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission with respect to liability, culpability, negligence, or wrongdoing on the part of Defendant or Plaintiff. The Parties have entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

1 I. **State Law:** All terms of this Settlement Agreement and the exhibits hereto shall be
2 governed by and interpreted according to the laws of the State of California.

3 J. **Continuing Jurisdiction:** Pursuant to California Rules of Court rule 3.769(h), the
4 Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of
5 the terms of this Settlement Agreement and all orders and judgments entered in connection therewith,
6 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
7 interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement and
8 all orders and judgments entered in connection therewith.

9 K. **Notice to Counsel:** Unless otherwise specifically provided herein, all notices,
10 demands, or other communications given hereunder shall be in writing and shall be both emailed and
11 mailed by United States registered or certified mail, return receipt requested, addressed as follows:

12 **Class Counsel:**

13 Edwin Aiwarzian
14 Lawyers for Justice, PC
15 410 West Arden Avenue, Suite 203
Glendale, California 91203

Counsel for Defendant:

Dean A. Rocco
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
555 South Flower Street, Suite 2900
Los Angeles, California 90071

16 L. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement
17 are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement
18 shall not be construed in favor of or against any Party by reason of the extent to which any Party or
19 his, her, or its counsel participated in the drafting of this Settlement.

20 M. **Captions and Interpretations:** Section titles or captions contained herein are inserted
21 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
22 of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely
23 a recital.

24 N. **Modification:** This Settlement may not be changed, altered, or modified, except in
25 writing and signed by the Parties hereto or their counsel of record. After preliminary approval of the
26 Settlement has been granted, this Settlement may not be modified except by a writing signed by the
27 Parties hereto or their counsel of record, and approved by the Court.

28 ///

1 O. **Integration:** This Settlement contains the entire agreement between the Parties
2 relating to any and all matters addressed in the Settlement Agreement, and all prior or
3 contemporaneous agreements, understandings, representations, and statements, whether oral or written
4 and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be
5 waived except in writing.

6 P. **Signatures and Authority:**

7 1. It is agreed that because the members of the Class are so numerous, it is
8 impossible or impractical to have each member of the Class execute this Settlement Agreement. The
9 Class Notice will advise all Class Members of the binding nature of the release of claims provided for by
10 the Settlement, and that the release shall have the same force and effect as if this Settlement Agreement
11 were executed by each Settlement Class Member.

12 2. This Settlement Agreement may be executed in counterparts and by electronic or
13 facsimile signatures, and when each party has signed and delivered at least one such counterpart, each
14 counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall
15 constitute one Settlement, which shall be binding upon and effective as to all Parties.

16 3. The signatories hereto hereby represent that they are fully authorized to enter into
17 this Settlement and bind the Parties hereto to the terms and conditions thereof.

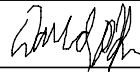
18 Q. **No Mass Communications:** Parties shall not disclose the negotiations of the
19 Settlement except as required to be disclosed by law or to be disclosed to the Court in order to obtain
20 preliminary and final approval of the Settlement. The Parties and attorneys will keep the Settlement
21 confidential until the filing of the motion for preliminary approval of the Settlement, except as
22 otherwise required by law. Thereafter, except as provided below, the Parties agree to not make, or
23 cause to make, any comments to the public or the media or engage in any mass communications or
24 other publicity, including, but not limit to, social media, regarding the Settlement, except in court
25 filings, as necessary to effectuate notice of the Settlement to the Class Members, and as required by
26 law. If the media asks about this case in any way or requests a comment on the Settlement, the Parties
27 agree to respond only with "The matter has been resolved."

28 ///

1 **IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this**
2 **Amended Joint Stipulation of Class Action Settlement:**

3 **IT IS SO STIPULATED.**

4
5 Dated: 11/9/2021

Electronically Signed 2021-11-09 18:38:05 UTC - 198.29.48.105
AssureSign®  b3e9ae08-7ef9-4ef9-a587-a5d801202a2

6 David DeBar
7 Plaintiff

8
9 Dated: _____

10 Johnny Lim
11 Plaintiff

12
13 Dated: _____


14 Optima Tax Relief, LLC
15 Defendant

16 Name: Kristen M. Bemis

17 Title: General Counsel

18 **APPROVED AS TO FORM.**

19 Dated: 11/09/2021

LAWYERS for JUSTICE, PC

20
21 By: _____


22 Edwin Aiwan
23 Attorneys for Plaintiffs and Proposed Class Counsel

24 Dated: November 8, 2021

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

25
26 By: _____


27 Dean A. Rocco
28 Attorneys for Defendant Optima Tax Relief, LLC

1 **IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this**
2 **Amended Joint Stipulation of Class Action Settlement:**

3 **IT IS SO STIPULATED.**

4
5 Dated: _____

6 David DeBar
7 Plaintiff

8
9 Dated: 11/9/2011

Electronically Signed 2021-11-09 19:03:21 UTC - 174.193.137.174
AssureSign® /243d82f-0ff5-4d82-bd2a-ada8b0132d4c3

10 Johnny Lim
11 Plaintiff

12
13 Dated: _____

Kristen M. Bemis

14 Optima Tax Relief, LLC
15 Defendant

16 Name: Kristen M. Bemis

17 Title: General Counsel

18 **APPROVED AS TO FORM.**

19 Dated: _____

LAWYERS for JUSTICE, PC

20
21 By: _____

Edwin Aiwazian
Attorneys for Plaintiffs and Proposed Class Counsel

22
23
24 Dated: November 8, 2021

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

25
26 By: _____

Dean A. Rocco
Attorneys for Defendant Optima Tax Relief, LLC

TITLE	Debar Settlement Agreement
FILE NAME	Optima Tax_Amende...e)_10.28.2021.pdf
DOCUMENT ID	c4f1cc0afd0b281fb0019c06d9772ff2e9b10d82
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



SENT

11 / 05 / 2021

17:12:06 UTC

Sent for signature to Kristen Bemis
(kbemis@optimataxrelief.com) from legal@optimataxrelief.com
IP: 12.231.13.202



VIEWED

11 / 05 / 2021

17:13:28 UTC

Viewed by Kristen Bemis (kbemis@optimataxrelief.com)
IP: 12.231.13.202



SIGNED

11 / 05 / 2021

17:13:58 UTC

Signed by Kristen Bemis (kbemis@optimataxrelief.com)
IP: 12.231.13.202



COMPLETED

11 / 05 / 2021

17:13:58 UTC

The document has been completed.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

David DeBar v. Optima Tax Relief, LLC
Superior Court of California for the County of Orange, Case No. 30-2018-00972771-CU-OE-CXC

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement.

By order of the Superior Court of California for the County of Orange (the "Court" or "Orange County Superior Court") you are notified that: in the case of *David DeBar v. Optima Tax Relief, LLC*, Orange County Superior Court Case No. 30-2018-00972771-CU-OE-CXC (the "Action") the Court granted preliminary approval of a proposed class action settlement on [preliminary approval date], reached between Plaintiffs David DeBar and Johnny Lim ("Plaintiffs") and Defendant Optima Tax Relief, LLC ("Defendant") (Plaintiffs and Defendant are collectively referred to as the "Parties"). A hearing shall be held on [hearing date] ("Final Approval Hearing") to determine whether final approval of the settlement should be granted.

I. IMPORTANT DEFINITIONS

"Class or Class Member" means collectively to the individuals who belong to the Pre-January 2019 Class and Post-January 2019 Class.

"Pre-January 2019 Class" means all current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time between February 7, 2014 and December 31, 2018 in the positions of Case Manager, Case Summary, Client Relations, Closing Team, Collections and Recovery, Compliance, Customer Service, Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales, Opp Servicing, Payments, POA, Quality Assurance, Resolution Support, Retention, Risk Management, Support, Tax Prep and Transcripts. "Pre-January 2019 Class Member" shall mean individuals who belong to the Pre-January 2019 Class.

"Post-January 2019 Class" means all current and former hourly-paid or non-exempt employees who began working for and worked for Defendant in California at any time between January 1, 2019 and December 31, 2019 in the positions of Case Manager, Case Summary, Client Relations, Closing Team, Collections and Recovery, Compliance, Customer Service, Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales, Opp Servicing, Payments, POA, Quality Assurance, Resolution Support, Retention, Risk Management, Support, Tax Prep and Transcripts. "Post-January 2019 Class Member" shall mean individuals who belong to the Post-January 2019 Class.

"Class Period" means the period of February 7, 2014 through December 31, 2019.

"Pre-January 2019 Workweeks" means the number of weeks a Class Member worked for Defendant as a non-exempt or hourly-paid employee in California during the period from February 7, 2014 to December 31, 2018, which will be calculated based on the Class Member's start and end dates of employment during the period from February 7, 2014 to December 31, 2018 as a non-exempt or hourly-paid employee of Defendant in California less any period of extended leave.

"Post-January 2019 Workweeks" means the number of weeks a Class Member worked for Defendant as a non-exempt or hourly-paid employee during the period from January 1, 2019 to December 31, 2019 which will be calculated based on the Class Member's start and end dates of employment during the period from January 1, 2019 to January 31, 2019 as a non-exempt or hourly-paid employee of Defendant in California less any period of extended leave.

II. BACKGROUND OF THE ACTION

The Action was commenced when Plaintiff DeBar filed the Class Action Complaint for Damages on February 7, 2018, in the Orange County Superior Court. On May 7, 2018, Plaintiff DeBar filed the First Amended Class Action Complaint for Damages. On [preliminary approval date], Plaintiff DeBar filed the Second Amended Class Action Complaint for Damages (“Operative Complaint”) adding Plaintiff Lim as a named plaintiff in the Action. Plaintiffs allege that Defendant failed to pay all wages due (including, *inter alia*, minimum wages, overtime wages, and its failure to properly calculate and pay all wages due), failed to provide compliant meal breaks and associated premiums, failed to provide compliant rest breaks and associated premiums, failed to timely pay wages during employment and upon termination of employment and associated waiting-time penalties, failed to provide accurate wage statements, failed to maintain payroll records, failed to reimburse business expenses, and thereby, engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.* Plaintiffs seek, among other things, recovery of unpaid wages and premiums, restitution, statutory penalties, interest, attorneys’ fees, and costs.

Defendant denies all of the allegations in the Action or that it violated any law, and contends that at all times it has complied with the law. Defendant believes its policies, practices, and procedures are fully compliant with all applicable requirements of state and federal law. Defendant believes all employees have been paid all wages owed, have been provided with all meal periods and rest breaks due, and that discharged employees have been fully and timely paid. Therefore, Defendant believes Plaintiffs’ allegations are without merit.

The Parties extensively litigated the Action and eventually participated in multiple mediation sessions with a respected class action mediator. The Parties subsequently reached a settlement. The Parties have since entered into the Amended Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement Agreement”), which was preliminarily approved by the Court on [preliminary approval date]. The Court has preliminarily appointed Plaintiffs David DeBar and Johnny Lim as representatives of the Class (“Class Representatives”), and has preliminarily appointed the following Plaintiffs’ counsel as counsel for the Class (“Class Counsel”):

Lawyers for Justice, PC
Edwin Aiwarzian, Esq.
Arby Aiwarzian, Esq.
Joanna Ghosh, Esq.
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member (or member of the Class), you need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive payment under the Settlement), object to the Settlement, and/or dispute the Covered Workweeks credited to you, if you so choose, as explained more fully in Section III below.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiffs or to Class Members. Plaintiffs and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Monetary Terms of the Settlement

The maximum settlement consideration is One Million Eight Hundred Sixty-Three Thousand Five Hundred Eighty-Two Dollars (\$1,863,582) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members who have not submitted a timely and valid Request for Exclusion (“Settlement Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments, which are subject to approval by the Court: (1) attorneys’ fees in an amount not to exceed \$684,000

and litigation costs and expenses in an amount not to exceed \$45,000 (collectively, “Attorneys’ Fees and Litigation Costs”) to Class Counsel; (2) payments in the amount of up to \$15,000 to Plaintiff DeBar and up to \$7,500 to Plaintiff Lim for their services in the Action (“Enhancement Awards”); and (3) fees and expenses for administration of the settlement, which are currently estimated not to exceed \$20,000 (“Settlement Administration Fees”) to Rust Consulting, Inc. (the “Settlement Administrator”).

Settlement Class Members will be entitled to a share of the Net Settlement Amount (“Settlement Share”) based on the total number of Pre-January 2019 Workweeks and Post-January 2019 Workweeks a Class Member worked for Defendant as a non-exempt or hourly-paid employee in California during the Class Period, which will be calculated based on the Class Member’s start and end dates of employment during the Class Period as a non-exempt or hourly-paid employee of Defendant in California less any period of extended leave (“Covered Workweeks”). “Pre-January 2019 Workweek Value” refers to the value of a Pre-January 2019 Workweek, calculated as eighty-five percent (85%) of the Net Settlement Amount divided by all Pre-January 2019 Workweeks. “Post-January 2019 Workweek Value” refers to the value of a Post-January 2019 Workweek, calculated as fifteen percent (15%) of the Net Settlement Amount divided by all Post-January 2019 Workweeks. Each Class Member’s Settlement Share will equal the total of his or her individual number of Pre-January 2019 Workweeks multiplied by the Pre-January 2019 Workweek Value and his or her individual number of Post-January 2019 Workweeks multiplied by the Post-January 2019 Workweek Value.

Each Settlement Share is allocated fifty percent (50%) as wages (to be reported on an IRS Form W2), twenty-five percent (25%) as interest (to be reported on an IRS Form 1099, if applicable), and twenty-five percent (25%) as penalties and other non-wage damages (to be reported on an IRS Form 1099, if applicable). Settlement Class Members will be issued payment of their respective Settlement Share, subject to reduction for applicable employee’s share of payroll taxes and withholdings with respect to the wages portion of the Settlement Share (the net payment is referred to as “Individual Settlement Payment”).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to.**

B. Your Covered Workweeks

According to Defendant’s records:

You worked for Defendant in California for [REDACTED] Pre-January 2019 Workweeks.

You worked for Defendant in California for [REDACTED] Post-January 2019 Workweeks.

You worked for Defendant in California for a total of [REDACTED] Covered Workweeks.

Defendant’s records are presumed to be accurate. If you wish to dispute the Covered Workweeks, Pre-January 2019 Workweeks, and/or Post-January 2019 Workweeks credited to you, you must submit a written dispute, as described below, to the Settlement Administrator or by completing and submitting the attached Covered Workweeks Dispute Form (both of which are referred to as a “Covered Workweeks Dispute”) to the Settlement Administrator. A Covered Workweeks Dispute must: (a) list your full name, current address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (b) contain the case name and number of the Action (*DeBar v. Optima Tax Relief, LLC*; Case No. 30-2018-00972771-CU-OE-CXC); (c) clearly state the basis for your dispute of the number of Covered Workweeks, Pre-January 2019 Workweeks, and/or Post-January 2019 Workweeks credited to you; (d) attach documentation to support the dispute; and (5) be mailed to the Settlement Administrator no later than [Response Deadline] (based on the postmark) at the address listed in Section IV.B below. Unless you submit documentation to support your dispute, Defendant’s records will be determinative. You are responsible for maintaining a photocopy of all documents sent to the Settlement Administrator and a record of proof of mailing.

C. Your Estimated Settlement Share

As explained above, your Settlement Share is based on the number of Covered Workweeks credited to you.

Your Settlement Share is estimated to be \$ [REDACTED].

Your Settlement Share reflected in this Notice is only an estimate, and your actual Settlement Share may be higher or lower than estimated. The Settlement Share is subject to reduction for employee's share of payroll taxes and withholdings with respect to the wages portion of the Settlement Share, and will only be distributed if the Court grants final approval of the Settlement and after the Settlement goes into effect. The settlement approval process may take multiple months.

D. Release of Claims

If the Court grants final approval of the Settlement, upon the Effective Date, and except as to such rights or claims as may be created by the Settlement, Plaintiffs and each Class Member who has not submitted a valid and timely Request for Exclusion (i.e., Settlement Class Members) each fully release and discharge Defendant, its past or present officers, managers, members, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys (collectively the "Released Parties") from all claims and/or causes of action that were pled or that could have been pled based on the factual allegations in the Operative Complaint, arising at any time during the Class Period, under California state law, including and not limited to the California Labor Code (excluding the Private Attorneys General Act, California Labor Code section 2698, *et seq.*), Industrial Welfare Commission Wage Orders, and California Business & Professions Code section 17200, *et seq.*, including but not limited to, claims for the failure to properly pay minimum wages, failure to properly pay overtime wages, the failure to provide meal periods and pay associated premiums, the failure to provide rest periods and pay associated premiums, the failure to pay waiting-time penalties, the failure to timely pay wages during employment and at termination of employment, the failure to keep and maintain accurate payroll records, the failure to provide accurate itemized wage statements, the failure to reimburse business expenses, unfair business practices, restitution and other equitable relief, liquidated damages, and penalties (collectively the "Released Claims").

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to \$684,000 and reimbursement of reasonable litigation costs and expenses actually incurred with respect to the Action in an amount of up to \$45,000 (collectively, Attorneys' Fees and Costs), subject to approval by the Court. All Attorneys' Fees and Litigation Costs awarded by the Court will be paid from the Gross Settlement Amount subject to approval by the Court. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Awards to Plaintiffs

In consideration for their service in connection with the Action, Plaintiff David DeBar will seek an Enhancement Award in the amount of \$15,000 and Plaintiff Johnny Lim will seek an Enhancement Award in the amount of \$7,500, to be paid from the Gross Settlement Amount, subject to approval by the Court. If awarded, the Enhancement Awards will be paid to Plaintiffs in addition to their Individual Settlement Payments that they are entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator, Rust Consulting, Inc. is estimated not to exceed \$20,000 for the costs of the notice and settlement administration process, including and not limited to the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion and Covered Workweeks Disputes, calculating Settlement Shares and Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to receive money from the Settlement, you do not have to do anything. You will automatically be issued your Individual Settlement Payment, based on your Settlement Share as indicated above in this Notice, unless you decide to exclude yourself from the Settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Claims against the Released Parties as described in Section III.D above in this Notice. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Settlement, you may seek exclusion from the Settlement by submitting a written request to be excluded from the Settlement, as described below, or by completing and submitting the attached Request for Exclusion Form (both of which are referred to as a "Request for Exclusion") to the Settlement Administrator.

A Request for Exclusion must: (a) list your full name, current address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (b) contain the case name and number of the Action (*DeBar v. Optima Tax Relief, LLC*; Case No. 30-2018-00972771-CU-OE-CXC); (c) contain a clear statement indicating that you seek to exclude yourself from the Settlement; and (d) be mailed to the Settlement Administrator no later than **[Response Deadline]**, at the following address:

[Rust Consulting, Inc.]
[Address]

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of Released Claims stated in Section III.D above), and will not have any right to object to, appeal, or comment on the Settlement. Any Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of Released Claims stated in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted a Request for Exclusion.

To object, you must do so by way of a written objection ("Objection"). A valid and timely Objection must: (a) be filed with the Court and a copy of the Objection must be served onto the Settlement Administrator by mail on or before **[Response Deadline]** (based on the file stamp and postmark); (b) contain your full name, current address, current telephone number, last four digits of your Social Security Number or employee ID number, and signature; (c) contain the case name and number of the Action (*DeBar v. Optima Tax Relief, LLC*; Case No. 30-2018-00972771-CU-OE-CXC); (d) clearly state your objection(s) to the Settlement; and (e) contain a statement indicating whether or not you are represented by counsel, identifying any such legal counsel, and indicating whether you intend to appear at the Final Approval Hearing to present your objection. You must file the written objection with the Court at the Clerk of the Orange County Superior Court, Civil Complex Center Orange County Courthouse located at 751 West Santa Ana Blvd., Santa Ana, California 92701, and must also mail a copy of the objection to the Settlement Administrator at the address listed in Section IV.B above **on or before [Response Deadline]**. For information regarding electronic filings with the Court, please visit: <https://www.occourts.org/online-services/efiling/efiling-civil.html>

You do not need to appear in Court at the Final Approval Hearing to have your Objection considered by the Court. If you choose to submit an Objection to the Settlement, you may (but are not required to) enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. If you choose to appear or have your own attorney, you will be solely responsible for your fees and costs in connection with your appearance and/or legal representation.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department CX104 of the Orange County Superior Court, Civil Complex Center Orange County Courthouse, 751 West Santa Ana Blvd., Santa Ana, California 92701 on [date], at [time], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the Attorneys' Fees and Litigation Costs, Enhancement Awards, and Settlement Administration Fees should be awarded.

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

Please visit the Court's website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: <https://ocjustice.occourts.org/>

For information regarding how to schedule yourself to appear remotely at the Final Approval Hearing by telephone, please visit: <https://www.courtcall.com/> (charges and fees may apply)

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should review the detailed Settlement Agreement and other papers which are on file with the Court. You may view the Settlement Agreement and documents filed in the Action free of charge by using the computers located at the Central Justice Center which is located at 700 Civic Center Drive, Santa Ana, California 92701. The documents filed in the Action can also be accessed online at the Orange County Superior Court's website, known as 'Public Case Access System,' at the following web address:

<https://ocjustice.occourts.org/civilwebShoppingNS/Login.do?jsessionid=WqJ9HMgVbg04ZoQp40Ea0sGKcGEkNnyf123MFmrZWfzwM0cYFux!241251178>

After navigating to the Orange County Superior Court's Public Case Access System website and clicking on 'Accept Terms,' enter Case Number '00972771' in the box provided, then enter the year '2018' in the box provided, click on the 'I'm not a robot' box and follow the instructions, and click 'SEARCH.' Thereafter, you should be able to view documents filed in the case which have been imaged by the Court and information that has been made available by the Court, for free or at a minimal charge.

Please visit the Court's website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: <https://ocjustice.occourts.org/>

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**
Debar, et al. v. Optima Tax Relief, LLC
Case No. 30-2018-00972771-CU-OE-CXC

COVERED WORKWEEKS DISPUTE FORM

[Class Member Name]
[Address]
[City, State, Zip Code]
[Telephone Number]

I. INSTRUCTIONS

On [DATE], [YEAR], the Court preliminarily approved a settlement in the matter of *David DeBar, et al. v. Optima Tax Relief, LLC*, Orange County Superior Court, Case Number 30-2018-00972771-CU-OE-CXC.

If want to dispute the number of Covered Workweeks credited to you in your Class Notice, you may fill out this Covered Workweeks Dispute Form and mail it to the Settlement Administrator, or submit a letter as described in your Class Notice, at the address listed below on or before [RESPONSE DEADLINE].

[Settlement Administrator's Mailing Information]

Class Members who believe the number of Covered Workweeks credited to them in their Class Notice is incorrect must fill out the section below and attach any documentation that you have to support your dispute.

II. DISPUTE

Print Name

Last 4 Digits of Social Security Number: ____ ____ ____ ____

Telephone Number: (_____)_____

Basis for Dispute

Dated: ____/____/____

Signature

EXHIBIT C

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**
Debar, et al. v. Optima Tax Relief, LLC
Case No. 30-2018-00972771-CU-OE-CXC

REQUEST FOR EXCLUSION FORM

[Class Member Name]
[Address]
[City, State, Zip Code]
[Telephone Number]

I. INSTRUCTIONS

On [DATE], [YEAR], the Court preliminarily approved a settlement in the matter of *David DeBar, et al. v. Optima Tax Relief, LLC*, Orange County Superior Court, Case Number 30-2018-00972771-CU-OE-CXC.

If you do not want to participate in the Settlement, you may fill out this Request for Exclusion Form and mail it to the Settlement Administrator, or submit a letter as described in your Class Notice, at the address listed below on or before [RESPONSE DEADLINE].

[Settlement Administrator's Mailing Information]

Class Members who fill out and return this form will not be bound by the Settlement, will not release the Released Claims, will not receive a Settlement Share, and will lack standing to object to the Settlement.

II. SIGNATURE

BY MY SIGNATURE BELOW, I wish to be excluded from the Settlement of the case entitled *David DeBar, et al. v. Optima Tax Relief, LLC*, Orange County Superior Court, Case Number 30-2018-00972771-CU-OE-CXC. **I understand that by filling out and returning this form, I will have no right to object to the Settlement nor to receive a Settlement Share under the Settlement.**

Dated: ____/____/____

Signature

Print Name

Last 4 Digits of Social Security Number: ____ ____ ____ ____

Telephone Number: (_____)_____

EXHIBIT D

1 **AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Amended Joint Stipulation of Class Action Settlement (“Settlement,” “Agreement,” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff David DeBar (“Plaintiff
4 DeBar”) and Plaintiff Johnny Lim (“Plaintiff Lim”), individually and on behalf of all others similarly
5 situated, and Defendant Optima Tax Relief, LLC (“Defendant~~2~~”) (collectively, with Plaintiffs, the
6 “Parties”), pursuant to section XIII.N of the Joint Stipulation of Class Action Settlement entered into by
7 the Parties on or around April 9, 2020.

8 The Parties agree to supplant the Joint Stipulation of Class Action Settlement entered into by the
9 Parties on or around April 9, 2020 and Amendment No. 1 to Joint Stipulation of Class Action Settlement
10 entered into by the Parties on or around October 22, 2020 with this Amended Joint Stipulation of Class
11 Action Settlement.

12 NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set
13 forth herein, the Parties agree, subject to the Court’s approval, that this case and the Released Claims
14 shall be settled and compromised as between the Class and Defendant, subject to the terms and
15 conditions set forth herein.

16 **I. DEFINITIONS**

17 A. “Action” refers to the above-captioned putative class action entitled *David DeBar v.*
18 *Optima Tax Relief, LLC*, Orange County Superior Court Case No. 30-2018-00972771.

19 B. “Class Counsel” or “Plaintiffs’ Counsel” ~~refer~~refers to Edwin Aiwazian, Esq., Arby
20 Aiwazian, Esq., and Joanna Ghosh, Esq. of Lawyers *for* Justice, PC.

21 C. “Class” or “Class Member” refers collectively to the individuals who belong to the Pre-
22 January 2019 Class and Post-January 2019 Class as follows:

- 23 a. “Pre-January 2019 Class” refers to all current and former hourly-paid or non-exempt
24 employees who worked for Defendant in California at any time between February 7,
25 2014 and December 31, 2018 in the positions of Case Manager, Case Summary, Client
26 Relations, Closing Team, Collections and Recovery, Compliance, Customer Service,
27 Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales,
28 Opp Servicing, Payments, POA, Quality Assurance, Resolution Support, Retention,

Risk Management, Support, Tax Prep and Transcripts. “Pre-January 2019 Class Member” shall mean individuals who belong to the Pre-January 2019 Class. To the extent members of the Pre-January 2019 Class worked for Defendant during the period January 1, 2019 to December 31, 2019, their Post-January 2019 Workweeks will be factored into their recovery under the Settlement, according to the methodology set forth in Section VIII.B.

b. “Post-January 2019 Class” refers to all current and former hourly-paid or non-exempt employees who began working for and worked for Defendant in California at any time between January 1, 2019 and December 31, 2019 in the positions of Case Manager, Case Summary, Client Relations, Closing Team, Collections and Recovery, Compliance, Customer Service, Documents, Executive Review Board, Investigations, Opp, Opp Payments, Opp Sales, Opp Servicing, Payments, POA, Quality Assurance, Resolution Support, Retention, Risk Management, Support, Tax Prep and Transcripts. “Post-January 2019 Class Member” shall mean individuals who belong to the Post-January 2019 Class.

~~E.D.~~ “Class Data” refers to the compilation of the following information for each Class Member:- last known full name, last known address, last known telephone number, Social Security number and employee ID number, start and end dates of employment as a non-exempt or hourly-paid employee of Defendant in California during the Class Period, Covered Workweeks, and such other information as may be necessary to independently review the Covered Workweeks attributed to each Class Member.

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~~D.E.~~ “Class Notice” refers to the Notice of Class Action Settlement that is to be mailed to the Class Members, substantially in the form attached hereto as “**Exhibit A**,” as ordered by the Court, subject to edits that the Parties may jointly agree upon which are in conformity with the Court’s orders and this Agreement.

~~E.F.~~ “Class Period” for purposes of this Settlement is from and including February 7, 2014

1 through ~~preliminary approval of the Settlement~~ December 31, 2019.

2 ///

3 F.G. “Court” refers to the court having jurisdiction over the Action, at any stage of the
4 Action, presently the Superior Court of the County of Orange.

5 G.H. “Covered Workweek(s)” means the total number of ~~weeks~~ Pre-January 2019
6 Workweeks and Post-January 2019 Workweeks a Class Member worked for Defendant as a non-
7 exempt or hourly-paid employee in California during the Class Period, which will be calculated by
8 Defendant, based on the Class Member’s start and end dates of employment during the Class Period as
9 a non-exempt or hourly-paid employee of Defendant in California less any period of extended leave.

10 H.I. “Defendant” refers to Defendant Optima Tax Relief, LLC.

11 I.J. “Defendant’s Counsel” refers to Dean A. Rocco of Wilson, Elser, Moskowitz, Edelman
12 & Dicker LLP.

13 K. “Dispute Form” refers to the Covered Workweeks Dispute Form that is to be mailed to
14 the Class Members, substantially in the form attached hereto as “Exhibit B,” as ordered by the Court,
15 subject to edits that the Parties may jointly agree upon which are in conformity with the Court’s orders
16 and this Agreement.

17 J.L. “Effective Date” refers to the date upon which the terms of this Settlement Agreement
18 shall become effective, which is the date on which all of the following events have occurred: (i) this
19 Settlement Agreement has been executed by all Parties and their respective counsel; (ii) the Court has
20 preliminarily approved the Settlement; (iii) the ~~Class~~-Notice Packet has been given to the Class,
21 providing them with an opportunity to dispute their Covered Workweeks as stated in their Class
22 Notice, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a Final
23 Approval Hearing and entered the contemplated Final Approval Order and Judgment, certifying the
24 Class and approving this Settlement; and (v) the later of the following events: (1) if there is no
25 objection to the Settlement, or if there is an objection but it is withdrawn, then, the date of the notice
26 of entry of the Final Approval Order and Judgment; (2) if there is an objection to the Settlement that is
27 not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following
28 notice of entry of the Final Approval Order and Judgment; or (3) if there is an objection to the

1 Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the
2 Settlement has been filed within sixty-five (65) calendar days following notice of entry of the Final
3 Approval Order and Judgment, then when any such appeal, writ, or other appellate proceeding
4 opposing the validity of the Settlement has been resolved finally and conclusively with no right to
5 pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement
6 shall not become effective until the Final Approval Order and Judgment is completely final, and there
7 is no further recourse by an appellant or objector who seeks to contest the Settlement.

8 M. “Exclusion Form” refers to the Request for Exclusion Form that is to be mailed to the
9 Class Members, substantially in the form attached hereto as “Exhibit C,” as ordered by the Court,
10 subject to edits that the Parties may jointly agree upon which are in conformity with the Court’s orders
11 and this Agreement.

12 K.N. “Final Approval Order and Judgment” refers to the order of the Court granting final
13 approval of this Settlement and entering a judgment approving this Settlement on substantially the
14 terms provided herein or as the same may be modified by subsequent agreement of the Parties.

15 L.O. “Gross Settlement Amount” is the maximum amount which Defendant is obligated to
16 pay under this Agreement, which is One Million Eight Hundred Sixty-Three Thousand Five Hundred
17 Eighty-Two Dollars (\$1,~~800,000~~863,582.00), subject to increase as provided in Section V(A)(2). The
18 Gross Settlement Amount is exclusive of Defendant’s employer-share of payroll taxes in connection
19 with the wages portion of Settlement Shares (“Employer Taxes”), payment of which it is responsible
20 for separately and in addition to the Gross Settlement Amount.

21 M.P. “Plaintiffs” refers to David DeBar and Johnny Lim.

22 Q. “Pre-January 2019 Workweeks” means the number of weeks a Class Member worked
23 for Defendant as a non-exempt or hourly-paid employee in California during the period from February
24 7, 2014 to December 31, 2018, which will be calculated by Defendant, based on the Class Member’s
25 start and end dates of employment during the period from February 7, 2014 to December 31, 2018 as a
26 non-exempt or hourly-paid employee of Defendant in California less any period of extended leave.

27 R. “Pre-January 2019 Workweek Value” refers to the value of a Pre-January 2019
28 Workweek, calculated as eighty-five percent (85%) of the Net Settlement Amount divided by all Pre-

1 January 2019 Workweeks.

2 ///

3 S. “Post-January 2019 Workweeks” means the number of weeks a Class Member worked
4 for Defendant as a non-exempt or hourly-paid employee during the period from January 1, 2019 to
5 December 31, 2019 which will be calculated by Defendant, based on the Class Member’s start and end
6 dates of employment during the period from January 1, 2019 to December 31, 2019 as a non-exempt
7 or hourly-paid employee of Defendant in California less any period of extended leave.

8 T. “Post-January 2019 Workweek Value” refers to the value of a Post-January 2019
9 Workweek, calculated as fifteen percent (15%) of the Net Settlement Amount divided by all Post-
10 January 2019 Workweeks.

11 N.U. “Net Settlement Amount” refers to the Gross Settlement Amount, less (1) Attorneys’
12 Fees and Litigation Costs to Class Counsel, (2) Enhancement Awards to Plaintiffs as approved by the
13 Court, and (3) Settlement Administration Fees as approved by the Court, as defined in Section V.B
14 herein.

15 V. “Notice Packet” refers to the Class Notice, Dispute Form, and Exclusion Form,
16 attached hereto as **Exhibit A**, **Exhibit B**, and **Exhibit C**.

17 Ø.W. “Parties” collectively refers to Plaintiffs and Defendant, who are also individually
18 referred to as “Party.”

19 P.X. “Preliminary Approval” refers to the date on which the Court grants preliminary
20 approval of the Settlement.

21 Q.Y. “Preliminary Approval Order” refers to the order of the Court granting preliminary
22 approval of the Settlement set forth herein.

23 ##

24 R.Z. “Response Deadline” means the date sixty (60) calendar days after the Settlement
25 Administrator mails the ~~Class~~-Notice Packet to Class Members and the last date on which Class
26 Members may submit a Request for Exclusion, Covered Workweeks Dispute, and/or Objection to the
27 Settlement. If a second mailing to any Class Member is required as a result of the initial mailing
28 being returned as undeliverable prior to or on the original Response Deadline, the Response Deadline

for those Class Members only, who shall be sent a second mailing, will be extended for fifteen (15) calendar days (i.e., such Class Members shall have seventy-five (75) calendar days from the first mailing to submit a Request for Exclusion, Covered Workweeks Dispute, or an Objection to the Settlement) irrespective of when the first mailing was returned as undeliverable.

S.AA. “Settlement Administrator” refers to Rust Consulting the third-party administrator that the Parties have mutually selected to handle the administration of the Settlement set forth in this Agreement.

T.BB. “Settlement Administration Fees” refers to the fees, costs, and expenses paid to the Settlement Administrator for undertaking the administration of the Settlement Agreement.

U.CC. “Settlement Class” or “Settlement Class Members” refers to each Class Member who has not submitted a valid and timely Request for Exclusion.

V.DD. “Settlement Share” refers to ~~a pro-rata~~ the individual share of the Net Settlement Amount, calculated in accordance with the methodology provided herein, that a Class Member may be eligible to receive in accordance with the terms set forth herein.

II. RELEVANT PROCEDURAL HISTORY

A. On February 7, 2018, Plaintiff DeBar commenced the Action against Defendant, in the Superior Court of California for the County of Orange, by filing the Class Action Complaint for Damages. On May 7, 2018, Plaintiff DeBar filed the First Amended Class Action Complaint for Damages.

B. Plaintiff will file the Second Amended Class Action Complaint for Damages (“Operative Complaint”) in the Action, adding Plaintiff Lim as a named plaintiff in the Action. Plaintiffs seek to represent a class of current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time from February 7, 2014 to final judgment.

C. The Operative Complaint alleges that Defendant has failed to properly pay minimum and overtime wages in conformity with California Labor Code sections 510, 1194, 1197, 1197.1, and 1198, failed to provide compliant meal breaks and associated premiums in conformity with California Labor Code sections 226.7 and 512(a), failed to provide compliant rest breaks and associated premiums in conformity with California Labor Code section 226.7, failed to timely pay final wages and associated

1 waiting-time penalties in conformity with California Labor Code sections 201 and 202, failed to timely
2 pay wages during employment in conformity California Labor Code section 204, failed to provide
3 accurate wage statements in conformity California Labor Code section 226(a), failed to maintain payroll
4 records in conformity California Labor Code section 1174(d), and failed to reimburse business expenses
5 in conformity California Labor Code sections 2800 and 2802, and thereby engaged in unfair business
6 practices in violation of California Business & Professions Code section 17200, *et seq.*

7 D. The Action was extensively litigated and the Parties engaged in multiple mediation
8 sessions with mediator Jeffrey Krivis, Esq. Following the mediation sessions, with the assistance of the
9 mediator, the Parties reached the agreement reflected in this Settlement, subject to Court approval.

10 **III. INADMISSIBILITY OF SETTLEMENT AGREEMENT/DENIAL OF LIABILITY**

11 A. This Settlement Agreement is the result of a good-faith compromise of disputed claims,
12 and neither it nor any statement or conduct in furtherance of the Settlement shall be offered or
13 construed to be an admission or concession of any kind by any Party. In particular, but without
14 limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as
15 an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever by Defendant,
16 who expressly denies any liability, wrongdoing, impropriety, responsibility, or fault whatsoever. In
17 addition, and also without limiting the generality of the foregoing, nothing about this Settlement shall
18 be offered or construed as an admission or evidence of the propriety or feasibility of certifying a class
19 in the Action or any other action for adversarial, rather than settlement purposes. The Parties further
20 agree that if, for any reason, the Settlement is not approved, the certification will have no force or
21 effect and will be immediately revoked.

22 ##

23 ##

24 B. Defendant further denies that, for any purpose other than settling this lawsuit, the action
25 is appropriate for class or representative treatment. With respect to Plaintiffs' claims, Defendant
26 contends, among other things, that Plaintiffs and the Class Members have been paid proper wages,
27 have been provided all required meal and rest periods and associated premium payments, have been
28 paid timely wages and associated waiting-time penalties, have been provided with accurate itemized

1 wage statements, and have been reimbursed for their business expenses or are not due any
2 reimbursements. Defendant also contends, among other things, that it maintained accurate payroll
3 records and has complied at all times with the California Labor Code and applicable Wage Orders of
4 the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that
5 it has complied at all times with the California Business & Professions Code, the Labor Code, and all
6 other directly applicable laws and/or regulations.

7 C. Class Counsel have conducted a thorough investigation into the facts of this class action
8 case, including an extensive review of relevant documents, and has diligently pursued an investigation
9 of the claims of the Class against Defendant. Based on its own independent investigation and
10 evaluation, Class Counsel are of the opinion that the Settlement with Defendant for the consideration
11 and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the
12 best interest of the Class in light of all known facts and circumstances, including the risk of significant
13 delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and
14 numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the
15 Settlement is fair and in the best interest of the Class.

16 **IV. CLASS CERTIFICATION**

17 A. Solely for purposes of settling this case, the Parties and their respective counsel
18 stipulate that the requisites for class certification with respect to the Class Members are met, and that
19 the Class should be certified.

20 B. The Parties stipulate that certification for settlement purposes under the lenient standard
21 applied to settlements is in no way an admission that class certification is proper under the more
22 stringent standard applied for litigation purposes, and that evidence of this limited stipulation for
23 settlement purposes will not be deemed admissible in this or any other proceeding. More specifically,
24 the Parties stipulate that, solely for settlement purposes:

25 1. The Class is ascertainable and so numerous as to make it impracticable to join
26 all Class Members;

27 2. With respect to the Class, common questions of law and fact predominate over
28 questions affecting any individual member in the Class, including, but not limited to: whether

Defendant paid proper wages to the Class; whether Defendant provided compliant meal periods and associated premium pay to the Class; whether Defendant provided compliant rest periods and associated premium pay to the Class; whether Defendant timely paid compensation and associated waiting-time penalties; whether Defendant provided accurate itemized wage statements to the Class; whether Defendant properly reimbursed the Class for their business expenses; whether Defendant maintained accurate payroll records with respect to the Class; whether Defendant engaged in unlawful or unfair business practices affecting the Class in violation of the California Business & Professions Code; and whether Plaintiffs and the Class are entitled to injunctive and/or declaratory relief;

3. Plaintiffs' claims are typical of the claims of the Class Members;

4. Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Class; and,

5. A class action is superior to other available means for the fair and efficient adjudication of the controversy, as the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

V. SETTLEMENT AMOUNT

A. Gross Settlement Amount:

1. In consideration for the resolution and release of claims provided for by this Settlement, Defendant shall pay the amount of One Million Eight Hundred Sixty-Three Thousand Five Hundred Eighty-Two Dollars (\$1,~~800,000~~863,582.00), subject to increase as provided in Section V(A)(2) below ("Gross Settlement Amount"), on a non-reversionary basis, which includes the Net Settlement Amount (to be distributed to Settlement Class Members on a *pro rata* basis, according to a specified formula based on Covered Workweeks), all Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Fees to the Settlement Administrator. Under no circumstances will Defendant's total obligation under this Settlement exceed the Gross Settlement Amount, except that Defendant shall be responsible for the Employer Taxes separately and in addition to the Gross Settlement Amount.

2. The Gross Settlement Amount specifically contemplates the number of

~~Covered~~ Pre-January 2019 Workweeks for the Pre-January 2019 Class for the period February 7, 2014 to ~~July 3, 2019–December 31, 2018~~ were approximately ~~47,000–45,046~~ and the number of Post-January 2019 Workweeks for the Pre-January 2019 Class and Post-January 2019 Class for the period January 1, 2019 to December 31, 2019 were approximately 14,996, for a total of 60,042 Covered Workweeks during the Class Period. If the number of Covered Workweeks for ~~this period–the Class Period~~ are determined to be more than ~~51,700~~ 66,047 (i.e., more than ten percent (10%) higher), the Gross Settlement Amount will be increased on a *pro rata* basis for each Covered Workweek above ~~51,700~~ 66,047 Covered Workweeks.

B. **Net Settlement Amount:** The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount the following sums, as approved by the Court: (1) attorneys’ fees in an amount not to exceed ~~38% of the Gross Settlement Amount (which is \$684,000 if the Gross Settlement Amount is \$1,800,000.00)~~ \$684,000 and reimbursement of litigation costs and expenses in an amount not to exceed \$45,000 (collectively, “Attorneys’ Fees and Litigation Costs”) to Class Counsel; (2) enhancement awards in the amount not to exceed \$15,000.00 to Plaintiff DeBar and the amount not to exceed \$7,500 to Plaintiff Lim (“Enhancement Awards”), which will be paid in addition to whatever payment they are otherwise entitled to as Settlement Class Members; and (3) fees and expenses of the Settlement Administrator in an amount that is estimated not to exceed \$20,000 (“Settlement Administration Fees”).

C. **Settlement Shares:** The Settlement Share for each Class Member will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth herein.

D. **Settlement Administration:** The Parties have mutually agreed to engage Rust Consulting to serve as Settlement Administrator, subject to approval by the Court. The Settlement Administrator’s fees, costs, and expenses for undertaking the administration of the Settlement (i.e., Settlement Administration Fees) are estimated not to exceed Twenty Thousand Dollars (\$20,000). All Settlement Administration Fees will be paid from the Gross Settlement Amount.

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E. **Notice to Class Members:**

1 1. Each Class Member will be provided with pre-printed information, in
2 substantially the same form as the Notice of Class Action Settlement attached hereto as **Exhibit A**
3 based on Defendant's records. The Class Notice shall state, among other things, the Class Member's
4 Covered Workweeks and his or her estimated individual Settlement Share. The pre-printed
5 information based on Defendant's records shall be presumed to be correct. The Class Notice shall be
6 sent by the Settlement Administrator to the Class Members by first class mail.

7 2. Within ten (10) calendar days from the date of preliminary approval of this
8 Settlement by the Court, Defendant shall provide to the Settlement Administrator the Class Data. This
9 Class Data shall be based on Defendant's payroll and other business records and shall be provided in a
10 format reasonably acceptable to the Settlement Administrator. Defendant agrees to consult with the
11 Settlement Administrator prior to the production date of the Class Data, to ensure that the format will
12 be reasonably acceptable to the Settlement Administrator.

13 3. The Settlement Administrator will run a check of the Class Members' addresses,
14 as reflected in the Class Data list provided by Defendant, against those on file with the U.S. Postal
15 Service's National Change of Address List; this check will be performed only once per Class Member
16 by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court
17 order, the Settlement Administrator will keep the Class Data List and any database prepared based
18 thereon confidential and use them only for the purposes described herein.

19 4. Within fifteen (15) calendar days after the Class Data is provided to the
20 Settlement Administrator, the Settlement Administrator will mail the ~~Class-Notice~~ Packet to the Class
21 Members by first class United States mail.

22 5. ~~Class-Notices~~ Notice Packets returned to the Settlement Administrator as non-
23 deliverable before the Response Deadline (based on the postmark) shall be resent to the forwarding
24 address, if any, on the returned envelope within two business days of receipt. A returned ~~Class-Notice~~
25 Packet will be forwarded only once per Class Member by the Settlement Administrator. If there is no
26 forwarding address, the Settlement Administrator will do a skip-trace search for a new address using
27 the Class Member's Social Security number, and the return ~~Class-Notice~~ Packet will be resent to any
28 new address that is located by way of skip-trace, if any within three business days of receipt; this

search and re-mailing will be performed only once per Class Member by the Settlement Administrator.

6. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligation to provide the ~~Class~~ Notice Packet to the affected Class Member. The affected Class Member shall remain a member of the Class and shall be bound by all the terms of the Settlement and the Court's order granting final approval of the Settlement and judgment based thereon.

7. Class Counsel shall provide to the Court, at least five (5) calendar days prior to the Final Approval Hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the ~~Class~~-Notice Packet to the Class Members.

F. **Resolution of Covered Workweeks Disputes:** A Class Member may dispute the pre-printed information in the Class Notice as to his or her Covered Workweeks by submitting a Dispute Form or written dispute to the Settlement Administrator ("Covered Workweeks ~~Disputes~~Dispute"). A valid and timely Covered Workweeks ~~Disputes~~Dispute must: (1) list the Class Member's full name, current address, current telephone number, last four digits of his or her Social Security number or employee ID number, and signature; (2) contain the case name and number of the Action; (3) clearly state the basis for his or her dispute of the number of Covered Workweeks, Pre-January 2019 Workweeks, and/or Post-January 2019 Workweeks credited to him or her; (4) attach any documentation that he or she has to support the dispute; and (5) be mailed to the Settlement Administrator no later than the applicable Response Deadline (based on the postmark). Unless a disputing Class Member submits documentary evidence in support of his or her Covered Workweeks Dispute, the records of the Defendant will be determinative. If the Parties' counsel cannot resolve the Covered Workweeks Dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records and any information or documents submitted by the Class Member and issue a non-appealable decision regarding the Covered Workweeks Dispute. No Covered Workweeks Disputes will be honored if they are postmarked after the Response Deadline, unless the Parties mutually agree to accept the untimely Covered Workweeks Dispute. Each Class Member is responsible to maintain a photocopy of all documents sent to the

1 Settlement Administrator and a record of proof of mailing.

2 G. **Right of Class Member to Request Exclusion from the Settlement:** Any Class
3 Member may request to be excluded from the Settlement by mailing ~~a~~an Exclusion Form or written
4 request ~~(“both of which are referred to as a~~ “Request for Exclusion”) on or before the Response
5 Deadline (based on postmark) to the Settlement Administrator. A valid and timely Request for
6 Exclusion must: (1) list the Class Member’s full name, current address, current telephone number, last
7 four digits of his or her Social Security number or employee ID number, and signature; (2) contain the
8 case name and number of the Action; (3) clearly state that he or she seeks exclusion from the
9 Settlement; and (4) be mailed to the Settlement Administrator no later than the applicable Response
10 Deadline. Any Class Member who timely submits a Request for Exclusion in compliance with these
11 requirements shall not have any right under this Settlement, shall not have standing to object to the
12 Settlement; shall not be entitled to receive any Settlement Share under this Settlement, and shall not
13 be bound by this Settlement or the Court’s order granting final approval of the Settlement and
14 judgment based thereon.

15 H. **Right of Class Member to Object to the Settlement:** Any Class Member may object
16 to the Settlement by submitting a written objection (“Objection”), as long as he or she has not
17 submitted a valid and timely Request for Exclusion. A valid and timely Objection must: (1) be filed
18 with the Court and serve a copy of the Objection onto to the Settlement Administrator by mail on or
19 before the Response Deadline (based on the file stamp and postmark); (2) the Class Member’s full
20 name, current address, current telephone number, last four digits of his or her Social Security number
21 or employee ID number, and signature; (3) contain the case name and number of the Action; (4)
22 clearly state his or her objection(s) to the Settlement; and (5) contain a statement indicating whether or
23 not the Class Member is represented by counsel and identifying any such legal counsel, and indicating
24 whether the Class Member intends to appear at the Final Approval Hearing to present his or her
25 objection(s). Class Members who fail to file and serve a timely Objections in the manner specified
26 above, and as set forth in the Class Notice, shall be deemed to have waived all objections and shall be
27 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, unless
28 otherwise ordered by the Court. Class Counsel and Defendant’s Counsel may, at least five (5)

1 calendar days (or some other number of days as the Court shall specify) before the Final Approval
2 Hearing, file a response to any Objections submitted to the Court.

3 **VI. SETTLEMENT ADMINISTRATOR'S DUTIES AND FEES**

4 A. The Settlement Administrator will calculate the number of Covered Workweeks to
5 attribute to each Class Member by Defendant and will calculate the amounts due to each Class Member
6 in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative
7 form, the substance of its findings to the Parties. The Parties will cooperate to provide to the Settlement
8 Administrator relevant records in order to perform its duties.

9 ~~///~~

10 ~~///~~

11 B. In accordance with the terms of this Settlement, and upon receipt of funds from
12 Defendant, the Settlement Administrator will issue and send out the Individual Settlement Payment
13 checks to the Settlement Class Members. All disputes relating to the Settlement Administrator's
14 performance of its duties shall be referred to the Court, if necessary, which will have continuing
15 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
16 contemplated by this Settlement have been fully carried out.

17 **VII. FUNDING AND DISTRIBUTION OF SETTLEMENT**

18 A. Within thirty (30) business days of the Effective Date, Defendant shall fund the Gross
19 Settlement Amount plus an amount sufficient to cover Employer Taxes, into a settlement account to be
20 established by the Settlement Administrator.

21 B. Within ten (10) business days after Defendant transmits the Gross Settlement Amount to
22 the settlement account established by the Settlement Administrator, the Settlement Administrator shall
23 distribute the Individual Settlement Payments to Settlement Class Members, Attorneys' Fees and
24 Litigation Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration
25 Fees to itself.

26 ~~C. With respect to the Attorneys' Fees and Litigation Costs to Class Counsel, Settlement~~
27 ~~Administrator may, at the request of Lawyers for Justice, PC, purchase annuities to utilize United States~~
28 ~~Treasuries and bonds or other attorney fee deferral vehicles, in connection with the Attorneys' Fees and~~

Costs:

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VIII. INDIVIDUAL SETTLEMENT PAYMENTS TO SETTLEMENT CLASS MEMBERS

A. Each Class Member who does not submit a timely and valid Request for Exclusion (i.e., Settlement Class Member) will be entitled to a ~~pro-rata~~ share of the Net Settlement Amount (i.e., Settlement Share), as calculated by the Settlement Administrator.

B. The Settlement Administrator will determine the Settlement Share of each Class Member, using the Class Data (as independently reviewed by the Settlement Administrator) according to the following methodology: each Class Member's Settlement Share will equal the total of his or her individual number of Pre-January 2019 Workweeks multiplied by the Pre-January 2019 Workweek Value and his or her individual number of Post-January 2019 Workweeks multiplied by the Post-January 2019 Workweek Value.

~~1. The number of Covered Workweeks worked by all Settlement Class Members will be totaled ("Total Covered Workweeks");~~

~~2. Each Settlement Class Member's Covered Workweeks will be divided by the Total Covered Workweeks to yield his or her "Individual Percentage Allocation"; and,~~

~~3. The Settlement Administrator will multiply each Settlement Class Member's Individual Percentage Allocation by the Net Settlement Amount to yield his or her Settlement Share.~~

C. The Parties have agreed that all Settlement Shares will be allocated as follows: fifty percent (50%) as wages, twenty-five percent (25%) as interest and the remaining twenty-five percent (25%) as penalties and other non-wage damages. The wages portion of each Settlement Share will be reported on an IRS Form W-2 and the interest and penalties portions will be reported on an IRS Form 1099. Settlement Class Members are solely responsible to pay appropriate taxes due on any amount paid to them under the Settlement. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Settlement Class Member with respect to such payments.

1 D. Settlement Class Members will be paid their respective Settlement Share, subject to
2 reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion
3 of his or her Settlement Share (the net payment is their "Individual Settlement Payment"). Individual
4 Settlement Payments shall be distributed by the Settlement Administrator, by way of check that is
5 mailed to the Settlement Class Members at the last known address that the Settlement Administrator has
6 on file.

7 ##

8 ##

9 E. All payments made to Plaintiffs and Settlement Class Members under this Settlement,
10 shall be deemed to be paid to such Settlement Class Member solely in the year in which such payments
11 actually are received by Plaintiffs and Settlement Class Members. It is expressly understood and agreed
12 that the receipt of payment under this Settlement will not entitle Plaintiffs or any Settlement Class
13 Member to additional compensation or benefits under any company bonus, contest, or other
14 compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will
15 it entitle Plaintiffs or any Settlement Class Member to any increased retirement, 401(k) benefits,
16 matching benefits, or deferred compensation benefits. It is the intent that the payments provided for in
17 this Settlement are the sole payments to be made by Defendant to Plaintiffs and Settlement Class
18 Members, and that Plaintiffs and Settlement Class Members are not entitled to any new or additional
19 compensation or benefits as a result of having received the payments under the Settlement
20 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
21 might have been in effect during the period covered by this Settlement).

22 F. All payees under this Settlement Agreement remain responsible for payment of their
23 respective income taxes (if any).

24 G. Individual Settlement Payment checks shall remain valid and negotiable for one hundred
25 and eighty (180) calendar days from the date of their issuance, and if not cashed, deposited, or otherwise
26 negotiated within the 180-day deadline, shall be cancelled, however, the funds associated with such
27 cancelled ~~check will be distributed in accordance with Code of Civil Procedure section 384 to Legal Aid~~
28 ~~at Work, a non-profit organization which, among other things, operates Workers' Rights Clinics at sites~~

~~across California checks will be transmitted to the State Controller's Unclaimed Property Fund in the name of the Settlement Class Members whose checks are cancelled.~~

H. Upon completion of its calculation of Settlement Shares and Individual Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amount of all payments to be made to each Settlement Class Member. Proof of payment will be provided to Class Counsel and Defendant's Counsel (without disclosing or identifying information of the Settlement Class Members), and filed with the Court as ordered by the Court.

IX. ATTORNEYS' FEES AND LITIGATION COSTS/EXPENSES

In consideration for resolving this matter and in exchange for the release of all claims by the Class Members, and subject to approval by the Court, Defendant will not object to Class Counsel's application for attorneys' fees in an amount not to exceed ~~thirty-eight percent (38%) of the Gross Settlement Amount (which is \$684,000 if the Gross Settlement Amount is \$1,800,000)~~ \$684,000 and reasonable litigation costs and expenses actually incurred with respect to the Action in an amount not to exceed Forty-Five Thousand Dollars (\$45,000) (i.e., Attorneys' Fees and Litigation Costs). The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in connection with obtaining the approval by the Court of this Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court awards a lesser amount(s) for Attorneys' Fees and Litigation Costs, the difference between the lesser amount(s) and the maximum amount set forth above shall be part of the Net Settlement Amount, and shall not affect the total Gross Settlement Amount to be paid by Defendant. The Settlement Administrator will issue an IRS Form 1099 to Class Counsel for the payment of Attorneys' Fees and Costs.

~~X. ENHANCEMENT AWARDS FOR CLASS REPRESENTATIVES~~

X. ENHANCEMENT AWARDS FOR CLASS REPRESENTATIVES

Subject to approval by the Court, Defendant will not object to Plaintiffs' application for a payment of up to Fifteen Thousand Dollars (\$15,000.00) for Plaintiff DeBar and a payment of up to Seven Thousand Five Hundred Dollars (\$7,500) for Plaintiff Lim, for their service as the Class Representatives ("Enhancement Awards"). It is understood that these Enhancement Awards are in

1 addition to the Settlement Share to which Plaintiffs are entitled to as Settlement Class Members. The
2 Settlement Administrator will issue an IRS Form 1099 to Plaintiffs for the Enhancement Awards.
3 Plaintiffs will be individually responsible for correctly characterizing the Enhancement Awards on their
4 individual personal income tax returns for tax purposes and for paying any taxes on the amount
5 received. Should the Court approve Enhancement Awards to Plaintiffs in amounts that are less than the
6 amounts set forth above, the difference between the lesser amounts that are approved by the Court and
7 the Enhancement Award amounts that are set forth above shall be a part of the Net Settlement Amount.

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11 **XI. RELEASE OF CLAIMS**

12 A. **Release of Claims by the Settlement Class Members:** Upon the Effective Date, and
13 except as to such rights or claims as may be created by this Settlement, Plaintiffs and each Class
14 Member who has not submitted a valid and timely Request for Exclusion (i.e. Settlement Class
15 Members) each fully release and discharge Defendant, its past or present officers, managers, members,
16 directors, shareholders, employees, agents, principals, ~~heirs,~~ representatives, accountants, auditors,
17 consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents,
18 and attorneys (collectively the “Released Parties”) from all claims and/or causes of action that were
19 pled or that could have been pled based on the factual allegations in the Operative Complaint, arising
20 at any time during the Class Period, under California state law, including and not limited to the
21 California Labor Code (excluding the Private Attorneys General Act, California Labor Code section
22 2698, *et seq.*), Industrial Welfare Commission Wage Orders, and California Business & Professions
23 Code section 17200, *et seq.*, including but not limited to, claims for the failure to properly pay
24 minimum wages, failure to properly pay overtime wages, the failure to provide meal periods and pay
25 associated premiums, the failure to provide rest periods and pay associated premiums, the failure to
26 pay waiting-time penalties, the failure to timely pay wages during employment and at termination of
27 employment, the failure to keep and maintain accurate payroll records, the failure to provide accurate
28 itemized wage statements, the failure to reimburse business expenses, unfair business practices,

1 restitution and other equitable relief, ~~conversion~~, liquidated damages, ~~punitive damages~~, and penalties
2 (collectively the “Released Claims”).

3 **B. Release of Claims by the Class Representatives:**

4 1. Class Representatives agree that, in exchange for the consideration set forth in
5 this Settlement Agreement, and upon the Effective Date, each of them shall and hereby does fully,
6 finally, and forever compromise, release, resolve, relinquish, discharge, and settle, on behalf of
7 themselves and each of their heirs, representative, successors, assigns, and attorneys, any and all
8 claims of any nature whatsoever, each of them has or may have against the Released Parties, based on
9 their employment with Defendant, for any act occurring on or before the date of final approval of the
10 Settlement. Class Representatives shall not institute any action or cause of action (in law, in equity, or
11 administratively), suit, debt, lien, or claim, known or unknown, fixed or contingent, for the claims
12 described in Section XI, in state or federal court, or with any state, federal, or local government
13 agency, except the EEOC or DFEH, or with any administrative or advisory body.

14 2. Class Representatives may hereafter discover facts in addition to or different
15 from those which they now knows or believes to be true, but they nevertheless stipulate and agree that,
16 upon the Effective Date, each of them shall and hereby do fully, finally, and forever settle and release
17 any and all of their individual claims whether known or unknown, suspected or unsuspected,
18 contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have
19 existed, upon any theory of law or equity and without regard to the subsequent discovery or existence
20 of such different or additional facts. With respect to the release of their individual claims, as set forth
21 in this section, Class Representatives specifically acknowledge that they are each aware of and
22 familiar with the provisions of California Civil Code section 1542, which provides as follows:

23 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
24 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
25 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
26 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

27 Class Representatives, being aware of California Civil Code section 1542, hereby expressly waive and
28 relinquish all rights and benefits that they may have under the section as well as any other statute or

common law principle of a similar effect, with respect to the release of his individual claims.

XII. APPROVAL OF THE SETTLEMENT

C. **Seeking Preliminary Approval:** This Settlement Agreement shall be submitted to the Court in support of Plaintiffs' motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. In conjunction with the motion, Plaintiffs will submit a proposed order to the Court, in a form agreed upon by the Parties, providing for the following:

1. Scheduling of a hearing ("Final Approval Hearing") on the question of whether the Settlement should be finally approved as fair, reasonable, and adequate as to the members of the Class, and whether to award payment of Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Awards to Plaintiffs, and Settlement Administration Fees to the Settlement Administrator;
2. Conditional certification of the Class for settlement purposes only;
3. Preliminary appointment of Plaintiffs as representatives of the Class and Plaintiffs' Counsel as counsel for the Class;
4. Approval as to form and content the proposed Class Notice;
5. Directing the mailing of the Class Notice; and
6. Preliminary approval of the Settlement subject only to the Objections of Settlement Class Members and final review by the Court.

D. **Seeking Final Approval of the Settlement:** Class Counsel shall file a motion for final approval of the Settlement, and in conjunction with the motion, Class Counsel will submit a proposed order granting final approval of the Settlement and judgment based thereon, in a form that is to be agreed upon by the Parties, providing for the following:

1. Making final the conditional certification of the Class for settlement purposes only;
2. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
3. Approval of Class Counsel's application for an award of Attorneys' Fees and Litigation Costs;
4. Approval of the Enhancement Awards to Plaintiffs; and

5. Entry of judgment in the Action with continuing jurisdiction of the Court in conformity with California Rules of Court Rule 3.769.

XIII. MISCELLANEOUS

A. **Entire Agreement:** This Settlement Agreement and its associated Exhibit set forth the entire agreement of the Parties with respect to their subject matter and supersede any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise, or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement have been made.

B. **No Additional Contribution by Defendant:** Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount and Employer Taxes.

C. **Interim Stay of Proceedings:** Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the Settlement itself.

D. **Termination/Nullification of the Settlement:** This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the amount awarded for Attorneys' Fees and Litigation Costs to Class Counsel and/or Enhancement Awards to Plaintiffs; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

1. If ten percent (10%) or more of the Class Members submit a timely and valid Request for Exclusion, then Defendant in its sole discretion may, but is not obligated to, terminate, nullify, and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel

1 with the information necessary to effectuate this provision on a regular basis, but no less frequently
2 than on a monthly basis. To terminate this Settlement under this section, Defendant's Counsel must
3 give Class Counsel written notice no later than seven (7) business days after being provided with a
4 final count of opt-outs by the Settlement Administrator. If Defendant exercises this option, Defendant
5 shall pay the Settlement Administrator's fees incurred as of that date.

6 ///

7 2. In the event this Settlement is nullified or terminated as provided above: (i) this
8 Settlement shall be considered null and void *ab initio*, (ii) neither this Settlement nor any of the related
9 negotiations or proceedings shall have any force or effect and no party shall be bound by any of its
10 terms, (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the
11 Settlement had been neither entered into nor filed with the Court; and (iv) this Settlement shall not be
12 referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the
13 Settlement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152,
14 and any other analogous rules of evidence that are applicable.

15 E. **Mutual Cooperation:** The Parties agree to fully cooperate with each other to
16 accomplish the terms of this Settlement including, but not limited to, execution of such documents and
17 taking such other action as reasonably may be necessary to implement the terms of this Settlement.
18 The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this
19 Settlement and any other effort that may become necessary by order of the Court, or otherwise, to
20 effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this
21 Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's
22 Counsel, take all necessary steps to secure the Court's preliminary and final approval of this
23 Settlement.

24 F. **No Prior Assignments:** The Parties and their respective counsel represent, covenant,
25 and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
26 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
27 action, cause of action, or rights herein released and discharged except as set forth herein.

28 G. **Binding on Assigns:** This Settlement shall be binding upon the Parties hereto and their

1 respective heirs, trustees, executors, administrators, successors, and assigns.

2 H. **No Admissions With Respect to Liability:** Nothing contained herein, nor the
3 consummation of this Settlement, is to be construed or deemed an admission with respect to liability,
4 culpability, negligence, or wrongdoing on the part of Defendant or Plaintiff. The Parties have entered
5 into this Settlement solely with the intention to avoid further disputes and litigation with the attendant
6 inconvenience and expenses.

7 I. **State Law:** All terms of this Settlement Agreement and the exhibits hereto shall be
8 governed by and interpreted according to the laws of the State of California.

9 J. **Continuing Jurisdiction:** Pursuant to California Rules of Court rule 3.769(h), the
10 Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of
11 the terms of this Settlement Agreement and all orders and judgments entered in connection therewith,
12 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
13 interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement and
14 all orders and judgments entered in connection therewith.

15 K. **Notice to Counsel:** Unless otherwise specifically provided herein, all notices,
16 demands, or other communications given hereunder shall be in writing and shall be both emailed and
17 mailed by United States registered or certified mail, return receipt requested, addressed as follows:

18 **Class Counsel:**

19 Edwin Aiwarzian
20 Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
21 Glendale, California 91203

Counsel for Defendant:

Dean A. Rocco
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
555 South Flower Street, Suite 2900
Los Angeles, California 90071

22 L. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement
23 are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement
24 shall not be construed in favor of or against any Party by reason of the extent to which any Party or
25 his, her, or its counsel participated in the drafting of this Settlement.

26 M. **Captions and Interpretations:** Section titles or captions contained herein are inserted
27 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
28 of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely

1 a recital.

2 N. **Modification:** This Settlement may not be changed, altered, or modified, except in
3 writing and signed by the Parties hereto or their counsel of record. After preliminary approval of the
4 Settlement has been granted, this Settlement may not be modified except by a writing signed by the
5 Parties hereto or their counsel of record, and approved by the Court.

6 ///

7 O. **Integration:** This Settlement contains the entire agreement between the Parties
8 relating to any and all matters addressed in the Settlement Agreement, and all prior or
9 contemporaneous agreements, understandings, representations, and statements, whether oral or written
10 and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be
11 waived except in writing.

12 //

13 P. **Signatures and Authority:**

14 1. It is agreed that because the members of the Class are so numerous, it is
15 impossible or impractical to have each member of the Class execute this Settlement Agreement. The
16 Class Notice will advise all Class Members of the binding nature of the release of claims provided for by
17 the Settlement, and that the release shall have the same force and effect as if this Settlement Agreement
18 were executed by each Settlement Class Member.

19 2. This Settlement Agreement may be executed in counterparts and by electronic or
20 facsimile signatures, and when each party has signed and delivered at least one such counterpart, each
21 counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall
22 constitute one Settlement, which shall be binding upon and effective as to all Parties.

23 3. The signatories hereto hereby represent that they are fully authorized to enter into
24 this Settlement and bind the Parties hereto to the terms and conditions thereof.

25 Q. **No Mass Communications:** Parties shall not disclose the negotiations of the
26 Settlement except as required to be disclosed by law or to be disclosed to the Court in order to obtain
27 preliminary and final approval of the Settlement. The Parties and attorneys will keep the Settlement
28 confidential until the filing of the motion for preliminary approval of the Settlement, except as

otherwise required by law. Thereafter, except as provided below, the Parties agree to not make, or cause to make, any comments to the public or the media or engage in any mass communications or other publicity, including, but not limit to, social media, regarding the Settlement, except in court filings, as necessary to effectuate notice of the Settlement to the Class Members, and as required by law. If the media asks about this case in any way or requests a comment on the Settlement, the Parties agree to respond only with “The matter has been resolved.”

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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
Amended Joint Stipulation of Class Action Settlement:

IT IS SO STIPULATED.

Dated: _____

David DeBar
Plaintiff

Dated: _____

Johnny Lim
Plaintiff

Dated: _____

Optima Tax Relief, LLC
Defendant

Name: _____

Title: _____

1 **APPROVED AS TO FORM.**

2

3 Dated: _____ **LAWYERS *for* JUSTICE, PC**

4

5 By: _____

6 Edwin Aiwazian

7 Attorneys for Plaintiffs and Proposed Class Counsel

8 Dated: _____ **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**

9

10 By: _____

11 Dean A. Rocco

12 Attorneys for Defendant Optima Tax Relief, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**
Debar, et al. v. Optima Tax Relief, LLC
Case No. 30-2018-00972771-CU-OE-CXC

COVERED WORKWEEKS DISPUTE FORM

[Class Member Name]
[Address]
[City, State, Zip Code]
[Telephone Number]

I. INSTRUCTIONS

On [DATE], 2020[YEAR], the Court preliminarily approved a settlement in the matter of *David DeBar, et al. v. Optima Tax Relief, LLC*, Orange County Superior Court, Case Number 30-2018-00972771-CU-OE-CXC.

If want to dispute the number of Covered Workweeks credited to you in your Class Notice, you may fill out this Covered Workweeks Dispute Form and mail it to the Settlement Administrator, or submit a letter as described in your Class Notice, at the address listed below on or before [RESPONSE DEADLINE].

[Settlement Administrator's Mailing Information]

Class Members who believe the number of Covered Workweeks credited to them in their Class Notice is incorrect must fill out the section below and attach any documentation that you have to support your dispute.

II. DISPUTE

Print Name

Last 4 Digits of Social Security Number: ____ ____ ____ ____

Telephone Number: (_____)_____

Basis for Dispute

Dated: ____/____/____

Signature

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
Debar, et al. v. Optima Tax Relief, LLC
Case No. 30-2018-00972771-CU-OE-CXC

REQUEST FOR EXCLUSION FORM
OPT-OUT REQUEST

[Class Member Name]
[Address]
[City, State, Zip Code]
[Telephone Number]

I. INSTRUCTIONS

On [DATE], [YEAR]2020, the Court preliminarily approved a settlement in the matter of *David DeBar, et al. v. Optima Tax Relief, LLC*, Orange County Superior Court, Case Number 30-2018-00972771-CU-OE-CXC.

If you do **not** want to participate in the Settlement, you ~~must~~may fill out this ~~Opt-Out Request~~Request for Exclusion Form and mail it to the Settlement Administrator, or submit a letter as described in your Class Notice, at the address listed below on or before [RESPONSE DEADLINE].

[Settlement Administrator's Mailing Information]

Class Members who fill out and return this form will not be bound by the Settlement, will not release the Released Claims, will not receive a Settlement Share, and will lack standing to object to the Settlement.

II. SIGNATURE

BY MY SIGNATURE BELOW, I wish to be excluded from the Settlement of the case entitled *David DeBar, et al. v. Optima Tax Relief, LLC*, Orange County Superior Court, Case Number 30-2018-00972771-CU-OE-CXC. **I understand that by filling out and returning this form, I will have no right to object to the Settlement nor to receive a Settlement Share under the Settlement.**

Dated: ____/____/____

Signature

Print Name

Last 4 Digits of Social Security Number: ____ _

Telephone Number: (_____)_____

EXHIBIT E

1 **WINSTON LAW GROUP, P.C.**
David S. Winston, Esq. CA Bar No. 301667
2 david@employmentlitigators.com
1180 South Beverly Drive, Suite 320
3 Los Angeles, California 90035
Phone: (424) 288-4568
4 Fax: (424) 532-4062

5 Attorney for Plaintiff and all aggrieved employees

6 Dean A. Rocco, SBN: 210481
7 **WILSON, ELSER, MOSKOWITZ,**
8 **EDELMAN & DICKER LLP**
555 S. Flower Street, Suite 2900
Los Angeles, California 90071
9 Telephone: (213) 443-5100
Facsimile: (213) 443-5101
10 Email: dean.rocco@wilsonelser.com

11 Attorneys for Defendant, OPTIMA TAX RELIEF, LLC

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE**
14

15 DULCE GARCIA, an individual, on behalf of
the State of California, as a private attorney
16 general,

17 **PLAINTIFF,**

18 v.

19 OPTIMA TAX RELIEF, LLC, a Delaware
Limited Liability Company; and DOES 1 to
20 50, inclusive,

21 **DEFENDANTS.**
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 31 2020

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

Case No: 30-2019-01082473-CU-OE-CXC

[Assigned for All Purposes to the Hon.
William Claster, Dept. CX104]

**[PROPOSED] ORDER GRANTING
APPROVAL OF PAGA SETTLEMENT
AND FINAL JUDGMENT
(RELATED TO ROA #40)**

Date: July 31, 2020

Time: 9:00 a.m.

Dept.: CX104

Complaint Filed: July 11, 2019

Trial Date: None

1 The Court has received and considered the application of Plaintiff DULCE GARCIA, an
2 individual, on behalf of the people of the State of California, and as an "aggrieved employee"
3 acting as private attorneys general under the Labor Code Private Attorneys General Act of 2004,
4 § 2698, *et seq.* ("PAGA") for approval of the Private Attorney General Act Settlement Agreement
5 ("Settlement Agreement" or "Settlement") entered into between Plaintiff on behalf of the state of
6 California as a private attorney general pursuant to PAGA and Defendant OPTIMA TAX
7 RELIEF, LLC ("Defendant"). The Court issued a tentative ruling that is attached hereto as
8 **Exhibit A**. The Court hereby approves the Representative PAGA Settlement.

9 **NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:**

10 The Court hereby enters FINAL JUDGMENT in favor of Plaintiff and the Aggrieved
11 Employees in the amount of \$550,000.00 for Plaintiff's claims for PAGA penalties under Labor
12 Code § 2699 for violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 510,
13 1197 and 1198 as well as IWC Wage Order No. 4-2001 based upon the facts alleged or that could
14 have been alleged in the May 7, 2019 PAGA Notice and the July 11, 2019 Complaint as set forth
15 in the Settlement Agreement attached hereto as **Exhibit B**. The Judgment is awarded and
16 allocated as follows:

17 (a) PAGA Counsel's attorneys' fees in the amount of one-third of the
18 Settlement Payment (\$183,333.33) 90% of the attorneys' fees are awarded
19 to Winston Law Group, P.C. and 10% of the attorneys' fees are awarded
20 to Barkodar Law Group P.C.;

21 (b) PAGA Counsel's cost reimbursement in the amount of \$9,441.91 to
22 Winston Law Group, P.C. and \$8.10 to Barkodar Law Group P.C.;

23 (c) Settlement Administration costs of \$6,974.00 to be paid to the Settlement
24 Administrator Rust Consulting;

25 (d) the remainder of the Settlement Payment after deducting the items (a), (b),
26 and (c), herein shall be designated as PAGA Penalties, which are estimated to be
27 \$350,242.66 and will be allocated between the LWDA and the Aggrieved
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Employees pursuant to Labor Code section 2699(i) with 75% (\$262,681.00) paid to the LWDA and 25% (\$87,560.66) paid to the Aggrieved Employees on a pro rata basis.

The Settlement Administrator shall mail to each of the Aggrieved Employees the Notice of Settlement attached as Exhibit 4 to Register of Action 45. The notice sent to the aggrieved employees may not be in a smaller font size than the notice provided to the Court.

The Settlement Administrator shall file a declaration no later than March 19, 2021 to confirm that the distribution of funds to aggrieved employees is complete, including any distribution to the State Controller per the settlement agreement. Upon receipt of the administrator's declaration, the Court will determine whether further briefing or a hearing is necessary.

The Orange County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and aggrieved employees, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

This document shall constitute a Judgment and is intended to be a final disposition of the above captioned action in its entirety, and is intended to be immediately appealable.

IT IS SO ORDERED.

DATED: 7-31-20



Hon. William Claster
JUDGE OF THE SUPERIOR COURT

Exhibit A

**LAW & MOTION CALENDAR
TENTATIVE RULINGS****July 31, 2020****09:00 a.m.****CX-104****JUDGE WILLIAM D. CLASTER****Department CX104 Phone Number: (657) 622-5304**

The Court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5304. The Court will not entertain a request for continuance nor filing of further documents once the ruling has been posted.

APPEARANCES: "Unless otherwise ordered by the Court, all Unlimited and Complex proceedings will be conducted via telephonic appearance through CourtCall with each party/attorney having the option to appear by CourtCall video if the [Court], in [its] discretion, permits a video appearance instead of an audio appearance." Based on Orange County Superior Court Third Amended Administrative Order No. 2020/06, paragraph 12(c), the Court requests that the parties appear by way of CourtCall. If a party is unable to appear by way of CourtCall, please contact the Court Clerk. Please see, Civil Limited Unlimited & Complex Appearance Process at:

- [Civil Covid-19](#);
- [Civil Limited, Unlimited and Complex \(Updated June 11, 2020\)](#); and
- [Third Amended Administrative Order No. 20/06](#).

All appearances will be telephonic through CourtCall. Contact CourtCall at 888-882-6878 or [CourtCall](#). Requests for fee waivers may be submitted to CivilSRL@occourts.org or the drop box outside the Central Justice Center courthouse

COURT REPORTERS: Official court reporters (i.e. court reporters employed by the Court) are **NOT** provided for any matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and
- For additional information, please see the court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

8. Fifth, what was the basis for assuming one missed rest break and one missed meal break per week?

9. Sixth, was there a uniform policy applicable to rest breaks, and if so, was it facially valid? (The Court accepts counsel's description of the "bell system" for shutting down the production line entirely during meal breaks.)

10. At final approval, the Administrator must confirm that notice was sent to class members in both English and Spanish.

6**19-01082473**

Garcia vs. OPTIMA TAX RELIEF, LLC

Plaintiff Dulce Garcia's Motion for Approval of Representative PAGA Settlement

Plaintiff's motion for approval of PAGA settlement is GRANTED as set forth below. Following review of moving papers, the Court finds the parties' settlement agreement (ROA 45, Ex. 1) to be "fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.)

The Court approves the following distributions:

1. Attorney's fees in the amount of \$183,333.33 per the settlement agreement. The Court finds this to be a reasonable amount in light of the result obtained, the quality of the work performed by counsel, a review of the billing records provided, and the estimated lodestar. In approving this amount and examining the billing records as a cross-check on the overall reasonableness of the fees, the Court is not approving the hourly rates proposed by counsel. Per the request of counsel, this amount is to be split 90% to the Winston firm and 10% to the Barkodar firm.

2. Litigation costs in the following amounts, per counsel's declarations:

- a. \$9,441.91 to the Winston firm.
- b. \$8.10 to the Barkodar firm.

3. Administration costs in the amount of \$6,974, per the bid submitted by Rust Consulting.

4. Taking the above distributions into account, from the GSA of \$550,000, \$350,242.66 remains to be distributed as provided under PAGA. This amount shall be allocated as follows:

- a. \$262,681.00 (75%) to the LWDA.
- b. \$87,560.66 (25%) to the Aggrieved Employees, as that term is defined in the settlement agreement.

The Court approves the notice attached as Exhibit 4 to ROA 45. The notice actually sent to aggrieved employees may not be in a smaller font size than the notice provided to the Court.

The administrator is to file a declaration no later than March 19, 2021 to confirm that the distribution of funds to aggrieved employees is complete, including any distribution to the State Controller per the settlement agreement. Upon receipt of the administrator's declaration, the Court will determine whether further briefing or a hearing is necessary.

Please submit a revised proposed order that conforms to the foregoing for the Court's signature.

7

17-00961719

Trinh vs. Golden State Overnight Delivery Service, Inc.

Defendant Golden State Overnight Delivery Service, Inc.'s Motion to Strike Based on Prior Settlement

Defendant Golden State Overnight Delivery Service, Inc.'s motion to strike portions of the consolidated complaint ("CC") of Plaintiffs De Trinh and Noe Quijada is GRANTED, albeit as modified as set forth below. Defendant's request for judicial notice of various court records (ROA 236) is GRANTED.

This is a consolidated putative wage-and-hour class/PAGA action arising from Defendant's piece-rate compensation system for its courier drivers. Plaintiffs seek to represent a class dating back four years from the filing of the underlying *Quijada* action in Santa Clara County Superior Court. Defendant contends a court-approved settlement in *Kostyuk v. Golden State Overnight Delivery Service, Inc.*, Alameda County Superior Court Case No. RG14727191, bars all claims prior to December 17, 2016. Defendant therefore moves to strike the following language from paragraph 2 of the CC: "For at least four (4) years prior to the filing of an action by Plaintiff Quijada on July 27, 2018 (Case No. 30-2019-CU-WT-CXC) and continuing to the present (the 'Class Period')." (The CC references an Orange County case number because *Quijada* was later transferred to this Court and consolidated with this matter.)

The motion to strike is brought pursuant to CCP §§ 435 and 436. While there arguably are other ways to attack the class period definition (such as a motion for summary adjudication or in connection with a class certification motion), the broad discretion afforded the Court in CCP § 436 would appear to encompass the present motion. Significantly, Plaintiffs do not contend otherwise.

By way of background, the *Kostyuk* case involved a variety of alleged wage and hour violations, including the assertion that Defendant failed to pay its piece rate workers for non-productive time and rest periods. Specifically, regarding non-productive time, the complaint in *Kostyuk* alleges that "Plaintiff and Class Members were paid exclusively on a piece-rate basis and were not paid an hourly wage. Plaintiff was required to perform other work tasks for which he was not compensated." (*Kostyuk* Compl. ¶¶ 12-13) The *Kostyuk*

Exhibit B

PAGA SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release (“Settlement”) is made and entered into by and between Plaintiff DULCE GARCIA (“Plaintiff”) as a private attorney general on behalf of the State of California pursuant to Labor Code section 2698 *et seq.*, the Private Attorneys General Act (“PAGA”), on the one hand, and Defendant OPTIMA TAX RELIEF, LLC (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Settlement shall be binding on Plaintiff and the State of California with respect to the PAGA claims at issue in this action for the Aggrieved Employees (as defined herein) and Defendant, subject to the terms and conditions hereof and the approval of the Court.

I. NATURE OF ACTION

1. On May 7, 2019, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of her intent to pursue a representative PAGA action on behalf of herself and the State of California as well as on behalf of other aggrieved employees. On July 11, 2019, Plaintiff brought an action on behalf of the State of California under PAGA as an aggrieved employee concerning Plaintiff and other Aggrieved Employees’ employment with Defendant and the termination of that employment, which is pending as Garcia v. Optima Tax Relief LLC Orange County Superior Court Case No.: 30-2019-01082473-CU-OE-CXC.

2. In advance of mediation, Defendant provided Plaintiff and PAGA Counsel with information about the number of potentially aggrieved employees, the number of pay periods at issue, as well as relevant policy documents. As of the date of the Mediation, there were approximately 572 PAGA Aggrieved Employees. Defendant subsequently provided supplemental discovery following the close of the negotiated PAGA period indicating that there were 584 Aggrieved Employees.

3. On or about September 16, 2019, the Parties attended a mediation with experienced wage-and-hour mediator Jeff Krivis. During the mediation, and with significant assistance of the mediator, the Parties agreed to a settlement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving some of Plaintiff’s claims, potential defenses

asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay and numerous potential appellate issues. It was not easy for the Parties to reach this settlement, which was only possible with the skilled guidance and input of the mediator. During mediation, and with the assistance of mediator Jeff Krivis, the Company separately negotiated a Class Action Settlement with David Debar, who participated telephonically, that resolves *Debar v. Optima Tax Relief LLC*, Orange County Superior Court Case No. 30-2018-00972771-CU-OE-CXC.

II. REPRESENTATIONS AND DEFINITIONS

4. "Plaintiff" shall refer to Named Plaintiff DULCE GARCIA.
5. "Defendant" shall mean and refer to Optima Tax Relief, LLC
6. Released Parties shall mean and refer to Defendant and all of its affiliated entities, parents, subsidiaries, divisions, predecessors, insurers, successors, assigns, owners, directors, officers, shareholders, executives and managers.
7. "Lawsuit" refers to the civil action pending in Orange County Superior Court titled, *DULCE GARCIA, an individual, on behalf of the State of California, as a private attorney general, PLAINTIFF v. OPTIMA TAX RELIEF, LLC, a Delaware Limited Liability Company; and DOES 1 to 50, inclusive, DEFENDANTS*. Case No. 30-2019-01082473-CU-OE-CXC.
8. "PAGA Counsel" shall refer to David S. Winston of the Winston Law Group, P.C. and Lior Barkodar of Barkodar Law Group P.C.
9. "Defense Counsel" shall refer to Dean Rocco of Wilson, Elser, Moskowitz, Edelman & Dicker LLP.
10. "Covered Period" shall mean the period from May 7, 2018 until October 31, 2019.
11. "Aggrieved Employee" or "Aggrieved Employees" shall mean any and all any and all individuals who are employed or have been employed by Optima Tax Relief, LLC or its predecessors or merged entities in the State of California as a non-exempt hourly employee or other similar job title (including, but not limited to, individuals who worked in the position of Tax Associate or Senior Tax Associate) from May 7, 2018 and October 31, 2019.
12. "Court" refers to the Orange County Superior Court.

13. “Aggrieved Employee Share” shall mean and refer to each Aggrieved Employees’ share of the 25% of PAGA penalties allocated to the Aggrieved Employees in accordance with Labor Code section 2699(i).

14. “Settlement Administrator” shall refer to Rust Consulting.

15. “Covered Claims” means any and all claims that were asserted or could have been asserted for PAGA penalties based on violations of the following Labor Code provisions: 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 510, 1197 and 1198 as well as IWC Wage Order No. 4-2001 based upon the facts alleged or that could have been alleged based on the factual allegations in the May 7, 2019 PAGA Notice or the July 11, 2019 Complaint. The Covered Claims **do not** include any non-PAGA claims or employees’ individual claims—including the claims in *Debar v. Optima Tax Relief LLC*, Orange County Superior Court Case No. 30-2018-00972771-CU-OE-CXC—other than Plaintiff’s contingent Individual Settlement or any non-PAGA claims for civil penalties that is subject to the separate Individual Settlement attached hereto as **Exhibit A**. For purposes of completeness, attached hereto as **Exhibit B** is a true and correct copy of Plaintiff’s May 7, 2019 PAGA Notice and attached hereto as **Exhibit C** is a true and correct copy of Plaintiff’s July 11, 2019 Complaint referenced above.

16. “Eligible Pay Periods” means the total number of pay periods that each Aggrieved Employee received a wage statement during the Covered Period.

17. “Settlement” shall mean this PAGA Settlement and Release Agreement.

18. “Effective Date” shall mean the date that the Court grants approval of the PAGA Settlement.

19. “Gross Settlement Amount” shall mean and refer to the \$550,000.00 that Defendant is obligated to pay under the terms of the proposed settlement. The Gross Settlement Amount is non-reversionary, such that the entire amount will be disbursed and none will revert to Defendant.

20. “Individual Settlement” shall mean and refer to the individual settlement between Plaintiff and Defendant for individual claims that are not at issue in this action. A true and correct

copy of the Individual Settlement is attached hereto as **Exhibit A**.

21. Plaintiff alleged on behalf of herself, other aggrieved employees and the State of California that Defendant failed to maintain regular pay periods that complied with the requirements of Labor Code § 204 and to timely pay wages, failed to calculate and pay overtime wages associated with commissions and efficiency bonuses (including required retroactive payments), failed to provide accurate itemized wage statements, and failed to pay all wages owed upon the conclusion of an Aggrieved Employees' employment with the Company. Plaintiff alleges that this underlying conduct gives rise to a claim pursuant to Labor Code Section 2698, *et seq.*

22. The Parties exchanged meaningful information through informal discovery for the mediation including information about the number of aggrieved employees, number of pay periods at issue, and the number of current and former employees. Defendant denies all of the allegations made by Plaintiff. During the exchange of information and attendant discussions between the Parties, Plaintiff learned that, as of August 28, 2019, there were 15,874 pay periods and 572 aggrieved employees at issue. Subsequent confirmatory discovery following the close of the negotiated PAGA period, revealed that there were 584 aggrieved employees and 15,594 pay periods at issue. Following Mediation, Defendant discovered that it inadvertently included 323 additional pay periods involving employees who were not aggrieved employees. .

23. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and denies any liability or intentional wrongdoing. Defendant contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contends that the Lawsuit is without merit and that Plaintiff cannot pursue claims, if any, against any of the Released Parties. Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted against it in the Lawsuit. Defendant further contends that the imposition of any penalties would be unjust, arbitrary, oppressive, and confiscatory. Nevertheless, Defendant is willing to resolve this matter in accordance with the terms set forth

herein.

24. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

25. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the Aggrieved Employees' claims against Defendant.

26. Based on their own independent investigations and evaluations, Plaintiff and PAGA Counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, and the State of California in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and the State of California and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

27. The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiff and the Aggrieved Employees have under PAGA against Defendant and the Released Parties. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of the Released Parties. Nothing herein shall constitute an admission by the Released Parties that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of the Released Parties or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit;

(b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of the Released Parties' right to compel arbitration of any dispute with an Aggrieved Employee.

28. In order to comply with the requirements of Labor Code Section 2699(*l*), Plaintiff shall submit a Motion for Approval of Representative PAGA Settlement to the Court identifying the key terms of this Settlement and requesting that the Court approve the Settlement ("Motion for Approval"). The Settlement is contingent upon the Court granting the Motion for Approval. If the Court denies a Motion for Approval due to concerns that the Parties cannot address through non-material modifications of this Settlement, (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack. The Parties shall make all possible good faith efforts to resolve any issues raised by the Court during the approval process.

29. In the event that the Court does not grant a Motion for Approval of Representative PAGA Settlement, the Parties will be restored to their positions prior to the execution of this Settlement and the Settlement shall be null and void.

III. TERMS OF SETTLEMENT

30. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of the State of California as a Private Attorney General and Defendant agrees to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

31. The Amount of Settlement. As consideration for the settlement described herein and the release contained in this Settlement, Defendant agrees to pay the following amounts the Gross Settlement Amount of \$550,000.00 in connection with the PAGA Settlement. The Gross Settlement Amount will be allocated as follows:

- (a) PAGA Counsel's attorney fee request of one-third of the Settlement Payment (\$183,333.33 to be divided 90% to Winston Law Group, P.C. and 10% to Barkodar Law Group P.C.);
- (b) PAGA Counsel's request for costs in the amount of \$9,464.52;
- (c) Administration costs of \$6,974.00 to be paid to the Settlement Administrator Rust Consulting; and
- (d) the remainder of the Gross Settlement Amount after deducting the items (a), (b), and (c) herein shall be the "PAGA Penalty Fund." The PAGA Penalty Fund is estimated to be \$350,228.15, and will be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i) with 75% paid to the LWDA (\$262,671.12) and 25% paid to the Aggrieved Employees on a pro-rata basis (\$87,557.03).

32. Allocation and Calculation of the PAGA Penalty Fund.

33. Seventy-five percent of the PAGA Penalty Fund will be paid to the LWDA as required by Labor Code section 2699(i). The remaining 25% of the PAGA Penalty Fund will be distributed to Aggrieved Employees on a pro-rata basis based upon the number of pay periods worked during the Covered Period. The allocation amongst the Aggrieved Employees shall be determined by dividing the entire PAGA Penalty Fund by the number of pay periods worked by Plaintiff and the Aggrieved Employees in the Covered Period. The resulting amount shall be the

“Pay Period Amount.” Plaintiff and each Aggrieved Employee shall receive a pro rata value equal to the number of pay periods he or she worked during the Covered Period multiplied by the Pay Period Amount. All resulting settlement payments made to Aggrieved Employees will be reported on an IRS Form 1099. Each Aggrieved Employee’s pro-rata share of the PAGA Penalty Fund represents their share of the 25% in PAGA penalties distributable to the Aggrieved Employees.

34. PAGA Counsel’s Fees and Costs. As part of the request for approval of this Settlement, PAGA Counsel will request court approval of one-third of the Settlement Payment, which is \$183,333.33 in attorneys’ fees to be split 90% to Winston Law Group, P.C. and 10% to Barkodar Law Group P.C. PAGA Counsel will request cost reimbursement in the amount of \$9,464.52 for costs incurred by PAGA Counsel. Should PAGA Counsel request a lesser amount for attorneys’ fees and costs, or if the court approves a lesser amount, the difference shall be allocated to the PAGA Penalty Fund and distributed according to the terms of this Settlement. Any attorneys’ fees and costs awarded to PAGA Counsel (“PAGA Counsel Fees & Costs”) shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including but not limited to securing Court approval of the settlement, appearing at any hearings, making sure that the settlement is fairly and properly administered, defending the settlement in any appeal or other post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur.

35. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees and Plaintiff, IRS Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges Plaintiff has obtained no tax advice from Defendant and neither Defendant nor Defense Counsel have made any representation concerning the tax consequences, if any, of any part of the Gross Settlement Amount or any payment to be made pursuant to this Settlement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute

advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any Aggrieved Employees' tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

36. Escalator Clause. Defendant represented that there were 584 aggrieved employees and approximately 15,874 pay periods potentially at issue. If the aggregate number of aggrieved employees exceeds 600 or there are more than 17,000 pay periods, Defendant agrees to increase the Gross Settlement Amount on a pro-rata basis equal to the increase in number of employees and/or pay periods relative to the estimates. By way of example, if there turn out to be 650 aggrieved employees, the settlement shall be increased by 13.6% (78/584), which is the amount of increase relative to the initial estimate.

IV. RELEASE

37. Release By All Aggrieved Employees. Upon the approval by the Court of this Settlement, each Aggrieved Employee, including Plaintiff, shall, for the period from May 7, 2018 until October 31, 2019, fully release and forever discharge the Released Parties from any and all Covered Claims.

38. Release by Plaintiff. In addition to her participation in the release by all Aggrieved Employees and except as otherwise provided herein, upon the Effective Date of this Settlement Plaintiff has agreed to a separate Individual Settlement that is intended to compensate Plaintiff for the fullest release permitted by law of any other claims Plaintiff may have against Released Parties including her individual wage and hour claims that are not at issue in this case and potential claims for employment discrimination that are not being litigated in this case. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff's Individual Settlement. As set forth in that agreement, PAGA Counsel are not receiving any attorneys' fees associated with Plaintiff's individual settlement.

V. APPROVAL OF THE SETTLEMENT

39. The Parties recognize that, in accordance with Labor Code Section 2699(*l*), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal.4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza vs. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification.”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”); *Williams vs. Sup. Ct.*, 3 Cal.5th 531, 546-547 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”).

40. As explained in Paragraph 28-29 and 39, in order to comply with the requirements of Labor Code Section 2699(*l*), Plaintiff shall file a Motion for Approval.

VI. ADMINISTERING THE SETTLEMENT AND PAYMENT PLAN

41. Within fifteen (15) calendar days after the Effective Date, Defendant will compile a list containing: (1) the name, (2) the last known home address and telephone number, (3) the number of pay periods worked during the Covered Period and (4) the social security number of each Aggrieved Employee. (“Aggrieved Employee List”)

42. Defendant shall pay the Gross Settlement Amount within thirty (30) calendar days of the Effective Date. The Settlement Administrator shall distribute each Aggrieved Employee Share to the Aggrieved Employees and the attorneys’ fees and costs awarded by the Court within thirty-five (35) calendar days of the Effective Date.

43. The payment checks for each Aggrieved Employee Share shall be sent to each

Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. A letter approved by the Parties in advance of Plaintiff filing the Motion for Approval, explaining this Settlement will be included in the mailing of each Aggrieved Employees' check and submitted to the Court for its review and approval. It will be conclusively presumed that an Aggrieved Employee's settlement payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

44. The Settlement Administrator shall insure that 75% of the PAGA Penalty Fund is paid to the LWDA.

45. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the Settlement Administer will ensure that uncashed funds shall be forwarded the State of California Unclaimed Property Fund in the name of the Aggrieved Employee who did not cash his or her Aggrieved Employees Share.

VIII. DUTIES OF THE PARTIES PRIOR TO APPROVAL

46. Promptly upon execution of this Settlement, Plaintiff shall file a Motion for Approval requesting approval of the following:

- a. Approving the terms of this Settlement;
- b. Approving the amount of PAGA Counsel Fees & Costs; and
- c. Enter Final Judgment.

47. The Parties shall apply to the Court for the entry of an order and final judgement approving this Settlement as required by Labor Code section 2699(*I*). In conjunction with the Motion for Approval, the Parties will submit a proposed Final Judgment requesting the entry of judgment in the amount of \$550,000.00 in favor of Plaintiff unless the escalator clause has been triggered—in which case the Parties shall submit a Proposed Final Judgment in an amount

consistent with the Escalator Clause.

X. PARTIES' AUTHORITY

48. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

XI. MUTUAL FULL COOPERATION

49. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Settlement from the Court.

XII. NO PUBLICITY

50. Neither Plaintiff nor her Counsel shall publicize the terms of this Settlement on any website, social media, and/or to any reporting service regarding settlements and verdicts. Nothing in the publicity clause shall prohibit PAGA Counsel and/or the Parties from explaining to Aggrieved Employees why they are receiving settlement checks in the mail, publicly acknowledging the existence of these publicly filed documents, disclosing the fact of this Settlement and any publicly available information, and/or in declarations concerning their qualifications to serve as Class and/or PAGA Counsel.

XIII. NO PRIOR ASSIGNMENTS

51. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or purported to assign, or transfer to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. The representations, warranties, covenants, and agreements contained in this Settlement are for the sole benefit of the Parties under this Settlement, and shall

not be construed to confer any right or to avail any remedy to any other person.

XIV. NO ADMISSION

52. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of the Released Parties. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Lawsuit. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or shall be construed as an admission of liability or wrongdoing by Released Parties.

XV. NON-EVIDENTIARY USE

53. Whether or not the Effective Date occurs, neither this Settlement nor any of its terms shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Settlement or for Defendant to establish that an Aggrieved Employee has resolved any of his/her claims released through this Settlement.

XVI. NULLIFICATION

54. If (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the

same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

XVII. ATTORNEYS' FEES, COSTS AND EXPENSES

55. Except as specifically set forth herein, each of the Parties shall bear their own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by them arising out of the Lawsuit, and shall not seek reimbursement thereof from the other.

XVIII. CONSTRUCTION

56. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Settlement constitutes the entire agreement between the Parties regarding the Covered Claims. Excluding any arbitration or confidentiality agreements executed by Plaintiff with Defendant, both of which will remain in full force and effect, this Settlement supersedes all prior agreements, written or oral, between or among the Parties regarding the resolution of Covered Claims.

XIX. CAPTIONS AND INTERPRETATIONS

57. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

XXI. MODIFICATION

58. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XXII. MISCELLANEOUS

59. No rights hereunder may be waived except in writing. The Parties have made such

investigation of the facts and the law pertaining to the matters described herein and to this Settlement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Settlement, or with respect to any such matters that would alter or change the terms of this Settlement. No representations, warranties, or inducements have been made to any party concerning this Settlement other than those expressly set forth or referred to herein.

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

61. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

62. This Settlement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

63. The Parties have cooperated in the negotiation and preparation of this Settlement. This Settlement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Settlement.

64. The Orange County Superior Court shall retain jurisdiction to enforce this Settlement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Aggrieved Employees, to the fullest extent to enforce and effectuate the terms and intent of this Settlement.

65. This Settlement shall not be subject to collateral attack by any Aggrieved Employee. Such prohibited collateral attack shall include, but not be limited to, claims an

Aggrieved Employee failed, for any reason, to timely receive his or her settlement payment check.

THE PARTIES HAVE READ THE FOREGOING PAGA SETTLEMENT AND RELEASE AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

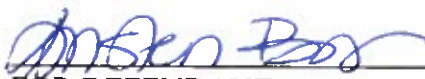
4/14/2020

DATED: February __, 2020

DocuSigned by:

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DULCE GARCIA

DATED: February 20, 2020

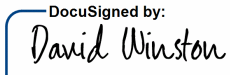

FOR DEFENDANT
By: Kristen Bemis
Its: General Counsel

APPROVED AS TO FORM AND CONTENT:

4/14/2020

DATED: February __, 2020

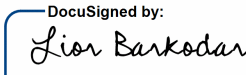
WINSTON LAW GROUP, P.C.

DocuSigned by:

By: DAVID S. WINSTON
01856B886DB12406...
Attorney for Plaintiff Dulce Garcia and the Aggrieved Employees

4/14/2020

DATED: February __, 2020

BARKODAR LAW GROUP P.C.

DocuSigned by:

By: LIOR BARKODAR
072D62177FBD402...
Attorney for Plaintiff Dulce Garcia and the Aggrieved Employees

DATED: February 20, 2020

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**


By: Dean A. Rocco
Angela M. Duerden
Attorneys for Defendant Optima Tax Relief, LLC

Exhibit A

**CONFIDENTIAL SETTLEMENT AGREEMENT AND
GENERAL RELEASE OF ALL CLAIMS**

This Confidential Settlement Agreement and General Release of All Claims ("Settlement Agreement") is entered into by and between Dulce Garcia ("Plaintiff") and Optima Tax Relief LLC ("Defendant"). The term "Party" or "Parties" as used herein shall refer to Plaintiff, Defendant or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from February 22, 2018 to March 5, 2019;

(b) On July 11, 2019, Plaintiff brought an action concerning Plaintiff's employment with Defendant, the termination of that employment and Plaintiff's interactions with Defendant's employees which is pending as Garcia v. Optima Tax Relief LLC Orange County Superior Court Case No.: 30-2019-01082473-CU-OE-CXC (the "Action");

(c) There has been no determination on the merits of the Action but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties (as defined in Section **Error! Reference source not found.** below) beyond merely the PAGA claims as of the date of execution of this Settlement Agreement.

2. **Non-Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind. No Party shall claim to be a prevailing party under

3. **Consideration/Indemnification For Tax Consequences.**

(a) In consideration for signing this Settlement Agreement and complying with its terms, and provided Plaintiff does not subsequently revoke this Settlement Agreement within the allotted time, Plaintiff will be paid a "Settlement Payment" in the total gross sum of TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00), which will be paid on behalf of Defendant as follows:

(1) To Plaintiff, as compensation for lost or unpaid wages, the gross sum of TWO THOUSAND DOLLARS AND ZERO CENTS (\$2,000.00), less lawful deductions, as compensation for alleged lost wages, said amount to be reported by Defendant on an IRS Form W-2 as appropriate; and

(2) To Plaintiff, as compensation for penalties, all alleged emotional injuries and related compensatory damages, the sum of EIGHT THOUSAND DOLLARS AND ZERO CENTS (\$8,000.00), said amount to be reported on an IRS Form 1099 as appropriate.

(b) The Parties acknowledge that there is a good faith dispute regarding Plaintiff's allegations of unpaid wages and that the consideration set forth in Section 3(a)(1) above includes a good faith, reasonable compromise and settlement regarding such claims.

(c) Plaintiff understands and agrees that should the IRS, or any other taxing authority or other federal, state or local agency assert, argue or determine that any money received by or paid to Plaintiff pursuant to this Settlement Agreement over and above the amount set forth in Section 3(a)(1) is taxable wages, income or benefits of any kind, Plaintiff solely and individually will be responsible for the payment of any and all taxes, contributions from any of the Released Parties or withholdings including, but not limited to, any related interest, costs, penalties or other charges regardless of whether any of the Released Parties should have withheld or paid such taxes or made such contributions (including Social Security or Medicare). Plaintiff will indemnify, reimburse and hold each of the Released Parties harmless for any and all taxes, contributions, withholdings, fees or interest owed or claimed to be owed or any penalties, fines or assessments that may be imposed on these amounts and assume any and all liability for all such taxes, contributions, fees, interest, penalties or fines assessed against the Released Parties. Plaintiff also will indemnify the Released Parties for any and all costs they incur as a result of any claim made by any federal, state or local agency to collect monies for taxes, penalties, costs, interest, fees or contributions that allegedly are owing as a result of the amounts paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

4. **No Consideration Absent Execution of this Agreement.** Plaintiff understands and agrees that Plaintiff would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement and the fulfillment of the promises contained herein.

5. **Dispersal of Settlement Funds/Dismissal of Action.**

(a) Provided Plaintiff does not revoke this Settlement Agreement within the allotted time and as the Settlement Payment is not a part of the proposed PAGA Settlement, Defendant shall mail the Settlement Payment within 30 calendar days of the approval of the PAGA settlement by check payable directly to Dulce Garcia and shall be transmitted to Plaintiff's Counsel David Winston at 1180 S. Beverly Dr. Suite 320, Los Angeles, CA 90035. As a condition of settlement and prior to such payments, Plaintiff shall send to Defendant, through its Counsel, Dean A. Rocco, Esq., of Wilson, Elser, Moskowitz, Edelman & Dicker LLP ("Defendant's Counsel") all of the following:

(1) the Settlement Agreement bearing the signature (electronic signatures, such as DocuSign, are permissible) of Plaintiff;

(2) an updated Employee's Withholding Allowance Certificate (IRS Form W-4); and

(3) fully-executed Requests for the Taxpayer Identification Number and Certification (IRS Form W-9) for Plaintiff; and

(b) If the date by which the payment described more fully herein is to be made available to Plaintiff's Counsel falls on a Saturday, Sunday or legal holiday in the State of California, then the date said payment shall be made available to Plaintiff's Counsel shall be the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

6. **General Release of Claims.**

(a) Plaintiff, individually and on behalf of Plaintiff's heirs, executors, administrators, successors and assigns knowingly and voluntarily releases and forever discharges Defendant, including its parent corporation, affiliates, subsidiaries, divisions, predecessors,

insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the “Released Parties”), to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this Settlement Agreement including, but not limited to, any alleged violation of:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The Employee Retirement Income Security Act of 1974 (“ERISA”);
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990;
- The Age Discrimination in Employment Act of 1967 (“ADEA”);
- The Workers Adjustment and Retraining Notification Act;
- The Occupational Safety and Health Act;
- The Sarbanes-Oxley Act of 2002;
- The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Genetic Information Nondiscrimination Act of 2008;
- California Family Rights Act - Cal. Gov’t Code § 12945.2;
- California Fair Employment and Housing Act - Cal. Gov’t Code § 12900 et seq.;
- California Unruh Civil Rights Act - Cal. Civ. Code § 51 et seq.;
- Statutory Provisions Regarding the Confidentiality of AIDS Information - Cal. Health & Safety Code § 120775 et seq.;
- California Confidentiality of Medical Information Act - Cal. Civ. Code § 56 et seq.;
- California Parental Leave Law - Cal. Lab. Code § 230.7 et seq.;
- California Apprenticeship Program Bias Law - Cal. Lab. Code § 3070 et seq.;
- California Equal Pay Law - Cal. Lab. Code § 1197.5;
- California Whistleblower Protection Law - Cal. Lab. Code § 1102.5;
- California Military Personnel Bias Law - Cal. Mil. & Vet. Code § 394;
- Statutory Provision Regarding California Family and Medical Leave - Cal. Lab. Code § 233;

- Statutory Provisions Regarding California Electronic Monitoring of Employees - Cal. Lab. Code § 435;
- The California Occupational Safety and Health Act, as amended, California Labor Code § 6300 et seq., and any applicable regulations thereunder;
- California Obligations of Investigative Consumer Reporting Agencies Law - Cal. Civ. Code § 1786.10 et seq.;
- California Political Activities of Employees Law - Cal. Lab. Code § 1101 et seq.;
- California Domestic Violence Victim Employment Leave Law - Cal. Lab. Code § 230.1;
- California Court Leave Law - Cal. Lab. Code § 230;
- Those other provisions of the California Labor Code that lawfully may be released;
- Los Angeles AIDS-Based Discrimination Ordinance, Los Angeles Municipal Ordinance §45.80 et seq.;
- Any other federal, state or local civil or human rights law or any other federal, state or local law, regulation or ordinance;
- Any basis for recovering costs, fees or other expenses including attorneys' fees incurred in these matters except as set forth in the Parties' PAGA Settlement Agreement upon which this Agreement is contingent.

(b) Notwithstanding the foregoing, the Parties agree that this general release does not apply to any claims Plaintiff may have for worker's compensation benefits (except as to claims under Labor Code sections 132a and 4553), unemployment insurance or indemnification as provided by state law as well as any other claims that cannot lawfully be released.

(c) Notwithstanding the foregoing, the Parties also agree that this general release shall not apply to any vested benefits accrued by Plaintiff prior to the effective date of this Settlement Agreement under any compensation or benefit plans, programs and arrangements maintained by Defendant for the benefit of its employees and subject to ERISA or with respect to any other compensation and benefits set forth in this Settlement Agreement.

(d) If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party except for the Action.

7. **Waiver of California Civil Code section 1542.** To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

8. Acknowledgements and Affirmations.

(a) Plaintiff affirms that Plaintiff has not filed or caused to be filed any claim, complaint or action against any of the Released Parties in any forum or form, other than the Action and that Plaintiff presently is not a party to any claim, complaint or action against any of the Released Parties in any forum or form, other than the Action.

(b) Plaintiff further affirms that Plaintiff has reported all hours worked as of the date Plaintiff signs this Settlement Agreement and has been paid or has received all compensation, wages, bonuses, commissions and benefits to which Plaintiff may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions or benefits are due to Plaintiff except as is expressly alleged in the Action.

(c) Plaintiff also affirms that Plaintiff has no known workplace injuries or occupational diseases and that Plaintiff has been granted or has not been denied any leave to which Plaintiff was entitled under the Family and Medical Leave Act or under the California Family Rights Act or disability accommodation laws.

(d) Plaintiff further affirms that Plaintiff has not been retaliated against for reporting any allegations of wrongdoing by Defendant or any of its officers, directors or employees including, but not limited to, allegations of corporate fraud.

(e) The Parties acknowledge that this Settlement Agreement does not limit any Party's right, where applicable, to file or participate in any investigative proceeding of any federal, state or local government agency. To the extent permitted by law, Plaintiff agrees that if such an

administrative charge is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

(f) Plaintiff affirms that as of the date Plaintiff signs this Settlement Agreement, Plaintiff is not Medicare eligible (*i.e.*, is not 65 years of age or older; is not suffering from end-stage renal failure; has not received Social Security Disability Insurance benefits for 24 months or longer, *etc.*). Nonetheless, if the Centers for Medicare & Medicaid Services (the “CMS”) (this term includes any related agency representing Medicare’s interests) determines that Medicare has an interest in the payment to Plaintiff under this Settlement Agreement, Plaintiff agrees to indemnify, defend and hold Defendant harmless from any action by the CMS relating to medical expenses of Plaintiff. Plaintiff agrees to reasonably cooperate with Defendant upon request with respect to any claim the CMS may make and for which Plaintiff is required to indemnify Defendant under this Section. Further, Plaintiff agrees to waive any and all future actions against Defendant for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

9. **No Publicity.**

(a) Plaintiff shall not publicize the terms of this Settlement on any website, social media, and/or to any reporting service regarding settlements and verdicts. Nothing in the publicity clause shall prohibit Plaintiff from explaining to Aggrieved Employees why they are receiving settlement checks in the mail, publicly acknowledging the existence of these publicly filed documents, and/or disclosing the fact of this Settlement and any publicly available information.

10. **Return of Property.** Within thirty (30) days of executing this Settlement Agreement, Plaintiff will return any documents or files in her possession which she obtained from Defendant’s managers or systems which contain information about Defendant’s customers or pricing, as well as any physical equipment distributed to Plaintiff in connection with Plaintiff’s employment such as computers, phones or key cards. This provision does not require Plaintiff to return any of her own timecard or payroll data or any handbooks or company policies distributed to her in the normal course of her employment. This provision does not pertain to any information solely produced to Plaintiff’s counsel in formal or informal discovery in connection with the Action.

11. **Job References.** Plaintiff shall direct all individuals inquiring about Plaintiff’s employment with Defendant to Defendant’s Human Resources Department, which will follow Defendant’s policy by responding with only Plaintiff’s last position and dates of employment, except that this provision shall not apply to any request from a prospective employer who provides a release signed by Plaintiff pursuant to the Fair Credit Reporting Act or any state counterpart.

12. **Consideration and Revocation Periods - Notice.**

(a) Plaintiff acknowledges that Plaintiff already has attained the age of 40 and understands that this is a full release of all existing claims whether currently known or unknown including, but not limited to, claims for age discrimination under the Age Discrimination in Employment Act.

(b) Plaintiff further acknowledges that Plaintiff has been advised to consult with an attorney of Plaintiff’s own choosing before signing this Settlement Agreement, in which

Plaintiff waives important rights, including those under the Age Discrimination in Employment Act.

(c) By executing this Settlement Agreement, Plaintiff also acknowledges that Plaintiff has been afforded at least 21 calendar days to consider the meaning and effect of this Settlement Agreement and to discuss the contents and meaning of this Settlement Agreement, as well as the alternatives to signing this Settlement Agreement, with an attorney of Plaintiff's choosing, and has done so.

(d) Plaintiff understands that the releases contained in this Settlement Agreement do not extend to any rights or claims that Plaintiff has under the Age Discrimination in Employment Act that first arise after execution of this Settlement Agreement.

(e) If Plaintiff signs this Settlement Agreement before the 21-day consideration period expires, the 7-day revocation period (described in Paragraph 12(f) below) immediately shall begin. If Plaintiff signs this Settlement Agreement before the 21-day consideration period expires, Plaintiff agrees that Plaintiff knowingly and voluntarily has accepted the shortening of the 21-day consideration period and that Defendant has not promised Plaintiff anything or made any representations that are not contained in this Settlement Agreement. In addition, if Plaintiff signs this Settlement Agreement before the 21-day consideration period expires, Plaintiff acknowledges and affirms that Defendant has not threatened to withdraw or alter the offer contained in this Settlement Agreement prior to the expiration of the 21-day consideration period.

(f) Plaintiff may revoke this Settlement Agreement for a period of seven calendar days following the date Plaintiff executes this Settlement Agreement. Any revocation during this period must be submitted in writing and state, "I hereby revoke my acceptance of our Settlement Agreement and General Release of All Claims." The revocation must be mailed to Dean Rocco Esq., Wilson Elser Moskowitz Edelman & Dicker, 555 South Flower Street, Suite 2900, Los Angeles, California 90071, and postmarked within seven calendar days after Plaintiff's execution of this Settlement Agreement. The foregoing notwithstanding, this Settlement Agreement shall not become effective and enforceable until the seven-day revocation period has expired

13. **No Transfer/Assignment of Claims.** Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiff and Plaintiff's Counsel agree that they solely are responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the actions of any lien holder or any lien claimant or any taxing authority or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

14. **Liens and Attorneys' Fees/Indemnification.**

(a) Plaintiff's Counsel/PAGA Counsel are not receiving any attorneys' fees or cost reimbursement from Plaintiff's individual settlement. Plaintiff acknowledges Plaintiff solely is responsible for any liens made in connection with any services performed on Plaintiff's behalf

by any attorney, consultants, expert witnesses or healthcare providers. Each Party solely is responsible for any fees and costs he, she or it has incurred including, but not limited to, fees for attorneys, consultants and expert witnesses.

(b) Plaintiff acknowledges and agrees that Plaintiff will indemnify the Released Parties for any and all costs any of them incur as a result of any claims made by any attorneys, consultants, expert witnesses, healthcare providers or other third parties to recover monies from the amounts payable to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

15. **Concurrent PAGA Settlement.** In connection with this Settlement the Plaintiff has also entered into a settlement agreement with Defendant wherein she has agreed to settle her claims as a PAGA Member/Aggrieved Employee. Unlike this Agreement, the PAGA Settlement, is limited to just the PAGA claims whereas this Settlement encompasses all claims the Plaintiff has or could have against the Defendant as a result of her employment or application process. The payments set forth in Paragraph 3 of this Settlement are contingent on the approval of the PAGA Settlement by the Court in which the Action is pending. In the event the PAGA settlement is not finally approved by the Court, this Settlement Agreement shall be rendered without effect.

16. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party may institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach.

(c) It is the intent of the Parties, pursuant to Evidence Code sections 1122(a)(1) and 1123, that all of the terms of this Settlement Agreement shall be admissible and shall be enforceable and binding upon them in a court of law.

17. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties wherein specific reference is made to this Settlement Agreement.

18. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

(d) If Plaintiff or Defendant fails to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

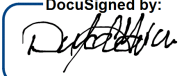
19. **Entire Agreement.** This Settlement Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties hereto except the Confidentiality Agreement signed on February 23, 2018. Plaintiff acknowledges that Plaintiff has not relied on any representations, promises or agreements of any kind made to Plaintiff in connection with Plaintiff's decision to accept this Settlement Agreement, except for those set forth in this Settlement Agreement.

PLAINTIFF UNDERSTANDS AND ACKNOWLEDGES THAT PLAINTIFF HAS AT LEAST 21 CALENDAR DAYS TO REVIEW THIS SETTLEMENT AGREEMENT PRIOR TO EXECUTION OF THIS SETTLEMENT AGREEMENT. PLAINTIFF FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS SETTLEMENT AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL 21 CALENDAR DAY CONSIDERATION PERIOD.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS SETTLEMENT AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS PLAINTIFF HAS OR MIGHT HAVE AGAINST THE RELEASED PARTIES AS OF THE DATE OF EXECUTION OF THIS SETTLEMENT AGREEMENT AND CONTINGENT UPON APPROVAL OF THE PARTIES PAGA SETTLEMENT AGREEMENT TO WHICH THIS AN EXHIBIT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Executed on April 14, 2020

DocuSigned by:

 78EC4A53E2E149A...
 Dulce Garcia

Optima Tax Relief, LLC

Executed on April 28, 2020


 Kristen Bemis, General Counsel

EXHIBIT F

Robert A. Parris, Curriculum Vitae



43364 10th Street West
Lancaster, CA 93534
(661) 382-2262

Work Experience:

Currently I am self-employed with the Robert A. Parris, Professional Corporation, working as an attorney, mediator, wage and hour and catastrophic injury valuation expert consultant. I have been an attorney for approximately 30 years, working as a partner for the Parris Law firm for 23 years, and presently serving of counsel. Before becoming an attorney, I was a sworn member of the California Highway Patrol (CHP), and completed my career at the rank of Captain. Upon leaving the CHP I became a sworn member of the Los Angeles County Sheriff's Department Reserve Forces retiring in 2016.

Education:

- J.D. (December 1991) – Loyola Law School, Los Angeles, California
- University of California Davis School of Law (August 1987-June 1988)
- B.S. in Criminal Justice (December 1982) (*Magna Cum Laude*) – California Polytechnic State University at San Luis Obispo
- A.A. in General Education (June 1975) – Antelope Valley College, Lancaster, California

Professional Licenses:

Admitted to Practice – Bar of the District of Columbia Court of Appeals (2020), United States District Court (1998), California Superior Court (1992) and California State Bar (1991).

Professional Memberships:

- Mediator, United States District Court for the Central District of California (2012-present)
- Volunteer Judge Pro Tempore – L.A. County Superior (2006 – 2010)
- Mediator, Los Angeles County Superior Court Alternate Dispute Resolution (2009-2011)
- Mediator, Los Angeles County Superior Court Civil Arbitration Panel, Civil Mediation Panel and Civil Neutral Evaluation Panel (2012-2013)
- Southern California Mediation Association (2013)
- Designated Mediator, The Mediator Registry (2013)

Robert A. Parris, Curriculum Vitae

Community Involvement:

- Member of the Board of Directors (Division 5) - Antelope Valley-East Kern Water Agency (2014- Present)
- Chairman of the Antelope Valley Water Master Board (2016- Present)
- Chairman of the Antelope Valley State Water Contractors Board (2018-Present)
- Chairman of the Board of Directors – Friends of the Antelope Valley Fair (1998-Present)
- Chairman of the Board of Directors – Antelope Valley Fair Joint Powers Authority (2018-2019)
- Member – City of Santa Clarita Planning Commission (2002-2004)
- Member of the Board of Directors – Grace Resource Center (2010-2014)
- L.A. County Sheriff's Reserve Deputy (1994-2016) (retired)
- Member – California Highway Patrol (1978-1993) (retired as captain)
- Past President and Board Member – Antelope Valley Bar Association (1994-1999)

Dispute Resolution Training:

- May 2018: Association of California Water Agencies: 2018 Spring Conference Attorney Programs: Groundwater Adjudications and SGMA training; Water transfer and SGMA
- November 2017: Association of California Water Agencies: CLE Workshop for Water professionals
- June 2017: Straus Institute: Professional Skills Program in Conflict Resolution Consulting
- June 2016; Advanced Mediation Workshop: Mediating Complex Disputes, Program on Negotiation, Harvard Law School
- June 2014; Straus Institute: Professional Skills Program in Dispute Resolution
- December 12, 2013 – United States District Court: ADR Program – Analyzing Interests to Facilitate Settlement
- November 16, 2013 – CAOC Annual Convention – Mediation: Maximizing Your Client's Settlement
- June 2013; Straus Institute: Professional Skills Program in Dispute Resolution
- May 15, 2013; United States District Court: ADR Program – Advanced Mediation Training
- Fall 2012; Kenneth Cloke's Center for Dispute Resolution: Mediation Training
- November 9, 2012; United States District Court: Cross-Cultural Challenges in Mediation
- November 2, 2012; Straus Institute: Apology, Forgiveness and Reconciliation
- September 21, 2012; United States District Court: ADR Program – Mediation Training
- June 2009; Straus Institute: Negotiating the Litigated Case I&II
- March 3, 2009 - Los Angeles Superior Court: ADR VSC Orientation
- June 2004 - Straus Institute: Mediating the Litigated Case
- September 11, 1993 - California Bar CLE: Effective Legal Negotiation

Awards and Honors:

- Super Lawyers (2014 -Present)
- Consumer Attorneys of California's Consumer Attorney of the Year Finalist (2013)
- Antelope Valley Fair Association's Distinguished Director Award (2012)
- Appointed by California Governor Pete Wilson to the 50th District Agricultural Association as President (1999-2000) and Member of the Board of Directors (1994-2000)
- Los Angeles County Sheriff's Reserve Deputy of the Year – Lancaster Station (1999)
- Bachelor's Degree in Criminal Justice awarded *Magna Cum Laude* (1982)

PARRIS LAW FIRM – SELECTED CLASS ACTION EXPERIENCE

- ***Gutierrez vs. State Farm***, Los Angeles Superior Court Case No. BC 236552
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2004 for **\$135,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***Sekly vs. Allstate Insurance Company***, Los Angeles Superior Court Case No. BC240813
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then summary adjudication as to liability granted in favor of the class. Case settled in 2005 for **\$120,000,000.00**, with Final Approval granted in Department 309 and no objections filed.
- ***CNA Class Action Litigation***, Los Angeles Superior Court Case No. BC242487, Orange County Superior Court Case No. 01CC08868
 - Plaintiffs' counsel in class action misclassification case seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$33,000,000.00**, with Final Approval granted and no objections filed.
- ***Parris v. Lowe's Home Improvement***, Los Angeles Superior Court Case No. BC260702
 - Plaintiffs' counsel in class action seeking payment of "off the clock" hours worked by all hourly employees of Lowe's in the State of California. Class certification ordered by the Court of Appeal. Case settled in 2009 for **\$29,500,000.00**, with Final Approval granted and no objections filed.
- ***Chavoya v. Southern California Edison Company***, Los Angeles County Superior Court Case No. BC366032 and BC425358
 - Plaintiffs' counsel in class action seeking overtime compensation for employees that were reclassified in February 2006 that were not employed at Edison's San Onofre Nuclear Generator facility. Class certification granted, in part, by the trial court. Class was provisionally certified for settlement purposes. Case settled in 2010 for **\$29,000,000.00**, with Final Approval granted and no objections filed.
- ***Roberts vs. Coast National Insurance***, Orange County Superior Court Case No 01CC08478
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Certification granted, and then the matter was tried in binding arbitration. Case settled for in excess of **\$18,000,000.00** during arbitration.
- ***Dotson vs. Royal Sun Alliance***, Orange County Superior Court Case No. 02CC01787
 - Plaintiffs' counsel in class action seeking overtime compensation for insurance claims adjusters employed by defendant in the State of California. Case settled in 2005 for **\$12,300,000.00** with Final Approval granted and no objections filed.
- ***Ingalls v. Hallmark***, Central District of California Case Nos. CV08-04342-VBF (Ex) C/W; CV08-05330-VBF (FFMx)
 - Plaintiffs' counsel in class action seeking payment of "off the clock" hours worked by all hourly employees of Hallmark in the State of California. Class was provisionally certified. Case settled in 2009 for **\$5,625,000.00**, with Final Approval granted and no objections filed.

- ***Rodriguez v. Pacific Bell Telephone Company***, Los Angeles County Superior Court Case No. BC415309
 - Plaintiffs' counsel in class action seeking overtime compensation for employees employed by defendant in the State of California that were reclassified in May 2009. Class was provisionally certified. Case settled in 2010 for **\$5,500,000.00**, with Final Approval granted and no objections filed.
- ***Kim v. Jamison Services, Inc.***, Los Angeles County Superior Court Case No. BC400414
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt employees (except for high-level management and Receptionists) employed by defendant in the State of California. Class was provisionally certified. Case settled in 2009 for **\$2,797,861.24**, with Final Approval granted and no objections filed.
- ***Lippold v. Godiva Chocolatier, Inc.***, Northern District of California Case No. CV-10-00421-SI
 - Plaintiffs' counsel in misclassification class action seeking overtime compensation for all salaried, exempt Store Managers employed by Godiva in the State of California. Class was provisionally certified. Case settled in 2010 for **\$1,000,000.00**, with Final Approval granted and no objections filed.

EXHIBIT 9

Expert Witnesses—the Basics

Experts can be crucial in certain matters, so it is worth considering an expert's potential benefits early in a case. Here are a few basics to keep in mind when thinking about experts.

By R. Adam Swick and Ryan Goldstein

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The Expert's Role

Experts have various jobs in a case. They can assist with (i) assessing the value of a case; (ii) formulating claims, counterclaims, and defenses; (iii) drafting discovery requests and responses; (iv) reviewing documents; (v) challenging the other side's experts; (vi) developing and refining case strategy; (vii) identifying, evaluating, and calculating damages; (viii) evaluating and responding to opposing claims and theories; and (ix) aiding the factfinder through trial testimony.

While experts have many different possible uses, under Federal Rule of Civil Procedure 26(a)(2) and (b)(4), experts fall into two general categories: consulting experts and testifying experts. A consulting expert has been retained or consulted with by a party in anticipation of litigation or trial, but who will not testify at trial. A testifying expert, on the other hand, may be used at trial to present evidence. Generally, no information about consulting experts is discoverable while testifying experts are disclosed to the other side and involved in pre-trial discovery.

While expert needs can evolve over the life of the case, it generally makes sense to retain an expert as early as possible to help with case strategy.

Selection Criteria

A testifying expert's qualifications are almost always challenged. At the outset, an attorney should review a potential expert's qualifications and experience to make sure that the expert has substantive expertise in the relevant subject matter and no prior reports or testimony conflict with the case the expert is currently being considered for. Additionally, it is absolutely critical to

review an expert's history of *Daubert* challenges and disqualifications. Obviously, if the potential expert has been criticized or disqualified in a similar case or subject matter, the expert likely shouldn't be retained.

Expert Reports

Under Rule 26 of the Federal Rules of Civil Procedure, in addition to the disclosure of the expert witness's qualifications, publications, testimony, and compensation, the expert report must contain a complete statement of the expert's opinions, the data of other information considered by the expert in forming such opinions, and any exhibits that will be used to summarize or support the expert's opinions.

Rules differ across jurisdictions, so attorneys need to know the rules that govern in a particular case. For example, sometimes an expert witness's draft reports are shielded from discovery, but in some jurisdictions draft reports are not. But even when communications between a party's attorney and an expert witness are protected, there are three exceptions: communications that (i) relate to the expert's compensation; (ii) identify facts or data that the attorney provided and that the expert relied on in forming opinions; or (iii) identify assumptions that the attorney provided and that the expert relies on in forming opinions.

Testimony

A testifying expert can be deposed by another party in the case. Deposition questions usually cover an expert's qualifications, analysis, methodology, report, and key assumptions, including rejected analyses and unused information. Opposing counsel often use depositions to narrow the scope of an expert's testimony by confirming what the expert is not going to testify about at trial.

In federal court and most state courts, the trial judge provides a gatekeeper function and will apply the *Daubert* standard to determine whether an expert's testimony is based on scientifically valid reasoning and whether it has been properly applied to the facts at issue. The *Daubert* standard has five factors:

- 1 whether the theory or technique in question can be and has been tested;
- 2 whether it has been subjected to peer review and publication;

- 3 its known or potential error rate;
- 4 the existence and maintenance of standards controlling its operation; and
- 5 whether it has attracted widespread acceptance within a relevant scientific community.

Anything the expert says at the deposition can be used to impeach the expert at trial so the deposition testimony must be consistent with the expert's anticipated trial testimony.

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Using a Consulting Expert's Assistance to Take Effective Depositions

A good consulting expert can help you prepare for deposition success.

By Jonathan Couchman

Share:



Consulting experts can be used to assist attorneys in taking more effective and useful fact and opposing expert depositions. In many cases, the most helpful and valuable time spent by your consulting expert during the engagement is spent preparing for and assisting with depositions. A significant benefit of using a consulting expert instead of a testifying expert is that in all but the most unusual circumstances, the work product (and even the identity) of your consulting expert is shielded from discovery.

Preparation is the key to a productive and efficient deposition. One of the axioms of John Wooden, the legendary college basketball coach who guided UCLA to 10 national championships, is that failure to prepare is preparing to fail. This philosophy applies not only to March Madness, but also to taking effective depositions. A good consulting expert can help you prepare for deposition success.

Most likely, you hired your consulting expert because of his or her specialized knowledge and experience, often with respect to a particular industry or profession. Meeting with your consulting expert prior to taking depositions is a great way to collectively discuss what questions, issues, data, or facts each of you believes are important to the case. Your consulting expert can also provide assistance with drafting questions as well as preparing exhibits for use at the deposition. Particularly when taking a deposition on a highly technical subject or detailed financial information, a dry run with the exhibits you plan to use can preempt problems that may arise at the deposition. For example; do you have the right document? Is the print large enough and legible? Do you need a digital copy in native format to see relevant formulas (such as in Excel)? Are there other documents referenced on your exhibits that you might also want to have ready just in case? Working with your consulting expert to clearly hone in on the goals and objectives for

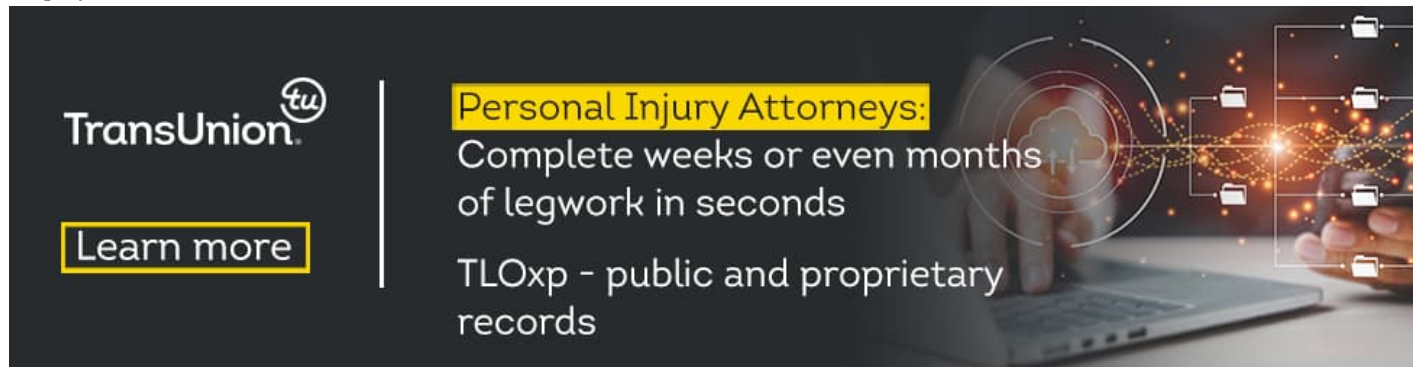
the deposition, as well as resolving any administrative issues with exhibits, will lead to a much more focused and efficient deposition.

Your consulting expert can also provide valuable assistance during your deposition. Your expert can help formulate on-the-fly follow-up questions, provide you with a better understanding or interpretation of your witness's responses, and also help you recognize when the witness may not have even answered your question at all. Remember to take your time and to take advantage of the setting and structure of a deposition. Need time to digest your witness's testimony or gather your thoughts for your next line of inquiry? Take a break and regroup with your consulting expert in the hall or simply lean back from the table and whisper with your expert. The transcript doesn't reflect your conversation and the time spent honing your next question with your consulting expert often obviates the need for several rounds of back-and-forth with the witness as you both struggle to understand each other.

One of your goals for every deposition should be to have a clear and clean record that can seamlessly support cross-examination and potential impeachment at trial. If you have to read aloud three pages of a transcript, then your impeachment probably isn't effective, especially if the judge or jury has to wade through sections of broken or confused testimony that distracts from the point you are trying to make. Your consulting expert can help you avoid a messy record by helping manage and navigate exhibits during your deposition. Using detailed directional indicators with your witness can greatly clean up your transcript. For example, direct your witness to a particular page or Bates number of an exhibit; a paragraph or section number; the top/bottom/left/right; or row, column number, or cell of a spreadsheet. You should strive to create a transcript that can be clearly followed by a reader not present at the time of the deposition, which includes the ability to easily navigate to where and what the witness was looking at when testifying.

Your consulting expert can help prepare you achieve a productive and efficient outcome with both strategic and tactical assistance prior to and during your deposition. Working closely with your expert will allow you to unlock the maximum benefit he or she can provide at one of the most important stages of your case.

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A dark-themed advertisement banner for TransUnion. On the left, the TransUnion logo is displayed above a yellow-bordered button that says "Learn more". To the right of the button, the text "Personal Injury Attorneys:" is highlighted in yellow, followed by "Complete weeks or even months of legwork in seconds" and "TLOxp - public and proprietary records". The background features a hand interacting with a laptop, overlaid with a glowing digital interface showing a cloud icon, a circular radar-like graphic, and a network of nodes and lines.

ABA American Bar Association

</content/aba-cms-dotorg/en/groups/litigation/committees/expert-witnesses/practice/2017/using-a-consulting-experts-assistance-to-take-effective-depositions>

archive

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Stealth Class Actions

by Christina L. Feege, James N. Boudreau and Allan G. King

ON JUNE 21, 2004, a federal district court in San Francisco certified a nationwide class of approximately 1.6 million current and former female employees of Wal-Mart who claim sex discrimination in promotions and pay at Wal-Mart stores around the country. *'Dukes, et al. v. Wal-Mart Stores, Inc.'*, No. C 01-02252 [N.D. Cal. June 21, 2004]. Although this is a noteworthy case, it is not just about sex anymore. Wage and hour collective actions now take up a significant portion of state and federal court dockets, demonstrating that this once sleepy area of the law has caught the attention of the plaintiffs' bar. While the headlines suggest that these recent class actions are won or lost in the courts, the new "action" in class actions comes from quiet demand letters that threaten employers across the country.

"Stealth class actions" are phantom lawsuits that are quietly initiated with a short, carefully crafted demand letter from aggressive, well-known class action counsel. These letters typically suggest that there is a large class action waiting in the wings, and outlines in broad strokes the areas where the organization is potentially liable. The letter closes with an offer to resolve the matter

quickly and quietly at the pre-litigation phase, if the price is right. It is then up to in-house counsel to decide to settle at the outset, or risk large-scale and potentially messy class action litigation.

Why start with a demand letter rather than a formal suit? First, economics. Class actions are expensive to mount and maintain, so an up-front settlement, even if it is not for the full relief that would be available in court, is often the most cost-effective route for plaintiffs' counsel. Savvy "class" counsel also know that their leverage is highest when they can "sell" confidentiality as part of an omnibus pre-suit resolution.

How to Respond

Corporate legal departments need to recognize that these demand letters are different in kind from the ones they are used to receiving in single plaintiff cases, and that the threat they present is real. Below are some pointers on how to manage this threat in a manner that enables the company to effectively negotiate a settlement, if appropriate, while also preparing to mount a vigorous defense.

Preserve evidence -- often. Demand letters are addressed to the CEO, and may languish in his or her office for weeks before being shuffled off to another department. Equally dangerous, sometimes class action demand letters land on the desk of an unsuspecting human resources professional. Neither the CEO nor HR will typically view this type of demand letter as anything particularly urgent. But demand letters trigger the same type of legal obligations as a formal complaint, such as document retention and "legal hold" obligations of the type announced in the UBS Warburg litigation.

Although conventional wisdom has been that the duty to preserve evidence accrues upon receipt of a court complaint, courts are increasingly finding that it may accrue well before then. See, e.g., *Zubulake v. UBS Warburg LLC*, 2003 U.S. Dist. LEXIS 18771 at *9-11. For example, the court in *Zubulake* found that the defendants' duty to preserve evidence began when "almost everyone associated with *Zubulake* recognized the possibility that she might sue." *Zubulake*, 2003 U.S. Dist. LEXIS 18771 at *9-11. The court found that this was 22 months before the plaintiff filed her federal

court complaint and four months before she filed her Equal Employment Opportunity Commission (EEOC) charge.

The federal district court ultimately sanctioned UBS Warburg for failing to maintain e-mails germane to the case once the threat of litigation became apparent. Coincidentally, the following day, the U.S. District Court for the District of Columbia ordered tobacco giant Philip Morris to pay \$2.75 million in sanctions for its own e-discovery violations, including the deletion of relevant e-mails. *U.S. v. Philip Morris*, No. 99-2496 (D.D.C. 2004).

Document and information retention obligations can be massive in scope when they pertain to, for example, every sales associate employed by a nationwide retail organization over the past five years. As *Zubulake* demonstrates, however, failure to preserve evidence under these circumstances can place the company at risk for sanctions in later litigation (which may be substantial, even if the underlying case has little merit), as well as weaken the company's substantive defenses.

As a first line of defense, therefore, legal departments should put procedures in place to deal with demand letters, just as they have with formal court complaints and agency charges. For example, a "legal hold" memo should detail a specific method by which employees should preserve potentially relevant e-mails. It is also imperative to inform the IT department of the company's newfound retention obligations. The IT department will likely have to stop or alter the company's current automatic document/e-mail deletion practice.

Line up your experts. When your company receives a demand letter that appears credible, it is time to reach out to the small universe of expert witnesses who specialize in employment class action litigation. Do not wait. If you do, you may find that plaintiffs' counsel has already contacted the one you want. Early involvement of the right experts can also help your organization evaluate its potential exposure early on.

In employment discrimination cases, there are three areas where expert evidence is generally required. First, a statistician should be retained. There are very few who are truly

experienced in the area of employment discrimination pattern and practice litigation. Make sure you get one of the good ones from the start. Second, you will likely need a labor economist to address damage allegations, such as pay disparities between male and female employees or minority and non-minority employees.

Finally, and increasingly on the scene, are industrial psychologists. Plaintiffs increasingly use such experts to opine, for example, that the employer's work force is "male-dominated," and as a result, managers hold stereotypical views concerning female employees' ability to succeed. This expert may suggest that these biases are unconscious, and will contend that absent specific checks on managerial discretion, which are lacking, the discriminatory results found by the economist/statistician are virtually inevitable. For example, in *Dukes v. Wal-Mart*, the sex discrimination class action recently certified in California, plaintiffs' sociologist emphasized that the "Wal-Mart culture" was the common thread that tied together the seemingly unrelated decisions managers made throughout the nation. A company defending such allegations will need an expert to rebut these opinions.

Given the importance of expert testimony in class litigation, early involvement of effective experts, both consulting and testifying, is imperative. Such early involvement enables the company to identify relevant data, what needs to be retained, and the best way to analyze it. Consulting experts are particularly helpful because they can help to build a statistical model to study various employment decisions at issue without risking the discovery of results. This may give the company immeasurable leverage in settlement negotiations as it will already have defenses prepared to claims that plaintiffs' counsel may make during settlement negotiations. Further, the company will be in position to defend the case in the event a resolution is not reached, as it can use the data to defeat class certification if it proceeds to litigation.

Manage communications with employees. The threat of a class action poses another very practical problem for companies: whom to tell. The first instinct upon receiving a demand letter is often to conduct a wide-scale investigation into the merit of the claims. A

wide investigation, however, often results in publication of the claims deep within the organization, possibly to otherwise unaware potential plaintiffs. Thus, be careful. There is a need to balance the instinct to investigate immediately against the desire for confidentiality. Ethical considerations also play a role. In every case, establish a control group charged with receiving information and investigating the basis of the claims. The control group should be small at the outset, consisting of senior ranking employees from legal, HR and the affected business unit. Like a widespread investigation, a large control group may very well defeat the purpose of a quiet settlement. That is, you may get your settlement, but it will not be "quiet."

As time goes by and the investigation continues, employees in the company, many of whom will be potential class members, will inevitably learn of the action. A company may find itself wanting to get its message out to rank and file employees, but beware — any such message must be carefully scripted. One way to manage the message is to prepare "talking points" for HR and managers. By controlling what is to be said in this manner, the organization can meet its ethical obligations in regard to communicating with putative class members and simultaneously protect itself against claims that it is trying to coerce potential class members to avoid the litigation or to speak directly to the company about their claims. Companies may also consider a mass communication (for example, an e-mail or intranet posting) that describes the lawsuit, issues involved and the company's position. As a general rule employers can issue mass communications to potential class members, so long as they are (a) not false or misleading and (b) contain a disclaimer indicating that the communication represents the position of the company and that no employee will be retaliated against for "participating in the litigation." Manual for Complex Litigation (Third) §30.24, at 257 (citing *Gulf Oil v. Bernard*, 452 U.S. 89, 102-04 (1981)).

Judiciously manage the data. Of course, any company trying to decide between settlement and litigation in response to a threatened class action will need to evaluate the claims raised, and prepare for litigation if necessary. It is necessary to start to identify potential class members, to assess the magnitude of potential exposure from best to worst case

scenarios, and to prepare defenses to class certification.

It is critical that these activities be done in a manner that preserves privilege. It is not unusual for human resources or business people to start generating data without counsel specifically instructing them to do so. In all likelihood, this information will not be privileged, and may be generated in a way that is potentially damaging to the company's position. As part of a company's standard response protocol, therefore, counsel should instruct human resources and other support teams to wait to generate reports and other data concerning contested claims until specifically instructed to do so. As discussed above, this is also the time to get consulting experts involved. They can help organize and generate data in ways that assist the defense to the maximum extent, all under the umbrella of privilege.

Initially, the company should interview relevant decision-makers and hear their rationale for the challenged decisions. Such interviews may give the company viable defenses that it can use to oppose class certification — for example, that the plaintiff's experience does not reflect corporate "policy," or to argue that the contested policy has a narrow effect on as limited a class of employees as possible. One goal your company should have during the investigations is to develop how processes at issue in the potential class action actually work, i.e., at what level are decisions made, what kind of HR/managerial oversight was there, what are the objective components of the decision-making. To the extent the data permits, it may also be possible to "play with the numbers" in a manner that demonstrates the weakness of plaintiffs' claims and/or theories. A consulting expert may help the company develop facts showing that income differences between men and women do not reflect gender bias, but instead reflect income, educational or experience-based disparities that pre-dated employment with the employer.

So, You Want to Settle?

If the company wants to pursue settlement, how should it proceed in the precomplaint context? As negotiations unfold, in-house

counsel will want to be cognizant of the following considerations:

Tolling for trolling. Employers have leverage at the pre-suit stage. Experienced plaintiffs' counsel know that confidentiality and closure make up the real product they are selling. Do not be afraid to demand broad confidentiality concerning the plaintiffs' claims and all settlement negotiations. If the parties involved decide to pursue settlement negotiations, they will generally be protracted. As a result, plaintiffs' counsel will likely ask for an agreement tolling the statute of limitations until settlement discussions end. Although there is generally nothing wrong with entering a tolling agreement, it is important to demand that plaintiffs' counsel agree not to "troll" for new clients during settlement negotiations. Be aware, however, that if the U.S. Equal Employment Opportunity Commission (EEOC) or National Labor Relations Board gets involved, these agencies may not countenance language that amounts, in their view, to gag orders.

Understand what you are buying. Beware. If the company's goal is to dispose of an action quickly and quietly, a private settlement may be an appropriate option. The settlement of a threatened class-wide claim without court involvement, however, does not bar future litigation on the same claim (except to the extent individual releases are obtained). This may leave lingering, unresolved claims lurking in the background. A company could ink a deal on Monday and be sued in court on Tuesday based on the exact same allegations. If the company's goal is to ensure full closure and to prevent the reoccurrence of a class action threat, therefore, a private settlement may not be the best vehicle.

If the company wants more closure on threatened claims, it will have to go public at some point and seek court approval of the settlement. There are strategies and tactics for accomplishing this as quietly as possible, but notice of the proposed settlement will have to be sent to all potential class members and a court will have to hold a fairness hearing before approving the settlement. This strategy will not necessarily work with Fair Labor Standards Act (FLSA) or Age Discrimination

in Employment Act collective actions, which follow an "optin" procedure, and thus bind only those employees who have formally sought to join the suit. Depending on the nature of the suit, an outside agency also may have to get involved. For example, in FLSA litigation an employee may not waive his or her right to back pay and other relief absent approval from a court or the U.S. Department of Labor. Similarly, because a privately negotiated release of claims will not bind the EEOC, it may be necessary to involve the EEOC in settlement negotiations if the company wants to close out any possibility of future litigation. Common settlement provisions. During settlement negotiations of class-wide employment claims, plaintiffs' counsel often make requests beyond monetary demands, some of which may even help a company prevent future claims. For example, changes to the company's existing job posting processes may be demanded. Plaintiffs may demand ongoing independent equity studies to determine if the company is determining pay, job grades and promotions on a nondiscriminatory basis.

Structural changes may be required as a condition of settlement if disparities are found. These may include the creation of an ombuds office to resolve independent employee complaints;¹ and the creation of "affinity groups" of similarly situated employees, including the provision of meeting space and other resources that allow members to communicate about common issues. Plaintiffs may even demand that the company retain an industrial psychologist to review and make recommended changes to job applications, performance appraisal forms and other human resources policies.

Although these requests may appear taxing and burdensome, they are all subject to negotiation. The company's goal should be to ensure that any agreements regarding ongoing monitoring or systemic changes have a minimal impact on the company's day-to-day operations. Moreover, companies should strive not to surrender day-to-day decision-making or control to outsiders, expert or not, as a condition of any settlement.

Where is the EEOC? The EEOC rarely walks

¹ For example, in settling a nationwide class action asserting claims of race discrimination with both private plaintiffs and the EEOC, the Abercrombie & Fitch retail chain agreed to create a new "diversity" office, and to modify its workplace complaint procedures.

away from class actions (threatened or actual) without making programmatic changes to the employer's existing workplace policies. If the EEOC is involved, expect the agency to be less focused on money than a private plaintiff would and more focused on implementing programmatic changes (like affinity groups, pay equity studies and structural changes discussed above). A company may need to go the extra mile on programmatic relief to ensure the EEOC's cooperation in endorsing a favorable monetary settlement.

Preventative Strategies

There are proactive measures that corporate legal departments can initiate to make sure that their case is not the next one featured on "bigclassaction.com." The best strategy is to be proactive: determine whether your company's statistics and policies are a harbinger of class certification and take corrective steps now rather than in response to a threatened or actual claim. In-house counsel would be well-advised to do the following:

- In a privileged fashion, become familiar with your employment statistics and the inferences that can be drawn from them;
 - If your company already has that familiarity, examine your policies regarding hiring, promotion and pay — again in a privileged fashion — to assess whether modifications can be made so that they do not appear to rely too much on subjective criteria;
 - Adopt or modify a job posting system so that job openings and promotional opportunities (or more of them) are publicized internally;
 - Conduct a systematic assessment in a privileged fashion of potential barriers to the advancement of individuals in protected classifications;
 - Adopt an appeals process for decisions denying promotions or pay raises; and
 - Audit your pay practices to ascertain whether employees are appropriately classified, and assess whether exempt employees are being paid for all hours worked, and overtime, if applicable.
- Draft policies to fill in any gaps.

Why open up this potential can of worms? Four reasons:

(1) To identify and correct problems. Even if it does not keep your company out of court, a demonstrably proactive approach at the corporate level will nevertheless assist

you in keeping the issue of punitive damages from being sent to a jury or incurring liquidated damages in wage and hour litigation based on "willful violations of law." It may also make your organization a less attractive candidate for a stealth class action threat.

(2) To promote good employee relations. Employee satisfaction and retention will increase if employment policies are viewed as non-discriminatory and legally sound.

(3) To enhance the bottom line. Staying out of the headlines and/or defeating a large class certification attempt could enhance the company's share price, and the implementation of preventative measures decreases the cost of employment practices liability insurance. And do not forget about legal fees saved, which are not insignificant in the context of potentially large-scale, nationwide class actions.

(4) To arm your company with a better settlement posture, and a better body of evidence should the case proceed to litigation.