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individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ANDREA WALKER, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00305106

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT SETTLEMENT**

Reservation No. A-305106004

Date: September 13, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 29, 2021

FAC Filed: September 18, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 13, 2024, at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department 22 of the above-entitled Court, Plaintiff Andrea Walker (“Plaintiff”)
4 will, and hereby does, move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act (“PAGA”) and, as such, was authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$285,000 PAGA Settlement, which is incorporated by reference as if stated
9 here in full;
- 10 3. Approving the application for payment to Plaintiff’s Counsel of reasonable costs in the
11 amount of \$15,094.80;
- 12 4. Approving the appointment of ILYM Group, Inc. as the Settlement Administrator and for
13 payment to ILYM Group, Inc., for administering said settlement in the amount of \$5,550;
- 14 5. Approving the application for payment to Plaintiff’s Counsel of reasonable attorneys’ fees in
15 the amount of \$19,155;
- 16 6. Approving an Enhancement Payment of \$10,000 to Plaintiff from the Gross Settlement
17 Amount for her work on behalf of the Aggrieved Employees and the LWDA and in exchange
18 for her general release of all her individual claims in addition to any amount Plaintiff may be
19 entitled to under the Agreement’s pro rata distribution formula;
- 20 7. Approving as to form and content the proposed Notice of Settlement, which provides
21 individuals within the scope of the Settlement information regarding the Settlement;
- 22 8. Approving the proposed procedures to notify, and deliver payment to, the individuals within
23 the scope of the Settlement;
- 24 9. Directing Defendants to report employment information, including social security numbers,
25 to the Settlement Administrator to administer the settlement proceeds;
- 26 10. Directing that any amount from settlement checks that were not cashed by the check cashing
27 deadline be forwarded to the California Controller’s Unclaimed Property Fund in the name of
28 the Aggrieved Employee each check pertains to; and

1 11. Approving and adopting the Proposed Order and its implementation schedule, which is filed
2 herewith and incorporated by reference.

3 This Motion is being made pursuant to California Labor Code section 2699(1)(2) on the grounds
4 that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the
5 asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement
6 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
7 points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Andrea Walker,
8 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the
9 hearing of this motion.

10 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
11 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
12 **department may be downloaded off the court's website. If the party does not have online access,**
13 **they may call the dedicated phone number for the department as referenced in the local telephone**
14 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
15 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
16 **court day before the hearing, no hearing will be held.**

17 Dated: August 21, 2024

Shimoda & Rodriguez Law, PC

18 By: _____

19 
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Case No. 34-2021-00305106

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**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Andrea Walker (“Plaintiff”) seeks approval of a Private Attorneys General Act
3 (“PAGA”) Settlement in the gross amount of \$285,000. *See generally* Exhibit A (Proposed PAGA
4 Settlement [“Agreement”]). Plaintiff brought this PAGA lawsuit on behalf of the Labor and Workforce
5 Development Agency (“LWDA”) and Aggrieved Employees who worked for Defendants Yan Kalika
6 Dental Corporation and Yan Kalika (“Defendants”) (Plaintiff and Defendants sometimes collectively
7 referred to as the “Parties”). *See, generally*, Exhibit B (Plaintiff’s Operative Complaint). There are
8 approximately 524 Aggrieved Employees.

9 Plaintiff has alleged that Defendants violated California law by failing to pay overtime wages,
10 failing to provide meal periods or pay premiums in lieu thereof, failing to provide accurate wage
11 statements, failing to pay final wages, failing to pay reimbursement for expenses, violating Labor Code
12 §§ 558, 558.1, and failing to provide paid sick leave. *See generally* Exhibit B; *see also* Declaration of
13 Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 2. Defendants have denied all of Plaintiff’s allegations and
14 any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶¶ 7, 11. However, subject to Court
15 approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive
16 investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and
17 Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the
18 investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues
19 in this case. *See* Decl. Rodriguez, ¶¶ 8, 11-13. The Agreement was entered into in good faith to resolve
20 heavily contested claims and it guarantees a reasonable recovery for Aggrieved Employees and the
21 LWDA. Accordingly, Plaintiff requests that the Court: (1) make a finding that Plaintiff has exhausted
22 all administrative remedies and that Plaintiff is authorized to enter into the proposed Agreement on
23 behalf of the LWDA; (2) approve the proposed Agreement as fair, reasonable, and adequate; (3) set
24 dates for and direct distribution of payment and the Notice of Settlement (Exhibit E) to Aggrieved
25 Employees affected by the settlement as set forth in the Agreement and (4) adopt the implementation
26 schedule contained in the proposed order.

27 //

28 //

II. PROCEDURAL AND LITIGATION HISTORY

On May 12, 2021, Plaintiff gave written notice to the LWDA and Defendants providing facts and the legal basis for all claims asserted in the Complaint and the claims that are being resolved under the Agreement. *See* Exhibit C (Plaintiff's Ltr. to the LWDA). The notice was sent via certified mail to Defendants on the same day and Plaintiff submitted the \$75.00 filing fee to the LWDA at that time. *See id.*; Decl. Rodriguez, ¶ 3. The LWDA did not provide any response to Plaintiff's notice correspondence within the statutorily required time frame and, as a result, Plaintiff became authorized to act as a Private Attorney General for the asserted claims. *See* Decl. Rodriguez, ¶ 3. Plaintiff filed this lawsuit on July 29, 2021. *See id.* There is no trial date set in this matter. *See id.* at ¶ 5.

Due to the United States Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), Plaintiff submitted her individual claims to arbitration, including the "individual" portion of the PAGA claims. *See id.* at ¶ 4; Declaration of Andrea Walker ("Decl. Walker"), ¶ 5. While arbitration was pending, Defendants did not pay one of the arbitrator's invoices as required and Plaintiff elected to proceed with the claims in Court instead of arbitration pursuant to California Code of Civil Procedure section 1281.98(b)(1). *See* Decl. Rodriguez, ¶ 4; Decl. Walker, ¶ 5. Plaintiff filed a motion for attorney's fees and costs incurred in arbitration, which the Court granted on January 26, 2024, awarding \$80,595 in attorney's fees and \$1,923.44 in costs. *See* Decl. Rodriguez, ¶ 10; Exhibit I (January 26, 2024, Minute Order re 1281.98 Motion for Fees & Costs ["Fee Order"]).

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims. *See* Decl. Rodriguez, ¶¶ 8-11. Plaintiff worked during the time all of Defendants' policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Walker, ¶¶ 2, 6-7; Decl. Rodriguez, ¶¶ 2-3. The Parties engaged in extensive formal discovery as well as further informal discovery and exchange of documents in connection with mediation, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. *See* Decl. Rodriguez, ¶¶ 8-9. The discovery covered all aspects of the asserted claims, including merits issues, damages, the scope and configuration of Aggrieved Employees,

1 the content and implementation of the wage and hour policies at issue, issues relating to manageability
2 and the ability prove violations in every pay period for every Aggrieved Employee, among other
3 relevant areas. *See id.* at ¶ 9. The information allowed Plaintiff to determine the extent and frequency
4 of any violations in accordance with Plaintiff's contentions and create an accurate damages model to
5 assess the reasonableness of any settlement. *See id.* at ¶¶ 8-13.

6 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

7 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

8 The final settlement occurred only after extended, arm's length negotiations. Over the course of
9 approximately three years, Plaintiff has been investigating the claims and arguing the merits of the
10 claims and issues present in this case with Defendants' counsel. *See id.* at ¶¶ 3-4, 7-10. The Parties
11 exchanged substantial amounts of information and legal analysis in connection with these discussions.
12 *See id.* It was only after these extended discussions, multiple motions, a full day mediation with an
13 experienced mediator, Michael J. Loeb, Esq., and a mediator's proposal, that the Parties were able
14 resolve all claims and enter into the Agreement. *See id.* at ¶¶ 9-10.

15 **b. The Terms of the Agreement**

16 1. The scope of Aggrieved Employees covered under the Agreement includes all non-
17 exempt employees who have worked for Defendants in California from May 12, 2020, up to July 16,
18 2024. *See* Exhibit A, ¶ 1.2. There are approximately 524 Aggrieved Employees. *See id.*

19 2. Defendants will pay the Gross Settlement Amount of \$285,000. *See id.* at ¶ 5.1. No
20 portion of the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.5.

21 3. Subject to Court approval, the Parties have selected ILYM Group, Inc., to act as the
22 Settlement Administrator. *See id.* at ¶ 1.29. Settlement administration costs are not to exceed \$15,000
23 under the Agreement and ILYM Group, Inc., has provided a cost estimate of \$5,550. *See id.* at ¶ 5.4;
24 Exhibit D, ¶¶ 6-7 (ILYM Group, Inc., Settlement Administration Bid).

25 4. Defendants remain obligated to pay the attorney's fees and costs awarded in the Fee
26 Order. *See* Exhibit A, ¶ 5.2. Under the Agreement, Defendants agree that they will not oppose
27 Plaintiff's request for an additional \$19,155 in attorney's fees and up to \$17,500 in additional costs
28 incurred in this case. *See id.* Any attorney's fees and costs awarded in connection with this Motion and

the fees and costs awarded from the Fee Order would be paid out of the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See id.* These additional fees and costs are for hours and expenses incurred litigating this case that were not within the scope of Plaintiff's 1281.98 fee motion. *See Decl. Rodriguez, ¶¶ 10, 23.* Including the additional \$19,155 in attorney's fees equates approximately to a 35% fee award for Plaintiff's Counsel's work in this litigation as a whole (\$80,595 + \$19,155 = \$99,750. $\$285,000 \times .35 = \$99,750$). At the time this motion was filed, the estimated total costs incurred and that will be incurred in the future as a result of the litigation and implementing the terms of the Agreement that were not within the scope of Plaintiff's 1281.98 fee motion are \$15,094.80. *See Decl. Rodriguez, ¶¶ 10, 23; Exhibit G (Plaintiff's Itemized Costs).* Including the additional \$15,094.80 in attorney's costs equates to a total of \$17,018.24 in costs incurred in this litigation as a whole ($\$1,923.44 + \$15,094.80 = \$17,018.24$).

5. In exchange for a waiver of her individual claims beyond the PAGA claims being released and for the risk, time, and expense involved in Plaintiff prosecuting the Action for the benefit of the LWDA and Aggrieved Employees, Defendants agree not to oppose Plaintiff's request for an Enhancement payment in the amount of \$10,000.00. *See Exhibit A, ¶¶ 1.9, 1.20, 1.27, 5.3.*

6. Any allocated amounts under the Agreement for Settlement Administrator Costs, attorney's fees and costs, and/or any Enhancement Payment that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to the LWDA and Aggrieved Employees as set forth in the Agreement. *See Exhibit A, ¶¶ 1.13, 1.15, 5.1-5.4, 5.8.* These amounts will be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See id.*

7. Any and all claims for civil penalties under the PAGA asserted in Plaintiff's notice letter to the LWDA or that could have been asserted based on the facts alleged in Plaintiff's notice letter to the LWDA during the PAGA Claim Period will be deemed fully, finally, and forever released against the Released Parties. *See Exhibit A, ¶¶ 1.18, 1.26, 1.28, 6.1.*

8. The Settlement Administrator will perform searches to locate Aggrieved Employees based on the last known contact information in Defendants' possession. *See id.* at ¶¶ 7.2, 7.5-7.7. The searches will include reference to the U.S. Postal Service's National Change of Address Database and, for any notice returned as undeliverable, skip tracing using the individual's social security number and

1 other pertinent identifying information. *See id.* Although not required to provide a notice of settlement
2 to Aggrieved Employees in connection with the Individual Settlement Amount, the Agreement provides
3 that Aggrieved Employees will receive a notice giving them information concerning all material terms
4 of the settlement. *See id.* at ¶ 7.5; Exhibit E; *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
5 1340777, *5 (N.D. Cal. 2010) (“Unnamed employees need not be given notice of the PAGA claim, nor
6 do they have the ability to opt-out of the representative PAGA claim”); *see also Arias v. Superior Ct.*, 46
7 Cal.4th 969, 984-988 (2009) (rejecting a defendant’s due process argument that aggrieved employees
8 must be given notice similar to class members in class actions); *Turrieta v. Lyft, Inc.*, No. S271721,
9 2024 WL 3611975, *11 n.12 (Cal. Aug. 1, 2024). Notice methods similar to those employed under the
10 Agreement have been found to satisfy due process even in class action cases. *See Silber v. Mabon*, 18
11 F.3d 1449, 1453-1454 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir.
12 2017); *Rannis v. Recchia*, 380 F. App’x 646, 650-651 (9th Cir. 2010).

13 9. For any portion of the Net Settlement Amount allocated to Aggrieved Employees that is
14 not claimed by them by cashing their respective settlement checks within 180 days of issuance, the
15 remaining amount shall be paid to the California Controller’s Unclaimed Property Fund to be held in the
16 name of each expired check payee, pursuant to applicable unclaimed property laws. *See Exhibit A*, at ¶
17 5.5. Because the Agreement provides a plan for distribution of all funds, there is no “residue” left over
18 from the settlement payments. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720, 722-724
19 (2006).

20 **c. Allocation of Settlement Funds**

21 A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount
22 any attorneys’ fees and costs, Enhancement Payment, Settlement Administrator Costs awarded by the
23 Court. *See Exhibit A*, ¶¶ 1.15, 5.8. The Net Settlement Amount shall be divided between the PAGA
24 Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the
25 Net Settlement Amount. *See Cal. Lab. Code § 2699(i)*. 25% of the Net Settlement Amount will be paid
26 to Aggrieved Employees *See id.* Each Individual Settlement Amount shall be determined by taking the
27 Qualifying Pay Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay
28

Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount. See Exhibit A, ¶¶ 1.25, 5.8.

V. THE AGREEMENT SHOULD BE APPROVED AS PLAINTIFF HAS MET ALL STATUTORY REQUIREMENTS FOR PROCEEDING WITH THE PAGA CLAIM AND THE AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE

A PAGA settlement is not effective unless the statutory requirements for becoming an authorized representative of the LWDA have been complied with and the Court has reviewed and approved the terms of the PAGA settlement. See Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c). The Court has broad discretion in making the decision to approve or reject a settlement for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should be assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of the case. See *id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must determine “whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same established framework Courts use to evaluate whether class action settlements are fair, reasonable, and adequate. See *id.*; see also *Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4, n.5 (E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v. NCI Group, Inc.*, 2018 WL 1409590, *1–2 (C.D. Cal. 2018) (same). This framework has been used many times over by multiple Courts. See, e.g., *Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017); *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5, n.4 (E.D. Cal. 2017); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL 2029061, *2 (N.D. Cal. 2019). An important difference in the analysis, however, is that the evaluation should focus on the amount of the settlement as a whole rather than any individual aggrieved

employee's share because a PAGA lawsuit is fundamentally a law enforcement action where the "relief is designed to protect the public[,] not to benefit private parties." *See Moniz*, 72 Cal.App.5th at 74 (internal quotation and citations omitted).

a. Plaintiff has Met All Statutory Requirements For Proceeding With A PAGA Claim

An aggrieved employee must give written notice of the facts, theories, and statutes supporting the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). The relevant statutory provisions state that an "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." *id.* at § 2699(c).¹ If the LWDA does not provide notice of its intent to investigate within 65 calendar days of the notice, the aggrieved employee may commence a civil action. *See id.* at §§ 2699.3(a)(2)(A), 2699.5. For alleged violations of the Labor Code sections not enumerated in section 2699.5, an aggrieved employee may commence a civil action if the employer has not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

As set forth above, Plaintiff complied with all statutory requirements to commence a civil action. *See* Decl. Rodriguez ¶ 3; Exhibit C. The notice letter to the LWDA sets forth all claims and theories of liability stated in the Complaint as well as supporting facts. *See* Exhibit C. Plaintiff also paid the \$75.00 filing fee. *See* Decl. Rodriguez ¶ 3. As the LWDA did not provide any notice of its intent to investigate within the required time frame and no cure under the statute took place, Plaintiff is authorized resolve those claims contained in the notice letter(s). *See id.*; Exhibit C. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire motion for approval to the LWDA for its consideration at the same time this motion was filed. *See* Rodriguez ¶ 28; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).

¹ Although the definition of "aggrieved employee" under the PAGA was amended, effective July 1, 2024, the amendments specifically state they do not apply to civil action filed before June 19, 2024, or to a notice that was filed with the LWDA before June 19, 2024. *See* Cal. Lab. Code § 2699(v)(1)-(2). Plaintiff's filings precede these dates. Thus, Plaintiff is using the definitions as they appeared before the July 1, 2024, amendments.

1 **b. The Terms of The Settlement Are Fair, Reasonable, and Adequate**

2 Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable,
3 and adequate include the strength of the case, the risk, expense, complexity and likely duration of further
4 litigation, the amount offered in settlement, the extent of discovery completed and the stage of the
5 proceedings, and the experience and views of counsel. *See Chamberlain*, 2020 WL 4350207, *4 n.5;
6 *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). However, this Court should begin its
7 analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists
8 where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are
9 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
10 litigation” *Dunk*, 48 Cal.App.4th at 1802. Indeed, the law favors settlement of lawsuits,
11 particularly complex litigation cases where substantial resources can be conserved by avoiding the time,
12 expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81
13 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008).

14 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length Negotiations**
15 **Between the Parties**

16 Settlement of the PAGA claims was reached only after substantial litigation and extensive arm’s
17 length negotiations lasting approximately three years, which included a full day mediation and
18 resolution through a mediator’s proposal. *See Decl. Rodriguez*, ¶¶ 7, 10. At all times, the negotiations
19 were adversarial, although still professional in nature. *See id.*

20 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
21 **Information to Enter into an Informed and Reasonable Settlement**

22 The Parties were in possession of all necessary information during the negotiations. The Parties
23 engaged in substantial formal and informal discovery, which included all necessary components for
24 evaluating the PAGA claims and creating an accurate damages model. *See id.* at ¶¶ 8-13. Plaintiff was
25 in possession of this information prior to calculating any damages in this case. *See id.* As a result,
26 Plaintiff was able to make a reasonable estimation of Defendants’ potential liability. *See id.* For these
27 reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a
28

1 clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd*
2 *v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

3 **iii. Plaintiff’s Counsel Are Experienced in Similar Litigation**

4 Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA
5 actions. *See* Decl. Rodriguez, ¶¶ 15-22. Thus, Plaintiff’s counsel are qualified to evaluate the PAGA
6 claims, the value of settlement versus moving forward with litigation, and viability of possible
7 affirmative defenses. Plaintiff’s counsel believe that the Agreement is fair, reasonable, and adequate in
8 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
9 benefit to Aggrieved Employees and the LWDA that the Agreement provides. *See id.* at ¶¶ 11-13.

10 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff’s Case**
11 **and the Risks and Costs of Further Litigation**

12 Every aspect of Plaintiff’s PAGA claims were heavily disputed by Defendants. *See* Decl.
13 Rodriguez, ¶¶ 4, 7, 10-11. Based on the records and facts of this case, Plaintiff has secured a gross
14 recovery of approximately 8.6% of the maximum value of the claims in this matter (\$3,297,692) and
15 between 21.7% and 258.4% of the more realistic range of recovery (\$110,607.51 to \$1,312,699.10). *See*
16 Decl. Rodriguez, ¶¶ 11-13. The Net Settlement Amount (\$152,681.76) represents approximately 4.6%
17 of the maximum value of the claims in this matter and between 11.6% to 138% of the more realistic
18 range of recovery. *See id.* The Agreement is a reasonable compromise and exceeds approved settlement
19 ranges in other PAGA cases whether comparing either absolute numbers or as a percentage of total
20 available damages. *See Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal.
21 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door*
22 *Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at
23 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL
24 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
25 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
26 *Commc’ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving
27 \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int’l, LLC*, 2014 U.S. Dist. LEXIS
28 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys’ fees award alone

amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in representative action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the data points relied upon in reaching these ranges. See Decl. Rodriguez ¶¶ 8-13. The record demonstrates that the compromises made by Plaintiff was reasonable and have resulted in a settlement with recovery percentage well within the range of what has been found to be sufficient in several other cases. See, *supra*, Section V.b.iv; see also *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)

1 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
2 in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”);
3 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in
4 theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a
5 single percent of the potential recovery”).

6 **VI. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS, AN**
7 **ENHANCEMENT PAYMENT TO PLAINTIFF, AND SETTLEMENT**
8 **ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE APPROVED**

9 **a. The Requested Attorney’s Fees and Costs Are Justified as a Percentage of the Common**
10 **Fund As Well As A Lodestar Cross Check**

11 This case is in a very unique procedural position with respect to attorney’s fees and costs. The
12 Court already reviewed and approved payment of \$80,595 in attorney’s fees and \$1,923.44 in costs on
13 January 26, 2024, in the Fee Order, granting Plaintiff’s request in full. See Exhibit I. Under the
14 Agreement, Defendants remain obligated to pay those amounts. See Exhibit A, ¶ 5.2. Thus, the
15 amounts for fees and costs requested in this Motion are in addition to the Fee Order and are for fees and
16 costs incurred that were outside the scope of the Fee Order. See Decl. Rodriguez, ¶¶ 23-24. Combining
17 the additional amounts requested with those already awarded would result in a total attorney’s fee award
18 of \$99,750 (35% of the Gross Settlement Amount) and a total cost award of \$17,018.24 for the time and
19 expenses incurred in this litigation. See *id.* The total fees and costs would be paid from the Gross
20 Settlement Amount, not in addition to, or separate from, the Gross Settlement Amount. See Exhibit A, ¶
21 5.2. Even if there were no prior approval of Plaintiff’s costs and most of the attorney’s fees being
22 awarded, these amounts would still be appropriately awarded in this case.

23 An award of attorney’s fees should include compensation for all hours reasonably spent. See
24 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); see also *Hensley v. Eckerhart*, 461 U.S. 424, 431
25 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client).
26 California has not adopted any “benchmark” percentage utilized by several federal courts. See *Emmons*
27 *v. Quest Diagnostics Clinical Lab’s, Inc.*, 2017 WL 749018, *7 (E.D. Cal. 2017) (“Notably, while the
28 California Supreme Court recognized the Ninth Circuit’s 25 percent benchmark for percentage awards
in common fund cases, it did not adopt such a benchmark for California cases”). Instead, “[t]he

1 benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61
2 Cal.App.5th 734, 744 (2021).

3 Although this litigation is under the PAGA and not a class action, the basis for a common fund
4 applies with equal force. A total fee award of 35% under the common fund doctrine would appropriate
5 in this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the Aggrieved Employees
6 and the LWDA), the benefits received can be accurately traced to the settlement Plaintiff and her
7 Counsel were able to negotiate on behalf of Aggrieved Employees and the LWDA, and the fee can be
8 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
9 fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston &*
10 *Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478
11 (1980) (“A lawyer who recovers a common fund for the benefit of persons other than . . . her client is
12 entitled to a reasonable attorney’s fee from the fund as a whole.”). The requested additional fees and
13 the resulting total fee award arising out of this litigation, 35% of the common fund, is within ranges
14 awarded in other cases. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D.
15 Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690
16 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v.*
17 *Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on
18 a \$3.75 million wage and hour class action settlement).

19 To the extent there may be some Courts that have granted fees at a percentage less than 35%,
20 that does not justify an arbitrary cap on Plaintiff’s Counsel’s fees in this case. First, in many instances,
21 the treatises or cases discussing these percentages are relying on federal decisions guided by a
22 “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See*
23 *Emmons*, 2017 WL 749018, at *7. This artificially lowers the average percentage of fees awarded.
24 Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement
25 fund to begin with, which will generally correspond to a lower percentage of fees being deemed
26 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an
27 appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of
28 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on

1 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as
2 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,
3 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular
4 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference
5 to all the circumstances of the case”).

6 A lodestar cross check confirms the reasonableness of the additional fees requested and the
7 reasonableness of a total award equaling 35% of the Gross Settlement Amount. *See Laffitte*, 1 Cal.5th
8 at 503-506. Again, an award of attorney’s fees should include compensation for all hours reasonably
9 spent. *See Ketchum*, 24 Cal.4th at 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are
10 reasonably spent if they are the kind normally billed to a fee-paying client). Considering only those
11 hours that were outside the scope of, and, therefore, not included in, Plaintiff’s 1281.98 fee motion,
12 Plaintiff’s counsel will have spent approximately 254.9 hours performing tasks that would normally be
13 billed to any fee playing client in complex litigation after completion of settlement administration,
14 including monitoring the disbursement of all funds and compliance hearing(s). *See Decl. Rodriguez*, ¶¶
15 23-24; Exhibit H (Fee Summary Chart); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699
16 (2014) (“Because time records are not required under California law ..., there is no required level of
17 detail that counsel must achieve.”) (internal quotations omitted). At rates the Court has already
18 approved in the Fee Order, this equates to a lodestar of approximately \$147,322.50. *See Decl.*
19 *Rodriguez*, ¶¶ 24-25; Exhibit H; Exhibit I; *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th
20 740, 746 (2002) (noting rates were reasonable where they were “within the range of reasonable rates
21 charged by and judicially awarded comparable attorneys for comparable work”).

22 The reasonableness of Plaintiff’s Counsel’s fee request is also demonstrated by the fact that the
23 amount requested would not require any multiplier of the lodestar. Multipliers are typically awarded in
24 contingent fee litigation to compensate counsel for the risk of non-payment:

25 It is an established practice in the private legal market to reward attorneys
26 for taking the risk of non-payment by paying them a premium over their
27 normal hourly rates for winning contingency cases. *See Richard Posner*,
28 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
fees that may far exceed the market value of the services if rendered on a
non-contingent basis are accepted in the legal profession as a legitimate

1 way of assuring competent representation for Plaintiff who could not
2 afford to pay on an hourly basis regardless whether they win or lose.

3 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
4 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
5 winning the case, must make up in compensation in the cases they win for the lack of compensation in
6 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
7 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
8 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
9 unexpected nor fortuitous”); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001)
10 (“Multipliers can range from 2 to 4 or even higher”). As a result, a lodestar cross check validates the
11 request for additional fees and a total fee award equaling 35% of the common fund. *See Decl.*
12 *Rodriguez*, ¶¶ 23-25.

13 The additional \$15,094.80 in costs were necessarily incurred to properly litigate this case. *See*
14 Exhibit G. The appropriate analysis in determining whether particular costs are compensable is whether
15 they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*
16 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees
17 those out-of pocket expenses that ‘would normally be charged to a fee paying client.’”); *Abrams v.*
18 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for
19 them); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses
20 reimbursable if normally billed to client). The categories of expenses for which Plaintiff’s counsel seek
21 reimbursement here are categories normally charged to hourly clients and, therefore, should be
22 reimbursed out of the common fund. *See Exhibit G; Decl. Rodriguez*, ¶ 26.

23 **b. An Enhancement Payment for the PAGA Representative Is Justified In Light of The**
24 **Results Achieved And The Waiver of Her Individual, Non-PAGA Claims**

25 A service award to a named plaintiff in representative litigation is intended to recognize their
26 time and effort on behalf of the group being represented and to provide an incentive for individuals to
27 bring cases that serve important public policies. Although typically discussed in the context of class
28 actions or hybrid class action and PAGA cases, the same reasoning supporting such payments in those
instances also supports awarding such incentive payments in a PAGA-only case. *See Cellphone*

1 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010) (“These awards ‘are discretionary,
2 [citation], and are intended to compensate class representatives for work done on behalf of the class, to
3 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
4 recognize their willingness to act as a private attorney general’”) (emphasis added); *Hamilton v. Juul*
5 *Labs, Inc.*, 2021 WL 5331451, *6, *8, *13-*14 (N.D. Cal. 2021) (approving a \$10,000 service award in
6 a PAGA only case where the individuals receiving the awards spent up to 60 hours over the course of
7 two years of litigation).

8 In this case, Plaintiff estimates spending approximately 105-125 hours assisting in the
9 prosecution of this case over the last three years. *See* Decl. Walker, ¶ 7. Plaintiff provided and
10 explained a substantial number of documents critical to helping establish important facts central to this
11 case and participated in substantial amount of formal discovery, informal discovery, and settlement
12 negotiations. *See id.* at ¶¶ 6-8. Additionally, Plaintiff is waiving her individual, non-PAGA claims,
13 which no other Aggrieved Employee is subject to. *See* Exhibit A, ¶¶ 1.9, 1.27, 6.2. Payment of
14 \$10,000.00 to Plaintiff is appropriate given the risk, assistance, time required, and burden experienced
15 in bringing and resolving this case. *See West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at
16 *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class
17 members were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement);
18 *Dent v. ITC Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at *9-10, *15-16 (D. Nev. 2013) (awarding a
19 \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class
20 members).

21 **c. The Court Should Approve the Payment of Settlement Administrator Costs**

22 ILYM Group, Inc., has provided a cost estimate of \$5,550 to administer the Settlement. *See*
23 Exhibit D, ¶¶ 6-7. Given the number of Aggrieved Employees, this cost estimate is reasonable and
24 should be approved. *See Patel*, 2019 WL 2029061, *2 (\$5,261 for settlement administrator’s fees was
25 not excessive where PAGA group consisted of 40 employees).

26 **VII. CONCLUSION**

27 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
28 has met all statutory requirements to commence a PAGA civil action; approve the Agreement, including

1 Plaintiff's Counsel's application for reasonable attorneys' fees and costs, an Enhancement Payment to
2 Plaintiff, and Settlement Administrator Costs; approve the Notice of Settlement and payment
3 distribution procedures; and adopt the implementation schedule identified in the proposed order, which
4 is being filed concurrently herewith.

5
6
7 Dated: August 21, 2024

Shimoda & Rodriguez Law, PC

8
9 By: _____

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Attorneys for Plaintiff ANDREA WALKER
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ANDREA WALKER, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,
Defendants.

Case No. 34-2021-00305106

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. A-305106004

Date: September 13, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 29, 2021

FAC Filed: September 18, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Andrea Walker (“Plaintiff”) herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private Attorneys
5 General Act Settlement. A true and correct copy of the Private Attorneys General Act Settlement is
6 being filed with this Motion as Exhibit A.

7 2. This case was brought as a Private Attorneys General Act (“PAGA”) lawsuit based on
8 Plaintiff’s contention that Defendants Yan Kalika Dental Corporation and Yan Kalika (“Defendants”)
9 failed to pay overtime wages, failed to provide meal periods or pay premiums in lieu thereof, failed to
10 provide accurate wage statements, failed to timely pay final wages, failed to provide paid sick leave,
11 and failure to pay reimbursements for expenses. These claims stem from Plaintiff’s allegations that
12 Defendants violated California law by 1) failing to incorporate the value of nondiscretionary bonuses
13 into Plaintiff’s and Aggrieved Employees’ regular rates of pay for the purpose of calculating overtime
14 wages, meal premiums, and paid sick leave; and 2) requiring aggrieved employees to use their
15 cellphones for work purposes without paying reimbursement. The claims for failure to provide
16 accurate wage statements, failure to pay final wages, and violation of Labor Code sections 558 and
17 558.1 are derivative of these violations. Plaintiff is also asserting an unfair competition claim against
18 Defendants on an individual basis.

19 3. Plaintiff is the only named Plaintiff in this matter. Based on our initial investigations of
20 Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
21 PAGA action. Plaintiff filed the original complaint on July 29, 2021. Plaintiff exhausted
22 administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to
23 filing the Complaint to pursue civil penalties under the PAGA. Plaintiff filed a notice with the LWDA
24 on May 12, 2021, setting forth the facts and theories of liability. A true and correct copy of the notice
25 filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent
26 to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time.
27 There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff’s
28

1 notice. As such, Plaintiff became authorized to commence a civil action under the PAGA. A copy of
2 the Complaint was uploaded to the LWDA, after we received a file stamped copy back from Court.

3 4. While this case was pending, the United States Supreme Court issued a ruling in *Viking*
4 *River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022). In *Viking River Cruises*, the Court found that an
5 employer could compel arbitration to resolve whether Labor Code violations occurred with respect to a
6 named plaintiff even when a lawsuit did not assert any individual causes of action (*i.e.* in a PAGA only
7 lawsuit). No individual claims were asserted on behalf of Plaintiff at the outset of the litigation because
8 Plaintiff had signed an arbitration agreement. After the *Viking River Cruises* decision, Defendants sent
9 a demand for arbitration and the Parties stipulated to stay this lawsuit pending arbitration. Shortly
10 thereafter, Defendants filed a motion for judgement on the pleadings for lack of standing, which was
11 ultimately denied. Because Plaintiff would now be in arbitration regardless, Plaintiff asserted her
12 individual wage and hour claims in arbitration as well, which were based on the same facts and theories
13 as the PAGA claims. While arbitration was pending, Defendants failed to pay an invoice for the
14 arbitrator's fees and Plaintiff exercised her right under California Code of Civil Procedure section
15 1291.98(b)(1) to withdraw the claims from arbitration and proceed on her individual claims and PAGA
16 claims in Court. Accordingly, a First Amended Complaint was filed in Court on September 18, 2023.
17 A true and correct copy of the operative Complaint is being filed with this Motion as Exhibit B.

18 5. Currently, there is no trial date set in this matter.

19 6. Because the settlement is a PAGA only settlement, no certification procedures have or
20 need to occur in the context of approving the Agreement pursuant to *Arias v. Superior Court*, 46
21 Cal.4th 969, 975 (2009) and California Labor Code section 2699(1)(2). The settlement notice being
22 provided to employees within the PAGA settlement identifies the scope of the settlement and that no
23 other claims of Aggrieved Employees, class or otherwise, are being compromised as part of the
24 settlement.

25 7. Defendants are represented in this matter by Weintraub Tobin Chediak Coleman Grodin.
26 From the beginning, Defendants have aggressively contested the merits of this case, the manageability
27 of the case at trial, and Plaintiff's ability to prove a violation in each pay period for each employee
28 among other defenses and contentions challenging the propriety of this action. Defendants further

1 contended that, even assuming there was a finding supporting the imposition of PAGA penalties, the
2 Court would likely exercise its discretion to substantially reduce any such penalties owed based on
3 evidence of good faith attempts to comply with Labor Code obligations by Defendants.

4 Notwithstanding its agreement to settle this matter, Defendants believe the practices Plaintiff is
5 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state
6 and federal employment laws with respect to Plaintiff and Aggrieved Employees.

7 8. Based on the expected testimony from Plaintiff, Aggrieved Employees, Defendants'
8 person most knowledgeable, a review of Defendants' policies and procedures and other documents
9 relating to the alleged claims, information on the number of Aggrieved Employees, Aggrieved
10 Employees' pay periods, and a representative sample of Aggrieved Employees' payroll data, the scope
11 of the potential penalties at issue in light of the claims alleged, and the negotiations that have taken
12 place, I am convinced that the proposed settlement is in the best interest of the Aggrieved Employees
13 affected by the Agreement and the LWDA. The length and risks of trial and other normal perils of
14 complex litigation that impact the value of the claims were also considered and weighed in reaching the
15 proposed settlement. These risks were also exacerbated in this case in that it would have been necessary
16 for Plaintiff to litigate the existence of violations for numerous individual Aggrieved Employees in each
17 pay period that they worked. In addition, I carefully considered the difficulties of complex litigation,
18 and the lengthy process of establishing specific damages and various possible delays and appeals in
19 agreeing to the proposed settlement. Several significant legal developments occurred during the
20 pendency of this case that had a substantial impact on the potential value of the claims, demonstrating
21 how risky continued litigation can be. I further considered the fact that penalties under the PAGA could
22 be substantially cut at the discretion of the Court even if Plaintiff was successful on proving those claims
23 and there was risk that a Court could find no willfulness in the failure to pay wages at separation, which
24 would eliminate the value of the waiting time penalty claim entirely. Overall, I believe it is more
25 beneficial to secure a guaranteed benefit to Aggrieved Employees, and the LWDA now rather than to
26 proceed with litigation and potentially obtain zero funds due to legal or factual issues.

27 9. My office, including my partner, Galen T. Shimoda, our associates, our paralegals, and
28 myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential

1 damages for such claims. The parties engaged in formal and informal discovery, including special
2 interrogatories, requests for production of documents and the exchange of over 4,000 documents,
3 obtaining Aggrieved Employee contact information and performing interviews through a *Belair* notice,
4 including a representative sampling of employee payroll data and relevant policies for the entirety of the
5 statute of limitations applicable to the PAGA claims. The discovery covered all aspects of the asserted
6 claims, including merits issues, damages, the scope and configuration of Aggrieved Employees, the
7 content and implementation of the wage and hour policies at issue, issues relating to manageability
8 concerns at trial, among other relevant areas. From this production we were able to determine
9 information critical to a reliable damages analysis such as the average hourly rate, average daily hours
10 worked, average number of pay periods that had potential violations based on the asserted claims, and
11 the number of former employees. This information allowed my office to assess both liability and
12 damages and create an accurate damages model. Plaintiff assisted in all aspects of this litigation
13 including providing factual information relating to Defendants' employment conditions, potential
14 witness information, and answered questions regarding Defendants' factual contentions in this matter.
15 This was important because it directly related to our ability to maintain this case as a PAGA action and
16 our ability to obtain a favorable settlement for the PAGA claims.

17 10. Throughout this litigation, our office had numerous communications with Defendants'
18 Counsel discussing our respective positions. The communications and negotiations were, at all times,
19 contentious and adversarial, although still professional in nature. Defendants continually, and
20 consistently, asserted there was no liability on the asserted PAGA claims. Defendants raised the issue of
21 filing motions for summary judgment/adjudication both before and after Plaintiff's claims were
22 submitted to arbitration. A motion for summary judgement was filed in arbitration, but Plaintiff
23 withdrew the claims from arbitration pursuant to California Civil Procedure Code section 1291.98(b)(1)
24 for Defendants' failure to pay the arbitrator's invoice prior to any decision being rendered. Once back in
25 Court, Defendants stated they intended to refile the summary judgment/adjudication motion, ultimately
26 reserving August 2, 2024, for the hearing date. We also made clear our intention to file a motion for
27 attorney's fees and costs incurred in arbitration under section 1291.98(c). Ultimately, the Parties agreed
28 to mediate the claims before any such decisions were rendered, using an experienced mediator, Michael

1 J. Loeb, Esq. Mediation took place on October 16, 2023, but the Parties were unable to resolve the
2 matter. We filed the motion for attorney's fees and costs under section 1281.98(c), which the Court
3 granted on January 26, 2024. A true and correct copy of the January 26, 2024, Minute Order granting
4 Plaintiff's motion for fees and costs under section 1281.98 ("Fee Order") is filed with this Motion as
5 Exhibit I. Subsequent to this, the parties continued negotiating the claims using Mr. Loeb to facilitate
6 the post-mediation discussions. After reaching another impasse, a mediator's proposal was made to
7 resolve the matter, which was ultimately accepted on April 3, 2024. It was only after approximately
8 three years of contentious litigation that a resolution was able to be had.

9 11. The following represents the maximum recovery for the PAGA claim based on my
10 office's analysis of Defendants' relevant policies and the data produced by Defendants, including a
11 sample of time and payroll records for Aggrieved Employees, as well as the responses to written
12 discovery and depositions. We also interviewed several putative Aggrieved Employees, covering their
13 work experiences in relation to the asserted claims and utilizing that information in conducting a merits
14 and damages analysis. Additionally, based on our research, we did not find any prior Labor
15 Commissioner or court decisions that stated Defendants' practices and/or policies were improper. As
16 such, a "subsequent violation" may not be found for penalty calculation purposes, and the exposure
17 analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter
18 went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). There are
19 approximately 524 Aggrieved Employees and 17,881 pay periods. Aggrieved Employees worked an
20 average of approximately 8.18 hours per day, earned an average of \$25.52 per hour and 141 of the
21 Aggrieved Employees were former employees. The maximum damages of all PAGA claims combined
22 are approximately \$3,297,692.

- 23 a) Failure to Pay Overtime: The maximum damages for this claim are \$125,150. Of the
24 total 17,881 pay periods, approximately only 14% of them (*i.e.* 2,503 pay periods) were
25 affected by the regular rate of pay issue wherein a bonus that Plaintiff contended should
26 have been included in the regular rate of pay was paid in the same pay period that
27 overtime was worked. Pursuant to Labor Code section 558, each violation for each
28 employee has a maximum civil penalty of \$50 per pay period (2,503 x \$50 = \$125,150).

1 The maximum damages calculation does not account for the risks associated with this
2 claim. Defendants contended that any such bonuses were discretionary as stated in a
3 written policy in the employee handbook and, therefore, was not subject to being
4 included in the regular rate of pay. Defendants asserted there were no written guidelines
5 setting forth what or how a bonus could be earned and, therefore, the fact of payment
6 and the amounts to be paid were left entirely to the discretion of various supervisors and
7 managers at the locations where Aggrieved Employees worked. A central dispute was
8 whether the amount of the bonus to be paid could be considered set in advance and,
9 therefore, satisfy the requirements for a payment being non-discretionary. A specific
10 dollar figure for several types of bonuses was not stated, but Plaintiff contended that a
11 method setting forth the range of potential bonus payouts and how any particular bonus
12 would be calculated within that range was set in advance. For example, a bonus could
13 be calculated by spinning a wheel with numbers set out and the number landed on would
14 be the amount of the bonus paid. Another method was to roll two (2) dice and the sum
15 of the two (2) dice would be the amount of the bonus paid. Another type of payment in
16 dispute was flat sums paid to employees traveling to various different work locations.
17 Defendants contended these were nothing more than reimbursements for travel and,
18 therefore, not subject to inclusion in the regular rate of pay. Again, Plaintiff disputed
19 this based on communications and practices from managers that these were additional
20 stipends paid for the inconvenience of the distant, irregular travel and that employees
21 were being separately reimbursed. To the extent that the Court found that the payments
22 were either non-discretionary or were merely reimbursements, this would entirely
23 eliminate the value of the claim. Taking these risk factors into account, I believe a more
24 realistic range of recovery for this theory of liability is between \$56,317.50 and
25 \$81,347.50 (35% to 55% reduction based on risk).

- 26 b) Failure to Provide Meal Periods: The maximum damages for this claim are \$44,700. Of
27 the total 17,881 pay periods, approximately only 5% of them (*i.e.* 894 pay periods) were
28 affected by the regular rate of pay issue wherein a payment that Plaintiff alleged should

1 have been included in the regular rate of pay was paid in the same pay period that a meal
2 period premium was earned. Pursuant to Labor Code section 558, each violation for
3 each employee has a maximum civil penalty of \$50 per pay period ($894 \times \$50 =$
4 $\$44,700$). This does not take into account the risks associated with this claim. This
5 claim is based on the same types of payments forming the basis of Plaintiff's overtime
6 claims and, therefore, are subject to the same risk of being found to be non-discretionary
7 or merely reimbursement. Again, to the extent the Court agreed with Defendants
8 contentions, this would entirely eliminate the value of this claim. Taking these risk
9 factors into account, I believe a more realistic range of recovery for this theory of
10 liability is between \$20,115 and \$29,055 (35% to 55% reduction based on risk).

11 c) Failure to Provide Paid Sick Leave: The maximum damages for this claim are \$53,600.
12 Of the total 17,881 pay periods, approximately only 3% of them (*i.e.* 536 pay periods)
13 were affected by the regular rate of pay issue wherein a bonus that Plaintiff alleged
14 should have been included in the regular rate of pay was paid in the same pay period that
15 sick leave wages were paid. Pursuant to Labor Code section 2699, each violation for
16 each employee has a maximum civil penalty of \$100, the default penalty, per pay period
17 ($536 \times \$100 = \$53,600$). This does not take into account the risks associated with this
18 claim. Similar to the meal period claim, this claim is based on the same types of
19 payments that form the basis of Plaintiff's overtime claims and, therefore, are subject to
20 the same risk of being found to be non-discretionary or merely reimbursement. Taking
21 these risk factors into account, I believe a more realistic range of recovery for this theory
22 of liability is between \$24,120 and \$34,840 (35% to 55% reduction based on risk).

23 d) Failure to Provide Accurate Wage Statements: The maximum damages for this claim
24 are \$393,400. This claim was entirely derivative of Plaintiff's claims for unpaid
25 overtime, meal period premiums, and sick leave and, therefore, subject to the same risks.
26 Because this is a derivative claim and to avoid any potential undercounting of pay
27 periods at issue, Plaintiff assumed that each of the violations occurred in separate pay
28 periods rather than multiple violations occurring in a single pay period, which would

1 then result in only one (1) wage statement violation, rather than three (3). Thus, of the
2 total 17,881 pay periods, a maximum of 22% of them (*i.e.* 3,934 pay periods) were
3 affected by the regular rate of pay issue wherein a bonus that Plaintiff alleged should
4 have been included in the regular rate of pay was paid in the same pay period that either
5 overtime, sick leave, or meal period premiums were earned. Pursuant to Labor Code
6 section 2699, each violation for each employee has a maximum civil penalty of \$100,
7 the default penalty, per pay period per employee ($3,934 \times \$100 = \$53,600$). Given the
8 risks to the claims as described above, I believe a more realistic range of recovery for
9 this theory of liability is between \$51,142 and \$255,710 (35% to 87% reduction based
10 on risk).

- 11 e) Failure to Pay Final Wages: The maximum damages for this claim are \$892,741.50.
12 This claim was entirely derivative of Plaintiff's claims for unpaid overtime, meal period
13 premiums, and sick leave. Based on the time and payroll records, there were 141 former
14 employees who worked an average of 8.18 hours per day and were paid an average of
15 \$25.52 per hour. This equates to a \$211.05 average daily rate ($[8 \times 25.52] + [38.28$
16 $\times .18]$) and a total of \$6,331.50 per Aggrieved Employee for the 30-day period. This
17 does not take into account the risks associated with this claim. Because this claim is
18 entirely derivative of Plaintiff's overtime, meal period, and sick leave claims and,
19 therefore, is subject to the same risks regarding proving the merits of the claims.
20 Beyond the merits, the correct valuation for waiting time penalties under the PAGA was
21 heavily disputed as Defendants contended the default civil penalty \$100 per violation
22 would apply, not the calculation identified in Labor Code section 256, which could
23 reduce the applicable civil penalties from \$892,741.50 to \$14,100. Taking these risk
24 factors into account, I believe a more realistic range of recovery for this theory of
25 liability is between \$14,100 (based on the default PAGA penalty calculation) and
26 \$580,281.98 (35% reduction based on risk).
- 27 f) Failure to Pay Reimbursement: This claim was based on Plaintiff's contentions that she
28 and other Aggrieved Employees were required to use their personal cell phones for work

1 purposes to communicate with supervisors via emails and phone calls directly to their
2 cell phones. Plaintiff also contended that the use of the personal cell phones was
3 required because applications needed to be downloaded in order to check work
4 schedules as well as using navigation applications when traveling to different worksites.
5 The maximum damages for this claim are \$1,788,100. Pursuant to Labor Code section
6 2699, each violation for each employee has a maximum civil penalty of \$100 per pay
7 period, the default penalty (17,881 x \$100 = \$1,788,100). This does not take into
8 account the risks associated with this claim. Defendants contended that they did not
9 know or have reason to know that any reimbursable expenses were being incurred by
10 Plaintiff or Aggrieved Employees, which Defendants contended precluded any potential
11 liability. Furthermore, Defendants contended they maintained a valid reimbursement
12 policy that specifically required employees to submit reimbursement requests for
13 personal cell phone use to the extent an employee felt they incurred such expenses.
14 Additionally, Defendants contended that no use of personal cell phones was actually
15 required because office phones and computers were readily available for all employees
16 to use, which Defendants contended could accomplish all of the tasks Plaintiff contends
17 required the use of personal cell phones. Given the risks associated with the claim, I
18 believe a more realistic range of recovery would be between \$447,025 to \$894,050 (50%
19 to 75% reduction based on risk).

20 12. In addition to the risks on the merits and disputes regarding the proper valuation of the
21 penalty amounts, I believe the Court may exercise its discretion to reduce PAGA penalties in this case.
22 The actual wage loss is very small compared to the potential civil penalties at issue, which has been a
23 basis for substantial discretionary reductions in prior cases. *See, e.g., Fleming v. Covidien, Inc.*, 2011
24 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). In this case, there were many pay
25 periods where either the amount of overtime worked, or the amount of the bonuses paid, was relatively
26 small. As a result, the amount of overtime owed as a result of regular rate of pay miscalculations could
27 be as little at 15 cents per pay period. The more typical range was between 50 cents and five dollars
28 per pay period. The amount of unpaid meal period premiums and sick leave wages were similar.

Furthermore, to the extent that the Court finds a good faith attempt at compliance and/or a good faith dispute regarding the legal obligations at issue, this could be a basis for a substantial discretionary reductions separate from any impact those findings may have on liability. *See, e.g., Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (reducing the civil penalty 90% to \$5 per violation due to good faith attempts to comply with the law); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016) (noting “a significant reduction would be appropriate” where it “is not a case where a company has deliberately evaded a clear legal obligation” and/or where a company has not “negligently failed to learn about its obligations under the law”). As noted above, there were substantial disputes regarding the merits of Plaintiff’s claims and Defendants produced legally compliant policies that a Court may find demonstrates a good faith attempt at compliance. Courts are statutorily authorized to use discretion to reduce penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (82% reduction). Thus, after considering potential discretionary reductions to the civil penalties in addition to the risks on the merits, the total exposure may be cut to approximately \$110,607.51 (82% reduction) to \$1,312,699.10 (30%) or lower.

13. In summary, Plaintiff’s gross recovery of \$285,000 is approximately 8.6% of the maximum damages at issue (\$3,297,692) and between 21.7% and 258.4% of the more realistic range of recovery (\$110,607.51 to \$1,312,699.10). The net recovery, after reductions for the requested total attorney’s fees (\$99,750) and costs (\$17,018.24) to be paid out of the Settlement, an Enhancement Payment for the PAGA Representative (\$10,000), and Settlement Administrator Costs (\$5,550), is \$152,681.76, which is approximately 4.6% of the maximum damages at issue and between 11.6% to 138% of the more realistic range of recovery. I believe the Agreement represents a reasonable compromise of claims and is fair, reasonable, and adequate based on the legal and factual disputes in this case, especially in light of amounts that Courts have approved as reasonable valuations in other cases. *See Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL

5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

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

15. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the

1 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
2 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
3 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
4 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
5 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
6 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
7 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
8 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
9 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
10 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
11 and an officer for the Latino Law Students Association from 2009 to 2010.

12 16. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
13 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
14 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
15 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I have
16 been recognized as a Super Lawyer (Rising Star). From 2024 to present, I have been recognized as a
17 Super Lawyer. I have been a panel speaker and presented a number of seminars covering issues in
18 wage and hour litigation in general and complex class and PAGA litigation in particular. These
19 engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment
20 Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA
21 Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The
22 Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to
23 Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar.
24 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-*Viking*
25 *River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento
26 County Bar Association Labor and Employment Law Section's executive committee in 2019 and was
27 the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil
28 Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice

1 focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair
2 Labor Standards Act (“FLSA”) claims. I am actively involved in most all of the complex litigation
3 handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including
4 the instant case, includes, but is not limited to, the following:

- 5 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 6 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 7 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 8 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 9 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San
10 Joaquin Sup. Ct.);
- 11 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 12 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 13 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.
14 Ct.);
- 15 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- 16 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 17 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174
18 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 20 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
21 Ct.);
- 22 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
23 Sup. Ct.);
- 24 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 25 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 26 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 27 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
28 (Sac. Sup. Ct.);

- 1 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 2 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 3 00222101 (Sac. Sup. Ct.);
- 4 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 5 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 6 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 7 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 8 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 9 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 10 Ct.);
- 11 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 12 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 13 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 14 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 15 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 16 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 17 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 18 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 19 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 20 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 21 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 22 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 23 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 24 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 25 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 26 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB
- 27 (E.D. Cal.);
- 28 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);

- 1 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 2 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 3 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 4 (Sac Sup. Ct.);
- 5 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 6 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 7 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 8 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 9 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 10 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 11 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 12 Sup. Ct.);
- 13 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 14 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

17 18. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in
18 assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of
19 plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda
20 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a
21 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the
22 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He
23 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and
24 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of
25 employment law articles for journals and our firm regularly publishes articles on our firm's website.
26 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
27 Employment Review seminars from 2014 to the present. His speaking engagements include the
28 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual

1 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
2 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
3 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
4 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
5 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
6 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
7 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
8 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
9 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
10 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
11 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
12 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
13 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
14 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
15 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
16 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
17 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
18 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
19 as a Super Lawyer from 2014 to present.

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

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);

1 Ct.);

- 2 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 3 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 4 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup.
- 5 Ct.);
- 6 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 7 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 8 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 9 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 10 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 11 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 12 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 13 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 14 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 15 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 16 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 17 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 18 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup.
- 19 Ct.);
- 20 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 21 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 22 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 23 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 24 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 25 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 26 (Sac Sup. Ct.);
- 27 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup.
- 28 Ct.);

- 1 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 2 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 3 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 4 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 5 Sup. Ct.);
- 6 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac. Sup. Ct.);
- 7 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 8 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 9 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

13 21. My former associate, Brittany V. Berzin, also worked on this case. Ms. Berzin attended
14 and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. Ms. Berzin
15 received her J.D. from the University of the Pacific McGeorge School of Law. Ms. Berzin joined
16 Shimoda & Rodriguez Law, PC as a law clerk in February 2015 where she gained civil litigation
17 experience working on individual, class action and PAGA employment cases throughout law school.
18 Ms. Berzin also participated in an employment law clinic in 2015 and 2016 that helps low-income
19 workers by providing free legal consultations, advising employees of their legal remedies on a variety
20 of matters (e.g., wage and hour, discrimination, harassment, California leave laws, unemployment,
21 workers' compensation, retaliation, and wrongful termination, etc.) under the supervision of an
22 attorney, preparing wage claims, and providing representation in wage claims before the California
23 Labor Commissioner. From 2016-2017, Ms. Berzin completed an externship at the Federal Public
24 Defenders Office as a Certified Law Student where Ms. Berzin obtained discovery, completed legal
25 research, drafted motions, negotiated plea deals, represented clients in a variety of hearings (e.g.,
26 arraignments, motion hearings, sentencing hearings, etc.), and defended a client against five
27 misdemeanor charges in a jury trial in the United States District Court for The Eastern District of
28 California. Ms. Berzin was also a member of the nationally recognized McGeorge Mock Trial Team

1 and went on to coach a high school Mock Trial team in 2018 after graduating from law school. In May
2 2017, Ms. Berzin graduated from the University of the Pacific, McGeorge School of Law with Great
3 Distinction and was inducted into the Order of the Coif, graduating in the top 10% of her class. Ms.
4 Berzin received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil
5 Procedure, Bankruptcy, and Criminal Procedure. From 2020 to 2023, Ms. Berzin had been recognized
6 as a Super Lawyer (Rising Star). Ms. Berzin was a member of the executive committee of the
7 Sacramento County Bar Association Labor & Employment Section since January 2020, serving as Co-
8 Chair of the committee in 2021. Ms. Berzin had over seven years of experience working on civil
9 litigation and employment law matters. Most of that experience has been specific to analyzing and
10 litigating wage and hour claims. As an associate, Ms. Berzin has worked on a variety of individual,
11 class action, and PAGA cases involving wage and hour claims, such as failure to pay overtime, failure
12 to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement
13 expenses, unlawful deductions, failure to keep accurate time records, failure to provide paid sick leave,
14 failure to pay all wages upon separation, unfair competition, breach of contract, independent contractor
15 misclassification, and salaried misclassifications. Ms. Berzin stopped working for our firm in March
16 2024.

17 22. My associate, Renald Konini, Esq., worked with me on this case after Ms. Berzin
18 stopped working for my firm. In May 2011, Mr. Konini graduated from Seton Hall University School
19 of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm,
20 Mr. Konini has worked on a variety of individual and class action cases, including those involving
21 wage and hour claims, Private Attorney General Act claims, wrongful termination claims,
22 discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016
23 California Bar Examination and started practicing as an associate at my firm from approximately April
24 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on written
25 discovery and depositions, calculating class-wide damages, communicating with class representatives,
26 drafting briefs and motions, and more. Mr. Konini worked on other class and/or PAGA wage and hour
27 actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-
28 00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-

00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc., et al.*, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac. Sup. Ct). Mr. Konini's practice largely revolves around wage and hour matters, including PAGA claims.

23. The request for attorney's fees and costs are structured in a way that accounts for the Fee Order already awarding \$80,595 in attorney's fees and \$1,923.44 in costs under Civil Procedure Code section 1281.98. Under the Agreement, all attorney's fees and costs, including those amounts from the Fee Order and any additional amounts awarded in connection with the Settlement, will be paid out of the Gross Settlement Amount, not in addition or separate from the Gross Settlement Amount. This means the request for an additional \$19,155 in attorney's fees will equate to a total fee award 35% of the Gross Settlement Amount ($\$80,595 + \$19,155 = \$99,750$. $\$285,000 \times .35 = \$99,750$). Similarly, the additional \$15,094.80 in costs will equate to a total costs award of \$17,018.24 ($\$1,923.44 + \$15,094.80 = \$17,018.24$). I believe the amount requested for attorney's fees is appropriate whether analyzed under the common fund method or a pure lodestar approach. The Gross Settlement Amount clearly falls under the common fund doctrine pursuant to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016), *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989), and *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiff has been able to secure an identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost of the representation should be born equally amongst all those receiving the benefits. The settlement

1 recovery provides a good result and is the product of substantial time and effort in analyzing the facts
2 and law applicable to this case. There was substantial risk in agreeing to take this case on a
3 contingency basis and as a representative action with the possibility that our firm would not receive any
4 compensation our time and efforts due to issues regarding the merits and/or damages. In my
5 experience, the attorney's fee request of thirty-five percent (35%) of the common fund is within ranges
6 typically approved in wage and hour representative litigation, whether on a class or PAGA basis. This
7 includes awards in Sacramento County Superior Court.

8 24. I believe a lodestar cross check supports finding that a total attorney's fee award
9 equaling 35% of the Gross Settlement Amount is appropriate in this case. The total lodestar is
10 approximately \$147,322.50 based on approximately 254.9 hours, which includes approximately 15
11 hours of time for me preparing for and attending the approval hearing and ensuring compliance and the
12 disbursement of funds consistent with the approval order. These hours are in addition to the hours our
13 firm already submitted for in connection with the Fee Order, *i.e.* there is no overlap in hours claimed
14 here and what was submitted in connection with the Fee Order. I have reviewed our firm's billing
15 records with Mr. Shimoda and Mr. Konini and have created a summary chart showing the task
16 categories and hours worked by each billing attorney in each category. Ms. Berzin was no longer with
17 our firm at the time this Motion was filed, so I was not able to review the billing entries with her.
18 When working on our 1281.98 motion, we did not review time outside of what was being submitted for
19 in the 1281.98 motion. I independently reviewed Ms. Berzin's billing entries for all time outside of
20 what was included in our 1281.98 motion. A true and correct copy of a summary chart for attorney's
21 hours incurred is being filed with this Motion as Exhibit H. In reviewing the entries, I believe the hours
22 reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we
23 attempt to assign tasks to the billing attorney with the lower rate to reduce costs that otherwise might
24 inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by
25 day and time. Our billing software also records time in 1/10 of an hour increments. Our billing
26 software also enables the use of a start/stop timer that can be used to more accurately record how long a
27 particular task takes. A summary of the entries in Exhibit H by timekeeper is as follows:
28

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	52.9	\$725	\$38,352.50
Justin P. Rodriguez	115.6	\$625	\$72,250.00
Brittany V. Berzin	81.3	\$425	\$34,552.50
Renald Konini	5.1	\$425	\$2,167.50
Total:	254.9	--	\$147,322.50

25. The hourly rates for myself, Ms. Berzin, and Mr. Shimoda were approved in connection with the Fee Order. Mr. Konini was approved at the requested rate by the Sacramento County Superior Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Ms. Berzin, Mr. Konini, myself, and Mr. Shimoda have approximately 5 years, 8 years, 13 years, and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions. Awarding fees at the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the request for an additional \$19,535 in attorney's fees (for a total of 35% of the Gross Settlement Amount) is justified given the results obtained in this case.

26. The total costs incurred and that will be incurred through a compliance hearing by Plaintiff's counsel is \$17,018.24. Because the Court has already awarded \$1,923.44 in costs in the Fee Order, Plaintiff is only requesting \$15,094.80 in additional costs. A true and correct copy of my firm's itemized costs incurred prior to the filing of this Motion and the expected costs incurred through a compliance hearing is filed with this motion as Exhibit G. Although there is case law stating a fee request may include the time spent drafting a motion for fees, it was unclear whether a request for costs unique to arbitration in our 1281.98 motion could include costs associated with the motion itself. For this reason, we did not include the filing and services fees associated with the 1281.98 motion and those costs were not previously considered or accounted for in the Fee Order. They are included in our requests for costs in the present motion. The difference in the actual total costs and the maximum

1 amount allocated under the Agreement will be added to the Net Settlement Amount and disbursed to
2 Aggrieved Employees and the LWDA as set forth in the Agreement.

3 27. I have used several class action and PAGA settlement administrator companies in the
4 cases I have resolved in the past and believe ILYM Group, Inc., will provide the best service to
5 administer the proposed class settlement. They have considerable experience in the field and have been
6 approved by the Court to act as a settlement administrator in several prior cases. ILYM Group, Inc., has
7 procedures in place to protect the security of employee data as well as insurance. A true and correct
8 copy of a settlement administration bid provided by ILYM Group, Inc., is being filed with this motion as
9 Exhibit D. Under the settlement the difference between the originally allocated amount, and the actual
10 administration costs will be added to the Net Settlement Amount and disbursed to Aggrieved Employees
11 and the LWDA as set forth in the Agreement.

12 28. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
13 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
14 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
15 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
16 Exhibit F.

17 29. A true and correct copy of the proposed Notice of Settlement to be distributed to
18 Aggrieved Employees informing them of the settlement and all material terms is being filed with this
19 Motion as Exhibit E.

20 30. I have spoken with every attorney at my firm and neither I nor any other attorney at my
21 firm has any interest, financial or otherwise, in the *cy pres* beneficiary, the California Controller's
22 Unclaimed Property Fund.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct. Executed on August 21, 2024, in Sacramento, California.

25
26
27
28

Justin P. Rodriguez

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Attorneys for Plaintiff ANDREA WALKER
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ANDREA WALKER, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00305106

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

**DECLARATION OF ANDREA WALKER IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Reservation No. A-305106004

Date: September 13, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 29, 2021

FAC Filed: September 18, 2023

Trial Date: None Set

1 I, Andrea Walker, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion to Approve Private Attorneys General Act Settlement.

5 2. I worked for Defendants Yan Kalika Dental Corporation Yan Kalika ("Defendants")
6 from approximately June 30, 2018, to December 1, 2020, as a non-exempt employee. I was subject to
7 all of Defendants' policies and practices that have been alleged as unlawful in the complaint and the
8 notice sent to the Labor and Workforce Development Agency ("LWDA"), including the following: the
9 failure to pay overtime, the failure to provide meal periods or pay premiums in lieu thereof, the failure
10 to provide accurate wage statements, the failure to pay final wages, the failure to reimburse expenses,
11 and the failure to provide paid sick leave.

12 3. I have actively participated in the litigation of this case for the benefit of Aggrieved
13 Employees and the LWDA. Prior to obtaining an attorney, I researched attorneys that would be able to
14 handle the wage and hour claims I felt needed to be pursued. I also spent time researching the claims to
15 know more about what was required to be successful in Court. I wanted to be sure I could have a
16 thorough discussion with the attorney about the claims and have a better understanding of what
17 bringing a lawsuit would entail. After securing Shimoda & Rodriguez Law, PC, I continued to be
18 actively involved in the case to help ensure a positive outcome.

19 4. My attorneys explained to me the risks and benefits of bringing a claim under the
20 Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a PAGA action meant
21 that it would take substantially longer than pursuing individual claims and that the claims being
22 pursued were for civil penalties, not for individual claims. I understood that I risked getting nothing in
23 the end, but I believed it was important to make sure that Defendants followed the law for everyone. I
24 understood that I took on the risk, both professionally and financially, in pursuing the case as a PAGA
25 action. As the named PAGA representative, I also took on the risk of having to pay Defendants' costs
26 if we were unsuccessful in bringing our claims.

27 5. After litigating the case for quite some time as a PAGA only action, we submitted my
28 individual claims to arbitration based on a then recent United States Supreme Court ruling. *Viking River*

1 *Cruises*. Because litigating my “individual” PAGA claim would cover the same facts and we were
2 already going to go through arbitration, we included my individual wage and hour claims in the
3 arbitration. Ultimately, the arbitration did not go forward and we went back to Court. Since we no
4 longer had to pursue arbitration for my individual claims, we included my individual wage and hour
5 claims into an amended complaint.

6 6. During the course of this litigation, I have given detailed accounts of all the facts related
7 to my employment. I provided my attorneys with extensive documentation that I believe supported the
8 claims brought against Defendants. I met with and assisted my attorneys in understanding these
9 documents and providing context for Defendants’ payroll process as it applied to me and how I
10 believed it applied to Defendants’ other employees. I worked at multiple job sites, so I was able to
11 discuss the similarities of the wage and hour policies and practices among all Aggrieved Employees.

12 7. The work I performed for this case included an extensive review of documents and
13 payroll practices to show and explain to my attorneys what was happening and why I thought it was
14 unlawful. For example, there was a substantial amount of written discovery and over 4,000 documents
15 produced in this matter. I prepared for and had my deposition taken and worked with my attorneys to
16 try and find witnesses that would help substantiate the claims. I also spent time reviewing facts with
17 my attorneys to help them prepare for deposing the company’s designated person most knowledgeable.
18 I reviewed the information again with my attorney’s when helping to prepare for mediation. I assisted
19 my attorneys in answering factual questions that arose from the data sample. Overall, I estimate that I
20 have spent approximately 105 to 125 hours assisting in the prosecution of this case.

21 8. I participated in the negotiations and settlement discussions in this case, including
22 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
23 additional information needed to assist the negotiations, and discussing the potential terms of the
24 Agreement to evaluate its adequacy. Throughout the course of this litigation I have asked questions
25 when I needed clarification about various aspects of this case to make sure there were continually steps
26 taken to advance the interests of the Aggrieved Employees and the LWDA.

27 9. I am the only person giving a general release of substantive claims, including a 1542
28 waiver. Every other Aggrieved Employee is still able to bring any individual claims they may have

1 while still being paid under the PAGA settlement. Given the time and effort I have put into this case on
2 behalf of Aggrieved Employees and the LWDA, as well as the fact that I am releasing my individual
3 claims under the settlement, I believe the \$10,000 is a reasonable amount for the Enhancement
4 Payment.

5 10. I have reviewed the Private Attorneys General Act Settlement, discussed the terms with
6 my attorneys, and asked my attorney any questions I had. I believe the terms of the Settlement and
7 allocations are fair and reasonable given the facts of the case.

8 11. I do not have any interest, financial or otherwise, in the California Controller's
9 Unclaimed Property Fund.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct. Executed on August 16, 2024 in Sacramento, California.

12
13
14 

Andrea Walker (Aug 17, 2024 16:59 PDT)

Andrea Walker

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff ANDREA WALKER
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ANDREA WALKER, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00305106

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. A-305106004

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Judge: Hon. Lauri A. Damrell

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<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	ILYM Group, Inc., Settlement Administration Bid
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiff's Itemized Costs
H	Plaintiff's Attorney's Fee Summary Chart
I	January 26, 2024, Minute Order re 1281.98 Motion for Fees & Costs

Dated: August 21, 2024

Shimoda & Rodriguez Law, PC

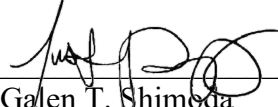
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

Exhibit A

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Attorneys for YAN KALIKA DENTAL CORPORATION
 and YAN KALIKA

**SUPERIOR COURT OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO**

ANDREA WALKER, individually and on
 behalf of all other similarly situated employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
 California Corporation; YAN KALIKA, an
 individual; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 34-2021-00305106

**PRIVATE ATTORNEYS GENERAL ACT
 SETTLEMENT**

Filed: July 29, 2021
 FAC Filed: September 18, 2023
 Trial Date: None Set

This Private Attorneys General Act (“PAGA”) Settlement is made and entered into between the Plaintiff Andrea Walker (“Plaintiff”), on behalf of herself, the Labor and Workforce Development Agency, and Aggrieved Employees, and Defendants Yan Kalika Dental Corporation and Yan Kalika, (“Defendants”). This Agreement is subject to the terms and conditions set forth below and approval of the Court.

1. DEFINITIONS

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

1.1 “Action” means the above stated lawsuit, *Walker v. Yan Kalika Dental Corporation, et al.*, Sacramento County Superior Court, Case No. 34-2021-00305106, filed July 29, 2021.

1.2 “Aggrieved Employee(s)” means all non-exempt employees who have worked, for Defendants in California from May 12, 2020, up to either (1) July 16, 2024, or (2) the Final Approval Date, whichever is earlier. The estimated number of Aggrieved Employees is 524.

1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Private Attorneys General Act Settlement.

1.4 “Complaint” means the operative Complaint on file in the Action with the Court.

1.5 “Court” means the Sacramento County Superior Court.

1.6 “Data Period” means May 12, 2020, to October 16, 2023.

1.7 “Defendants” means Yan Kalika Dental Corporation and Yan Kalika.

1.8 “Defendants’ Counsel” means Lukas Clary and Olatomiwa T. Aina of Weintraub Tobin Chediak Coleman Grodin.

1.9 “Enhancement Payment” means the amount approved by the Court to be paid to the PAGA Representative in recognition of the time and effort expended on behalf of Aggrieved Employees for the benefit of Aggrieved Employees, which is in addition to any Individual Settlement Amount paid to the PAGA Representative as an Aggrieved Employee. This payment is not to exceed \$10,000 and will be paid out of the Gross Settlement Amount. This payment shall also be in exchange for a waiver of individual claims by Plaintiff beyond the Private Attorneys General Act, including a waiver of the protections Civil Code section 1542 for those individual claims.

1 1.10 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
2 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
3 after a signed order approving this settlement has been filed provided no appellate proceeding having been
4 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
5 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
6 further remedies or relief, whichever is later.

7 1.11 “Final Approval Date” means the date the Court enters a signed order granting approval of
8 the Agreement.

9 1.12 “Gross Settlement Amount” is the sum of Two Hundred Eighty-Five Thousand Dollars
10 (\$285,000).

11 1.13 “Individual Settlement Amount” means an individual Aggrieved Employee’s allocation of
12 the Net Settlement Amount, as defined in Section 1.15 and 5.8.

13 1.14 “LWDA” means the California Labor and Workforce Development Agency.

14 1.15 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
15 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
16 deduction of Plaintiff’s attorneys’ fees and litigation costs, Enhancement Payment, and Settlement
17 Administrator Costs.

18 1.16 “Notice of Settlement” means the document substantially in the form attached hereto as
19 Exhibit 1.

20 1.17 “PAGA” means Private Attorneys General Act.

21 1.18 “PAGA Claim Period” means May 12, 2020, up to either (1) (1) July 16, 2024, or (2) the
22 Final Approval Date, whichever is earlier.

23 1.19 “PAGA Payment” means the 75% share of the Net Settlement Amount paid to the LWDA
24 pursuant to Labor Code section 2699(i).

25 1.20 “PAGA Representative” means Plaintiff Andrea Walker.

26 1.21 “Parties” mean Defendants and Plaintiff.

27 1.22 “Plaintiff” means Andrea Walker.

1 1.23 "Plaintiff's Counsel" means Galen T. Shimoda, Justin P. Rodriguez, Renald Konini of
2 Shimoda & Rodriguez Law, PC.

3 1.24 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the
4 benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made.
5 Any amounts Defendants have agreed to pay under this Agreement shall remain the property of
6 Defendants until the payments required under the Agreement are made.

7 1.25 "Qualifying Pay Periods" are pay periods worked by Aggrieved Employees during the
8 PAGA Claim Period in California. The calculation of an Aggrieved Employees' pay periods and a
9 determination as to whether an Aggrieved Employee was actively employed in California in a particular
10 pay period shall be construed from Defendants' records.

11 1.26 "Released PAGA Claims" means any and all claims for civil penalties that were brought
12 under the Private Attorneys General Act, Labor Code §§ 2698 et seq., contained in Plaintiff's notice letter
13 to the LWDA and any additional wage and hour PAGA claims that could have been brought based on the
14 facts alleged in Plaintiff's notice letter to the LWDA during the PAGA Claim Period. Aggrieved
15 Employees cannot opt out of this waiver of claims.

16 1.27 "PAGA Representative's Released Claims" means any and all of Plaintiff's individual
17 claims for (1) failure to pay overtime wages; (2) failure to provide meal periods or pay meal period
18 premiums; (3) failure to provide accurate wage statements; (4) failure to pay final wages; (5) failure to
19 reimburse necessary business expenses; and (6) violation of California's unfair competition law; based on
20 the afore-referenced claims ("Released Claims"), and a general release of all claims arising from her
21 employment with Defendants, separation of employment from Defendants, and any facts that have or
22 could have been asserted in any legal action or proceeding against Defendants, whether known or
23 unknown, arising under any federal, state, or local law, or statute, along with a waiver of any rights set
24 forth in California Civil Code section 1542. This release includes a waiver of the protections found in
25 California Civil Code section 1542, which states:

26 A general release does not extend to claims that the creditor or releasing
27 party does not know or suspect to exist in his or her favor at the time of
28 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.

1 1.28 “Released Parties” means Defendants, as well as Defendants’ parents and all of their
2 subsidiaries, related, and affiliated entities and each of their respective past and present employees,
3 officers, directors, administrators, staff, attorneys, owners, shareholders, members, partners, insurers,
4 predecessors, successors, assigns, benefit plan fiduciaries and agents, and all of their respective successors
5 and assigns.

6 1.29 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity
7 that will administer the Agreement as outlined in Section 7, or any other third-party administrator agreed
8 to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties
9 each represent that they do not have any financial interest in the Settlement Administrator or otherwise
10 have a relationship with the Settlement Administrator that could create a conflict of interest.

11 1.30 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
12 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
13 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
14 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and
15 fees associated with preparing, issuing and mailing any and all notices and other correspondence to
16 Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees,
17 Plaintiff’s Counsel, and Defendants’ Counsel; all costs and fees associated with computing, processing,
18 reviewing, and paying the Individual Settlement Amounts, and resolving disputes; all costs and fees
19 associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal
20 and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all
21 costs and fees associated with preparing any tax returns and any other filings required by any governmental
22 taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings
23 to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees
24 incurred and/or charged by the Settlement Administrator in connection with the execution of its duties
25 under this Agreement.

26 **2. DESCRIPTION OF THE LITIGATION**

27 2.1 On or about May 12, 2021, Plaintiff sent notice to the LWDA to exhaust administrative
28 remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Provide Meal Periods or

1 Pay Premiums in Lieu Thereof, (3) Failure to Provide Accurate Wage statements, (4) Failure to Pay Final
2 Wages, (5) Failure to Pay Reimbursement for Expenses, (6) Violation of Labor Code §§ 558, 558.1
3 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), (7)
4 Failure to Provide Paid Sick Leave. The LWDA did not respond to the notice within the statutorily
5 required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all
6 alleged PAGA claims.

7 2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on July 29, 2021, in
8 Sacramento County Superior Court on behalf of herself and Aggrieved Employees for claims alleged in
9 the May 12, 2021, notice to the LWDA. Also, Plaintiff filed a First Amended Complaint on September
10 18, 2023, which added individual causes of action against Defendants for 1) Failure to Pay Overtime
11 Wages, 2) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, 3) Failure to Provide
12 Accurate Wage Statements, 4) Failure to Pay Final Wages, 5) Failure to Pay Reimbursements for
13 Expenses, and 6) Unfair Competition. Defendants deny the allegations in the operative Complaint, deny
14 any failure to comply with the laws identified in the operative Complaint, and deny any and all liability
15 for the causes of action alleged.

16 2.3 Through formal and informal discovery, Defendants and Defendants' Counsel provided
17 Plaintiff's Counsel with copies of all applicable versions of its policies and procedures, employee
18 handbooks, information on the number of Aggrieved Employees, including, but not limited to, Aggrieved
19 Employees' workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay,
20 and pay periods as well as timecard data and payroll reports for a randomly selected sample of Aggrieved
21 Employees.

22 2.4 After Plaintiff's Counsel received the data, the Parties engaged in informal settlement
23 negotiations, but were not able to come to a resolution. On October 16, 2023, the Parties participated in
24 a lengthy mediation with private mediator Michael J. Loeb, Esq. At the conclusion of the mediation, the
25 Parties were not able to come to a resolution. The parties continued negotiations after the mediation and
26 were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-
27 collusive, adversarial, and at arm's length.

1 2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties, the
2 mediator, document productions, extensive legal analysis, the provision of information by Defendants to
3 Plaintiff and the detailed analysis of the sampled records have permitted each side to assess the relative
4 merits of the PAGA claims and the defenses to those claims.

5 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to
6 incorporate the value of nondiscretionary bonuses into Plaintiff's and aggrieved employees' regular rates
7 of pay for the purpose of calculating overtime wages, meal premiums, and paid sick time; and 2) requiring
8 aggrieved employees to use their cellphones without paying reimbursement. The wage statement and
9 waiting time penalty claims are derivative of the above claims. Defendants have denied each of Plaintiff's
10 claims, the allegations in the operative Complaint, any failure to comply with the laws identified in the
11 operative Complaint, and any and all liability for the causes of action alleged. The agreed upon Gross
12 Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the PAGA
13 claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the
14 potential liability based on Defendants' factual and legal contentions and defenses.

15 2.7 The Parties agree that the above-described investigation and evaluation, as well as
16 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
17 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff,
18 Plaintiff's Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the
19 PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth
20 herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and
21 the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel,
22 Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and
23 terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

24 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

25 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
26 of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are
27 made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement
28 on a conditional basis in order for the Court to evaluate and approve the settlement. If the Effective Date

1 does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate
2 review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall
3 not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the
4 Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152,
5 Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

6 3.2 Defendants have denied all claims as to liability, damages, penalties, interest, fees,
7 injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve
8 the asserted PAGA claims in the Action via this Agreement, but, to the extent this Agreement is deemed
9 void or the Effective Date does not occur, Defendants do not waive, and are expressly reserving, all rights
10 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
11 including, without limitation, the ability to challenge representative or collective treatment on any
12 grounds, as well as to assert any and all other potential defenses or privileges.

13 **4. SCOPE OF THE AGGRIEVED EMPLOYEES**

14 4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits
15 as authorized under the Agreement and subject to all obligations and duties required under the Agreement,
16 shall include all Aggrieved Employees as defined in Section 1.2.

17 4.2 Aggrieved Employees entitled to recover under this Agreement will include only those
18 individuals who are identified in Defendants' records as having worked as an Aggrieved Employee.

19 **5. TERMS OF THE SETTLEMENT**

20 The Parties agree as follows:

21 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
22 Section 6, Defendants shall pay the Gross Settlement Amount (\$285,000). Funding of the Gross
23 Settlement Amount shall occur within twenty-one (21) calendar days after the Effective Date to be held
24 in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount represents the maximum
25 amount payable under this Agreement by Defendants, and includes without limitation, the PAGA
26 Payment, all payments to the Aggrieved Employees, all attorneys' fees, costs and litigation expenses
27 directly related to the Action incurred to date, as well as all such fees and costs incurred in documenting
28

1 the Agreement, administering the Agreement (including Settlement Administrator Costs), Enhancement
2 Payment, and obtaining approval of the Agreement.

3 5.2 Attorneys' Fees and Costs: Defendants shall continue to be obligated to pay Plaintiff's
4 counsel's attorney's fees and costs as awarded by the Sacramento County Superior Court on January 26,
5 2024, which equaled \$80,595 in attorneys' fees and \$1,923.44 in costs ("Fee Order"). In addition to the
6 amounts owed under the Fee Order, Defendants agrees they will not oppose Plaintiff Counsel's request
7 for additional attorneys' fees not to exceed \$19,155 and additional costs not to exceed \$17,500. Amounts
8 payable under the Fee Order and the additional attorney's fees and costs identified by this paragraph will
9 be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. The
10 Settlement Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs
11 paid under this Agreement. In the event that the Court awards less than the requested attorney's fees
12 and/or costs, the portion of the requested amounts not awarded to Plaintiff's Counsel shall be added to the
13 Net Settlement Amount as defined in section 1.15.

14 5.3 Plaintiff's Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement
15 Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars (\$10,000) to
16 compensate for the risks, time, and expense of her involvement in the Action and securing the benefits of
17 this Agreement for Class Members. The Enhancement Payment is in addition to the Individual Settlement
18 Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member. This
19 payment is also in exchange for a waiver of individual claims by Plaintiff beyond the Private Attorneys
20 General Act, including a waiver of Civil Code section 1542. Defendants have agreed to not oppose
21 Plaintiff's Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the
22 amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported
23 on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment
24 amount requested, then any portion of the requested amount not awarded to the PAGA Representative
25 shall be added to the Net Settlement Amount to be distributed to the Aggrieved Employees on a pro rata
26 basis.

1 5.4 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from
2 the Gross Settlement Amount and shall not exceed \$15,000. The difference between any actual costs and
3 the allocated \$15,000 shall be added to the Net Settlement Amount as defined in section 1.15.

4 5.5 Treatment of Residue and Cy Pres: To the extent there are any funds remaining from
5 uncashed checks, the Settlement Administrator shall transmit the funds represented by such checks to the
6 California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee each check
7 pertains to. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

8 5.6 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
9 Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
10 actually received by Aggrieved Employees. It is expressly understood and agreed that the receipt of such
11 Individual Settlement Amounts will not entitle any Aggrieved Employee to any new or additional
12 compensation or benefits under any company bonus or other compensation or benefit plan or agreement
13 in place during the period covered by the Agreement, nor will it entitle any Aggrieved Employee to any
14 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the
15 intent of this Agreement that the Individual Settlement Amounts provided for in this Agreement are the
16 sole payments to be made by Defendants to the Aggrieved Employees in connection with this Agreement
17 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
18 might have been in effect during the period covered by this Agreement).

19 5.7 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid
20 to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of
21 Individual Settlement Amounts to Aggrieved Employees are as follows:

22 5.7.1 One Hundred percent (100%) of each Aggrieved Employees' Individual Settlement
23 Amount shall be allocated for payment of disputed civil penalties. This portion of the Individual
24 Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive
25 an IRS form 1099-MISC.

26 5.7.2 Aggrieved Employees shall be solely responsible for the reporting and payment of
27 their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
28 Agreement. No party has made any representation to any of the other Parties as to the taxability of any

1 payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to
2 Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement.

3 5.8 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs,
4 Enhancement Payment, and Settlement Administrator Costs are determined and a Net Settlement Amount
5 has been established, that Net Settlement Amount shall be divided between the PAGA Payment and
6 payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement
7 Amount. 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual
8 Aggrieved Employees' Individual Settlement Amount shall be determined by taking the Qualifying Pay
9 Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all
10 Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount.
11 Payment to Aggrieved Employees of their Individual Settlement Amount will not require the submission
12 of any claim form.

13 5.9 No Additional Contribution by Defendants: Defendants' monetary obligation under this
14 Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses
15 arising out of or in connection with the performance of this Agreement shall be paid from the Gross
16 Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is
17 deemed null and void as described in Section 3, then Defendants and Plaintiff shall be equally responsible
18 for the Settlement Administrator Costs incurred between the date the Agreement was executed and the
19 date of such event.

20 5.10 Adequacy of Plaintiff's Counsel and PAGA Representative: The Parties agree that, for
21 purposes of settlement only, Plaintiff's Counsel and Plaintiff are adequate representatives for Aggrieved
22 Employees.

23 **6. RELEASE**

24 6.1 Release by Aggrieved Employees: Upon the Effective Date, each Aggrieved Employee
25 shall be deemed to fully, finally, and forever release, on behalf of themselves and their respective former
26 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
27 Parties from all Released PAGA Claims.

6.2 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and forever release the Released PAGA Claims, and PAGA Representative's Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims, and PAGA Representative's Released Claims against any of the Released Parties. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the Individual Settlement Amount, including employer taxes, if any; 3) taking appropriate steps to trace and locate any individual Aggrieved Employees whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Aggrieved Employees; 4) providing notification to the appropriate state officials of this Agreement as required; 5) maintaining the Gross Settlement Amount in a QSF; 6) determining and paying the final amounts due to be paid under the Agreement after resolution of awarded attorneys' fees and costs and Settlement Administrator Costs; 7) paying any residual funds from uncashed checks to the *cy pres* beneficiaries; 8) reporting to Plaintiff's Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the

1 number of address traces performed for undeliverable Notice of Settlements; (g) the number of Notice of
2 Settlements undeliverable from traced addresses; 9) providing a declaration to the Court regarding the
3 final statistics of the administration and compliance with all payment obligations under the Agreement;
4 10) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts
5 to Aggrieved Employees; and 11) carrying out other related tasks as necessary to effectuate the terms of
6 this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability
7 and need to perform its duties shall be referred to the Court, if necessary, which will have continuing
8 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
9 contemplated by the Agreement have been fully executed.

10 7.2 Aggrieved Employee Data: Within seven (7) calendar days after the Effective Date,
11 Defendants shall provide the Settlement Administrator with the name, last known mailing address, last
12 known telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved
13 Employee. The production shall make clear the number of Qualifying Pay Periods occurring within the
14 Data Period as well as the total Qualifying Pay Periods within the PAGA Claim Period. The Settlement
15 Administrator shall review the data to determine the number of Qualifying Pay Periods for each Aggrieved
16 Employee. Defendants shall not provide any information for pay periods during which an Aggrieved
17 Employee may have worked as an exempt employee, worked outside California, or worked outside the
18 PAGA Claim Period. The Settlement Administrator shall maintain all information received from
19 Defendants confidential to itself, and Defendants' Counsel. However, Plaintiff's Counsel shall be able to
20 review the breakdown of Qualified Pay Periods and estimated Individual Settlement Amounts for
21 Aggrieved Employees prior to mailing for quality assurance.

22 7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:
23 Within seven (7) calendar days after Defendants have provided the Settlement Administrator with
24 information regarding Aggrieved Employees, the Settlement Administrator shall calculate the final Net
25 Settlement Amount, PAGA Payment, and the final Individual Settlement Amounts for Aggrieved
26 Employees, and report the results of these calculations to Plaintiff's Counsel and Defendants' Counsel.

27 7.4 Settlement Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the
28 LWDA: Defendants shall wire the Gross Settlement Amount as described in Section 5.1 to the Settlement

1 Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a
2 QSF. Within seven (7) calendar days after the Settlement Administrator receives the Gross Settlement
3 Amount, the Settlement Administrator shall deliver payment of Plaintiff's Counsels' attorney's fees and
4 costs, the Enhancement Payment, the PAGA Payment payable to the LWDA, Settlement Administrator
5 Costs, and payment for Individual Settlement Amounts to Aggrieved Employees as required under this
6 Agreement and approved by the Court. Plaintiff's Counsel shall provide the Settlement Administrator
7 with the pertinent taxpayer identification number and payment instructions for the attorney's fees and
8 costs after the Effective Date.

9 7.5 Notice to Aggrieved Employees: Defendants represent and warrant that Aggrieved
10 Employees are able to read and write in English such that no translation of the Notice of Settlement into
11 another language is necessary. The Settlement Administrator will provide a Notice of Settlement,
12 substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with providing
13 payment for Individual Settlement Amounts as described in Sections 5.7 and 7.4. The Notice of
14 Settlement will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement.
15 The Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net
16 Settlement Amount, attorneys' fees and costs allocations, Settlement Administrator Cost allocations,
17 PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent
18 of the Released PAGA Claims.

19 7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Settlement
20 Administrator receives the Gross Settlement Amount, the Settlement Administrator will perform a
21 national change of address ("NCOA") search, update the addresses per the results of the NCOA search
22 and will mail the respective Individual Settlement Amount, as determined in Sections 5.8 and 7.4, and
23 Notice of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

24 7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and
25 Individual Settlement Amount payment is returned to the Settlement Administrator as undeliverable, the
26 Notice of Settlement and Individual Settlement Amount payment shall be sent to the forwarding address
27 affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Settlement
28 Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer

1 or other search using the name, address and/or Social Security number of the individual involved, and
2 shall then perform a single re-mailing within seven (7) calendar days. Following each search that does
3 not result in a corrected address, for those Aggrieved Employees who appear to be current employees of
4 Defendants at the time of the Effective Date, the Settlement Administrator shall contact Defendants'
5 Counsel for assistance and Defendants shall cooperate in good faith with the Settlement Administrator's
6 reasonable efforts to obtain valid mailing addresses for Aggrieved Employees to the extent they were
7 active employees of Defendants at the time of the Effective Date. In the event the procedures in this
8 paragraph are followed and the intended recipient of a Notice of Settlement and Individual Settlement
9 Amount payment still does not receive the Notice of Settlement and/or Individual Settlement Amount
10 payment, the Aggrieved Employee shall still be bound by all terms of the Agreement, including the
11 releases contained in Sections 1.26 and 6.1, and any final judgment entered by the Court.

12 7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2
13 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
14 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
15 Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Agreement except as expressly
16 required by the Court.

17 7.9 Settlement Check Expiration and Cy Pres: The Settlement Administrator shall issue
18 Individual Settlement Amounts to Aggrieved Employees in the form of a check, which shall become null
19 and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred
20 eighty (180) calendar days of issuance, the checks shall be voided and funds from all undeposited checks
21 shall be transmitted as identified in Section 5.5. The Settlement Administrator shall deliver these funds
22 within fourteen (14) calendar days after the check cashing deadline.

23 7.10 Settlement Administrator Declaration Regarding Settlement Administration: Within
24 twenty-one (21) calendar days after the last day for Aggrieved Employees to cash their settlement checks,
25 the Settlement Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with a signed
26 declaration under penalty of perjury providing a complete and detailed report regarding the settlement
27 administration and that all the obligations of the Settlement Administrator have been completed.

28 **8. SETTLEMENT ADMINISTRATION SCHEDULE**

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out the Agreement is as follows.

Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendants to fund Gross Settlement Amount	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendants have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

1
2 **9. MISCELLANEOUS TERMS**

3 9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Released
4 PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the Parties to
5 enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party
6 in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and
7 costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for
8 attorney's fees and costs is filed.

9 9.2 Additional Pay Period Contingency: Defendants have represented that there are no more
10 than 16,256 pay periods during the Data Period. In the event the number of pay periods during the Data
11 Period is more than 17,881 (*i.e.*, greater than 10% more than 16,256), then Defendant will choose
12 between the options of (1) cutting off the release period when 16,256 pay periods are exhausted, or (2)
13 returning to the mediator, Michael Loeb, to negotiate the resolution of the additional pay periods. The
14 cost of mediation shall be paid by Defendants. To the extent the Parties are unable to reach a settlement
15 on the additional pay periods, the release period shall be limited to the date when 16,256 are exhausted.

16 9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
17 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
18 execution of such other documents and the taking of such other action as may reasonably be necessary to
19 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
20 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
21 order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include
22 modifying and/or resubmitting the Agreement for approval. Plaintiff's Counsel shall be responsible for
23 drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their
24 obligations under this Agreement, including the review and approval of settlement documents, such that
25 there are no substantial delays in seeking court approval or administration of this settlement. Plaintiff's
26 Counsel shall endeavor to file a motion for approval of this settlement within sixty (60) calendar days of
27 the date this Agreement is signed. Plaintiff's Counsel shall provide Defendants' Counsel with a draft
28

1 approval motion within 1 week after this Agreement is fully executed. Defendants' Counsel will provide
2 comments and/or proposed revisions within 1 week after receipt of the draft motion.

3 9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
4 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
5 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
6 Complaint, the representative character of the Action, the validity of any of the claims that were or could
7 have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of
8 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
9 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved
10 Employees, or any other person, and Defendants have specifically disclaimed any liability, culpability,
11 negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the
12 Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

13 9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
14 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
15 the third business day after mailing by United States certified mail, return receipt requested, addressed as
16 follows:

17 To the Plaintiff:

18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Renald Konini
21 Shimoda & Rodriguez Law, PC
22 9401 East Stockton Blvd., Suite 120
23 Elk Grove, CA 95624

24 To Defendants:

25 Lukas J. Clary
26 Olatomiwa T. Aina
27 Weintraub Tobin Chediak Coleman Grodin
28 400 Capitol Mall, 11th Floor
 Sacramento, CA 95814

9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that

1 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
2 party or its counsel participated in the drafting of this Agreement.

3 9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
4 terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the
5 terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties
6 hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

7 9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys
8 acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any
9 amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount
10 except as expressly provided herein.

11 9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in
12 writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged
13 except by performance in accordance with its terms.

14 9.10 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
15 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
16 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
17 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
18 this Agreement

19 9.11 Counterparts: This Agreement shall become effective upon its execution by all of the
20 undersigned. Plaintiff, Plaintiff's Counsel, Defendants and Defendants' Counsel may execute this
21 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
22 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
23 same force and effect of originals.

24 9.12 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
25 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
26 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
27 with, and governed by, the substantive laws of the State of California without giving effect to that State's
28 choice of law principles.

1 9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
3 scope of this Agreement, or any provision thereof.

4 9.14 No Retaliation or Discouragement: The Parties agree they will take no action that could
5 be construed as retaliation against any Aggrieved Employees for participating in this settlement.

6 9.15 Integrated Agreement: This Agreement sets forth the entire understanding between the
7 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
8 oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no
9 representation, inducement, promise or agreement which has been made, orally or otherwise, by the other
10 party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this
11 Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are
12 fully understood and voluntarily accepted by the Parties.

13 9.16 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
14 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
15 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

16 9.17 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
17 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
18 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

19 9.18 Waiver of Compliance: No waiver of any condition or covenant contained in this
20 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
21 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

22 9.19 No Prior Assignments: The Parties separately represent and warrant that they have not
23 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
24 any person or entity any portion of any liability, claim, demand, action, cause of action, or right released
25 and discharged by the Parties in this Settlement Agreement.

26 9.20 Confidentiality: Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel
27 separately agree that, until the Motion for Approval of the PAGA settlement is filed, they and each of
28

1 them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose,
 2 disseminate or publicize, any of the terms of the Settlement Agreement directly or indirectly, specifically
 3 or generally, to any person, corporation, association, [A1] or other entity except: (1) to the Parties' attorneys,
 4 accountants, or spouses, all of whom will be instructed to keep this Settlement Agreement confidential;
 5 (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
 6 authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena
 7 issued by a state or federal government agency. Each Party agrees to immediately notify each other Party
 8 of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Plaintiff's
 9 Counsel, Defendants, and Defendants' Counsel separately agree not to, directly or indirectly, initiate any
 10 conversation or other communication, before the filing of the Motion for Approval of the PAGA
 11 settlement, any with third party regarding this Settlement Agreement or the matters giving rise to this
 12 Settlement Agreement except to respond only that "the matter was resolved," or words to that effect. This
 13 paragraph does not restrict the Settlement Administrator's communications with the LWDA in accordance
 14 with the Settlement Administrator's obligations owed to the LWDA and Aggrieved Employees.

15 9.21 No Tax Advice. Neither Plaintiff, Plaintiff's Counsel, Defendants, nor Defendants'
 16 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement
 17 Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230
 18 (31 CFR Part 10, as amended) or otherwise.

19 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
 20 attorneys, as of the day and year herein set forth.

21 **For Plaintiff:**

22 Date: 07/05/2024

Andrea Walker

Andrea Walker (Jul 5, 2024 14:09 PDT)

Andrea Walker

25 **For Defendants:**

26 Date: Aug 16, 2024 | 1:57 PM PDT



By: Yan Kalika

For Yan Kalika Dental Corporation

Date: Aug 16, 2024 | 1:57 PM PDT

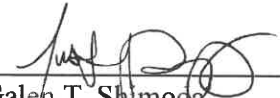


By: Yan Kalika
For Yan Kalika

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 7/5/2024

By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff and Aggrieved
Employees

APPROVED AS TO FORM

**WEINTRAUB TOBIN CHEDIAK COLEMAN
GRODIN**

Dated: 8/16/2024

By: 
Lukas J. Clary
Olatomiwa T. Aina
Attorneys for Defendants

Exhibit 1

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

Case No. 34-2021-00305106

ANDREA WALKER, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who have worked, for Defendants in California from May 12, 2020, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Walker v. Yan Kalika Dental Corporation, et al.*, Sacramento County Superior Court of California, Case No. 34-2021-00305106, filed July 29, 2021 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Andrea Walker ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of herself and Aggrieved Employees. Plaintiff alleged that Yan Kalika Dental Corporation and Yan Kalika. ("Defendants") violated California law by 1) failing to pay overtime wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to provide accurate wage statements, 4) failing to pay final wages, 5) failing to pay reimbursement for expenses, 6) violating Labor Code §§ 558, 558.1 (provisions regulating hours and days of work in any industrial welfare commission order), and 7) failing to provide paid sick leave. Defendants have denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 510, 1194, 226.7, 512, 226, 226.3, 201-203, 256, 558, 558.1, 246, 246.5, 248.5, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between May 12, 2020, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$285,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], the fees and expenses of the Settlement Administrator in the amount of \$[REDACTED], Enhancement payment to Plaintiff in the amount of \$[REDACTED], which will result in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between PAGA Claim Period from May 12, 2020, up to [REDACTED], dividing that number by the number of pay periods worked for all

Aggrieved Employees between PAGA Claim Period from May 12, 2020, up to , and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

Galen T. Shimoda
Justin P. Rodriguez
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Lukas J. Clary
Olatomiwa T. Aina
Weintraub Tobin Chediak Coleman Grodin
400 Capitol Mall, 11th Floor
Sacramento, CA 95814
Phone: (916) 558-6000
On behalf of Defendants

Exhibit B

Filed
Superior Court of California,
Sacramento
09/18/2023
zeyaadn
By _____, Deputy
34-2021-00305108-CU-OE-GDS

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff ANDREA WALKER
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 ANDREA WALKER,

11 Plaintiff,

12 vs.
13

14 YAN KALIKA DENTAL CORPORATION, a
California Corporation;
15 YAN KALIKA, an individual; and
16 DOES 1 to 100, inclusive,

17 Defendants.
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Case No. 34-2021-00305106

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND CIVIL PENALTIES:**

1. Private Attorneys General Act
2. Failure to Pay Overtime Wages
3. Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof
4. Failure to Provide Accurate Wage Statements
5. Failure to Pay Final Wages
6. Failure to Pay Reimbursements for Expenses
7. Unfair Competition

BY FAX

1 Plaintiff ANDREA WALKER ("Plaintiff"), on behalf of herself and Aggrieved Employees,
2 hereby files this Complaint against Defendants YAN KALIKA DENTAL CORPORATION, a
3 California Corporation; YAN KALIKA, an individual; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for failure
7 to pay all overtime, meal period premiums, and paid sick time owed, failure to reimburse expenses,
8 wage statement violations, and failure to pay final wages. Plaintiff has also alleged individual causes of
9 action for failure to pay overtime, failure to pay all meal period premiums, failure to provide accurate
10 wage statements, failure to pay final wages, failure to reimburse expenses, and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, Business & Professions Code and Wage Order No. 4.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5 in that some of
16 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and
17 Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*
18 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984). Furthermore, Defendants employed Aggrieved
19 Employees within Sacramento County. *See Crestwood Behavioral Health, Inc. v. Sup. Ct.*, 60
20 Cal.App.5th 1069, 1072, 1076-1077 (2021) (holding venue for former employee's action against
21 employer under the Private Attorneys General Act of 2004 was proper in any county where other
22 aggrieved employees worked).

23 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
24 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
25 of herself and other Aggrieved Employees. Pursuant to California Labor Code section 2699.3, Plaintiff
26 gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA")
27 on approximately May 12, 2021. Plaintiff provided facts and legal bases for her claims within the notice
28 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.

1 Plaintiff also submitted the \$75.00 filing fee. The May 12, 2021, notice was also sent via certified mail
2 to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice
3 correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private
4 Attorneys General Act ("PAGA") and may bring this action on behalf of herself and all similarly
5 situated employees, *i.e.*, Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
6 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
7 include but is not limited to the following: all non-exempt employees who have worked, or continue to
8 work, for Defendants in California from one year prior to Plaintiff's notice to the LWDA.

9 **PARTIES**

10 5. ANDREA WALKER is an individual over the age of eighteen (18) and is a resident
11 of the State of California.

12 6. On information and belief, Plaintiff alleges, YAN KALIKA DENTAL
13 CORPORATION is now and/or at all times mentioned in this Complaint was a California
14 Corporation and the owner and operator of an industry, business and/or facility doing business in the
15 State of California.

16 7. On information and belief, Plaintiff alleges that YAN KALIKA is an individual over
17 the age of eighteen (18) and is a resident of the State of California. Plaintiff further allege(s) that
18 YAN KALIKA is an owner, director, officer, and/or managing agent of YAN KALIKA DENTAL
19 CORPORATION responsible for causing the violations outlined in this Complaint. As such YAN
20 KALIKA is individually liable pursuant to California Labor Code section 558.1

21 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
22 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
23 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
24 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
25 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
26 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
27 Plaintiff.

28 //

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as though fully set forth herein.

13. Plaintiff worked for Defendants from approximately June 30, 2018 to December 1, 2020. Plaintiff worked as a dental assistant traveling between multiple office locations.

14. Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to non-discretionary remuneration, such as bonuses, etc. However, Defendants failed to incorporate the value of these bonuses into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages, meal period premiums and paid sick time. For example, during Defendants' 8/1/20 to 8/15/20 pay period, Defendants' paystub reflects that Defendants paid Plaintiff several bonuses totaling \$50.00 and that she worked .49 overtime hours. Defendants paid Plaintiff's overtime wages at exactly 1.5x her base hourly rate, which does not include any adjustment for the value of the bonuses. Similar miscalculations occurred regarding overtime, sick leave pay, and meal period premiums in the 9/1/20 to 9/15/20 pay period. This practice of Defendants not to incorporate the value of bonuses into employees' regular rates of pay resulted in unpaid overtime, unpaid meal period premiums, and unpaid sick leave for Plaintiff and Aggrieved Employees.

15. Plaintiff and Aggrieved Employees were also not authorized and permitted to take all meal periods they were entitled to, as evidenced by their being paid meal period premiums.

11

1 16. Defendants required Plaintiff and Aggrieved Employees to incur expenses for work
2 without paying reimbursement for such expenses. For instance, Defendants required Plaintiff and
3 Aggrieved Employees to use their personal cellphones to reply to work-emails, answer work related
4 calls, use the Google Drive app to check their schedule among other tasks, and use navigation to get to
5 various job sites. Defendants did not reimburse Plaintiff or Aggrieved Employees for the use of their
6 personal cellphones.

7 17. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage
8 statements. The wage statements Defendants provided did not accurately itemize employees' gross and
9 net wages, meal period premiums, and all applicable hourly rates in effect during the pay period, total
10 hours worked, and the corresponding number of hours worked at each hourly rate.

11 18. At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff
12 and Aggrieved Employees had overtime, sick time, and meal period premiums owing to them. To date,
13 Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

14 **FIRST CAUSE OF ACTION**
15 **PRIVATE ATTORNEYS GENERAL ACT**
16 **(As to all Defendants)**

17 19. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 18 as though fully
18 set forth herein.

19 20. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
20 following provisions of the Labor Code in their dealings with Plaintiff and other Aggrieved Employees:

- 21 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime
22 Wages)
- 23 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B)
24 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 25 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 26 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 27 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work
28 in Any Industrial Welfare Commission Order)

1 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

2 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

3 21. Plaintiff seeks civil penalties against Defendants as provided in the California Labor
4 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section
5 2699(f)(2).

6 22. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code
7 sections 2699(a) and 2699.3.

8 23. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have
9 been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the
10 extent pertinent as if set forth here in full.

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PAY OVERTIME WAGES**
13 **(As to all Defendants)**

14 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
15 set forth herein.

16 25. During the period Plaintiff employed by Defendants, Defendants were required to
17 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
18 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
19 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A);*
20 *Cal. Lab. Code §§ 510, 1194.*

21 26. Plaintiff worked in excess of eight (8) hours per day and/or forty (40) hours per week on
22 several occasions while employed by Defendants. Plaintiff also was paid nondiscretionary
23 remuneration, such as bonuses. However, Defendants failed to compensate Plaintiff for all overtime
24 hours worked at her regular rate of pay due to Defendants' failure to include the value of
25 nondiscretionary remuneration, such as bonuses, into her regular rate.

26 27. Plaintiff was not exempt from overtime protections employees under the California Wage
27 Orders and Labor Code.

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28. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully set forth herein.

30. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

31. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

32. California Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

33. Defendants employed Plaintiff for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff to take her first meal period before the completion of her fifth hour of work and failed to allow Plaintiff to take her second meal period before the completion of her tenth hour of work. Plaintiff did not waive their rights to all meal periods throughout their employment.

34. Defendants further failed to pay Plaintiff the full value of applicable meal period premiums for any such missed meal breaks. Defendants failed to pay Plaintiff meal period premiums at the correct rate of pay as Defendants failed to include the value of nondiscretionary remuneration, such as bonuses, when paying Plaintiff's regular rate of pay.

35. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully set forth herein.

37. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

38. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all overtime time hours worked, meal premiums, and paid sick time and corresponding rates of pay, and gross and net wages earned. Plaintiff suffered confusion over whether she received all wages owed and was prevented from effectively challenging information on her wage statements.

39. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully set forth herein.

41. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

42. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

43. Plaintiff did not receive all wages, including overtime wages, meal period premiums, or all sick leave pay owed at her termination or within the required time after her separation from employment.

44. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

45. Defendants knew of their obligation to pay Plaintiff her final wages. Defendants had knowledge that bonuses paid to Plaintiff were nondiscretionary and that such bonuses should have been included in the regular rate of pay calculation. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

46. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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**SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)**

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

49. As described above, Defendants required Plaintiff to use her personal cellphone for work but failed to reimburse her for such use.

50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to YAN KALIKA DENTAL CORPORATION and DOES 1 to 100)**

51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

52. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

53. Plaintiff was not paid all wages owed, overtime wages, meal period premiums, paid sick leave, or reimbursement for business expenses, during her employment or any time thereafter.

54. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

//

55. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 246, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

2. As to the Second Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Interest for the wages due pursuant to California Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

3. As to the Third Cause of Action:

- a. **Wages in an amount to be proven at trial;**
- b. **Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;**

4. As to the Fourth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

5. As to the Sixth Cause of Action:

- a. An amount to be proven at trial;
 - b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
6. For such other and further relief as this Court may deem just and proper, including, but not limited to:
- a. Wages as proved at trial;
 - b. Injunctive and Declaratory relief;
 - c. Attorney's fees and costs as provided for by law; and
 - d. Interest.

Dated: September 1, 2023

Shimoda & Rodriguez Law, PC

By: Brittany Berzin
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 *Walker v. Yan Kalika Dental Corporation*
2 *Sacramento County Superior Court of California, Case No. 34-2021-00305106*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On September 18, 2023, I served the following documents on the party below:

9 **• FIRST AMENDED COMPLAINT FOR DAMAGES AND CIVIL**
10 **PENALTIES**

11 Lukas Jon Clary (SBN:251519) 12 Weintraub Tobin Chediak Coleman & Grodin 13 400 Capitol Mall, Floor 11 14 Sacramento, CA 95814-4434 15 Phone: (916) 558-6000 16 Fax: (916) 446-1611 17 Email: lclary@weintraub.com ; 18 rcarrillo@weintraub.com ; 19 bjenness@weintraub.com ; 20 ccervantes@weintraub.com	
--	--

21 [] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set forth
25 above, I served the aforementioned document(s) on the parties in said action
26 by placing a true copy thereof enclosed in a sealed envelope with postage
27 thereon fully prepaid, for collection and mailing on this date, following
28 ordinary business practices, at Elk Grove, California, addressed as set forth
above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on September 18, 2023, at Salt Lake City, Utah.

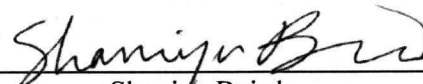
29 
30 Shaniya Baird

Exhibit C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

May 12, 2021

For Online Filing:

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

Re: *Walker v. Yan Kalika Dental Corporation*

Dear Labor Commissioner,

As counsel for Andrea Walker ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Yan Kalika Dental Corporation
3075 Beacon Blvd.
West Sacramento, CA 95691

Yan Kalika
3075 Beacon Blvd.
West Sacramento, CA 95691

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Yan Kalika Dental Corporation and Yan Kalika ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have worked, or continue to work, for Defendants in California. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately June 30, 2018 to December 1, 2020. Plaintiff worked as a dental assistant traveling between multiple office locations.



Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to non-discretionary remuneration, such as bonuses, etc. However, Defendants failed to incorporate the value of these bonuses into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages, meal period premiums and paid sick time. For example, during Defendants' 8/1/20 to 8/15/20 pay period, Defendants' paystub reflects that Defendants paid Plaintiff several bonuses totaling \$50.00 and that she worked .49 overtime hours. Defendants paid Plaintiff's overtime wages at exactly 1.5x her base hourly rate, which does not include any adjustment for the value of the bonuses. Similar miscalculations occurred regarding overtime, sick leave pay, and meal period premiums in the 9/1/20 to 9/15/20 pay period. This practice of Defendants not to incorporate the value of bonuses into the regular rates of pay resulted in unpaid overtime, unpaid meal period premiums, and unpaid sick leave for Plaintiff and Aggrieved Employees.

Plaintiff and Aggrieved Employees were also not authorized and permitted to take all meal period they were entitled to, as evidence by their being paid meal period premiums.

Defendants required Plaintiff and Aggrieved Employees to incur expenses for work without paying reimbursement for such expenses. For instance, Defendants required Plaintiff and Aggrieved Employees to use their personal cellphones to reply to work-emails, answer work related calls, check their schedule through an app, and use navigation to get to various job sites. Defendants did not reimburse Plaintiff or Aggrieved Employees for the use of their personal cellphones.

Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided did not accurately itemize employees' gross and net wages, meal period premiums, and all applicable hourly rates in effect during the pay period, total hours worked, and the corresponding number of hours worked at each hourly rate.

At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff and Aggrieved Employees had overtime, sick time, and meal period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times



their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take all legally compliant meal periods pursuant to California law. Defendants also failed to pay the correct rate for meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Three – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

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Count Four – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime wages, meal period premiums and sick time, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Five – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants' agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Yan Kalika was an officer, director, shareholder, and/or managing agent of Yan Kalika Dental Corporation responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Six – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick



leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count Seven – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendant failed to pay any reimbursements for the use of personal cellphones by Plaintiff and Aggrieved Employees. This was in violation of the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodriguez

JPR:bb

cc: Client via e-mail

1 *Walker v. Yan Kalika Dental Corporation*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On May 12, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9
10 Yan Kalika Dental Corporation
11 3075 Beacon Blvd.
West Sacramento, CA 95691

Yan Kalika
3075 Beacon Blvd.
West Sacramento, CA 95691

12 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
13 and processing of correspondence for mailing with the United States Postal
14 Service and that each day's mail is deposited with the United States Postal
15 Service that same day in the ordinary course of business. On the date set forth
16 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

17 [] [By Personal Service] By personally delivering a true copy thereof to the office
18 of the addressee above.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service:_____.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on May 12, 2021, at Elk Grove, California.

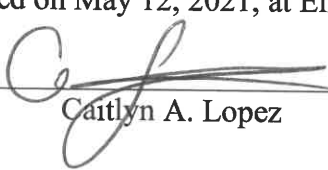
22
23 
24 Caitlyn A. Lopez
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Exhibit D

DECLARATION OF LISA MULLINS

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3 1. I am a resident of the United States of America and am over the age of 21. I am the
4 President for ILYM Group, Inc., (herein after referred to as “ILYM Group”), a professional class action
5 services provider. I am preparing this declaration at the request of Plaintiff’s Counsel. I have personal
6 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
7 facts.

8 2. ILYM Group has extensive experience in disseminating PAGA settlements and
9 administering class action settlements, including direct mail services, telephone, and web-based support,
10 database management, opt-out processing, and settlement fund distribution services for class actions
11 ranging in size from 26 to 4.5 million Class Members. Attached hereto, as **Exhibit A**, is a true and
12 correct copy of ILYM Group’s current CV, reflecting our primary competencies as they relate to class
13 action administration. Attached hereto, as **Exhibit B** is ILYM Group’s Security Summary and Protocol.
14 ILYM Group is insured with E&O and Cyber Insurance policies. ILYM Group is insured with E&O
15 Insurance policies up to \$2,000,000 per incident and Cyber Insurance policies up to \$5,000,000 per
16 incident.

17 3. ILYM Group has never had any financial interests in nor affiliation with the parties or
18 counsel in the *Walker v. Yan Kalika Dental Corporation* matter.

19 4. Upon appointment, ILYM Group will provide a mailing address and toll-free telephone
20 number to receive correspondence and inquiries from aggrieved employees. After receiving the data file
21 from Defendant, which should contain the aggrieved employees’ names, last known addresses, and
22 social security numbers, ILYM Group will upload the data into our database and check for duplicates
23 and other possible discrepancies.

24 5. As part of the preparation for notice and disbursement, ILYM Group will process
25 aggrieved employees’ names and addresses against the National Change of Address (“NCOA”) database,
26 maintained by the United States Postal Service (“USPS”), to update and confirm the mailing addresses of
27 the aggrieved employees before the mailing of the notice. To the extent an updated address is found in
28 the NCOA database, ILYM Group will use the updated address for mailing the notice. If ILYM Group

1 does not locate an updated address in the NCOA database, it will use the original address provided by
2 Defendant for mailing the notice.

3 6. ILYM Group's Disbursement Process will include but is not limited to; (a) applying for
4 case EIN; (b) establishing Qualified Settlement Fund ((QSF) Escrow Account), with administering tasks
5 including but not limited to overview and reconciliation of account; (c) calculating the individual
6 settlement amounts; (d) preparing, administering, and distributing settlement award checks to the
7 Participating Aggrieved Employees, including necessary tax forms (W2 and/or 1099); (e) calculating and
8 withholding all applicable state and federal taxes; (f) should any disbursements be returned to ILYM
9 Group's office as undeliverable, ILYM Group will attempt to locate an updated address using the NCOA
10 database and/or other skip trace efforts and will promptly remail the disbursement; (g) performing other
11 such duties as the Parties and/or the Courts direct. The above services are included in ILYM Group's
12 initial quote. Attached hereto, as **Exhibit C**, is a true and correct copy of ILYM Group's quote for this
13 matter.

14 7. ILYM Group's fees associated with the administration of this settlement are: **\$5,550.00**.

15 I declare, under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed this 11th day of July 2024, at Tustin, California.

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Lisa Mullins

EXHIBIT “A”

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification and direct media outlets firm. With over 14 years of experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and is becoming the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- Employment and Labor
- Securities
- Antitrust
- TCPA

Malta vs. Wells Fargo Home Mortgage Inc.

- TCPA Case with a class size of 5,200,000.

Gerardo Mojica vs. Compass Group USA, Inc.

- Wage & Hour Case with a class size of 22,573

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Grinder, et al. v. Clark County Collection Service, LLC.

- TCPA Case with a class size of 15,659. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 97% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Blaise Picchi et al., vs. World Financial Network Bank, et al.

- TCPA Case with a class size of 856,507. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.21% that did not have a valid address associated with the contact record.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID's. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages.
All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ’s) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels’ no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID’s to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- ***Distribution and Management:*** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- ***Check Printing and Mailing:*** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- ***Preparation, Filing and Reporting of Taxes:*** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- ***Data Manager Final Report:*** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- ***Project Manager Final Report:*** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- ***Affidavits:*** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- ***Document Retention:*** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT “B”

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

Technical Controls

Firewalls and intrusion detection/prevention systems	Yes
Endpoint Detection and Response (EDR) Systems	Yes
Complex Password Requirements	Yes
MultiFactor Authentication for Access to Systems and Data	Yes
Malware Protection and AntiVirus	Yes
Vulnerability Scanning/Pen Testing	Yes
Data Encryption	Yes
Key Management for access to encrypted Data	Yes
Access only provided on need-to-know basis	Yes
Security Operations Center (SOC)	Yes
Managed Detection and Response (MDR)	Yes
Security Information and Event Management (SIEM)	Yes
Software Defined Global Network (SGN) with next gen firewall	Yes

Administrative Policies

Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes	Yes
Personnel and support staff required to enter into non-disclosure and confidentiality agreements	Yes
Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights	
Information security and privacy policy training, including policy review, best practices, and data security	Yes
No remote access to systems for Employees	No
Exit interviews/confirmation that terminated/departed employees are immediately cut off from access	Yes
Robust audits of data privacy policies by third-party vendors	Yes
Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)	Compliant
Disclosure of external certifications and any notice of expiration	Yes

Crisis and Risk Management

Incident response/disaster plan for immediate response to security incidents such as data breach.	Yes
Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto	Yes
Vendor management program that determines and defines requirements to manage risk associated with outsourcing	Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2

Physical Access Controls

Physical Access Security Security Guards Access Cards to facilities with assignment of identification card subject to approval and review Logs of Access	Logs and “codes” No cards – just codes No security guards Logs are kept
Alarm Systems	Yes
CCTV recording Systems	Yes

Data Collection and Retention

Minimization of collection of personally identifiable information, e.g., social security numbers and banking information	Yes
Data collection only required to extent necessary for settlement administration	Yes
Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction) Compliance with applicable laws and regulations (see below) Secure data transfer	Yes

Data Destruction

Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions	Yes
Secure data destruction (e.g., 6 months – 1 year or when no longer required)	Yes
Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed	Yes
Destruction of all derivative copies and/or back-ups	Yes

Applicable Laws, Standards, and Other Regulation

Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001	Yes
Local, national, international privacy regulations (including CCPA)	Yes

Ethical Rules

Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior	Yes
Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment	Yes

Customer Service Measures

Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)	Yes
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Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator)	Yes
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EXHIBIT “C”

Case Name: Walker v. Yan Kalika Dental Corporation

Wednesday, June 5, 2024

Requesting Attorneys Name:	Justin Rodriguez
E-Mail:	jrodriguez@shimodalaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	625
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Static Website	No
NCOA	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$692.50
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$4,087.50
Case Conclusion:	\$770.00
Total ILYM Fees & Expenses:	\$5,550.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Walker v. Yan Kalika Dental Corporation

Wednesday, June 5, 2024

Requesting Attorneys Name:

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
NCOA	Flat Rate	\$142.50	1	\$142.50
Toll-Free Call Center	Flat Rate	\$160.00	1	\$160.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$692.50

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	625	\$937.50
USPS First Class 1oz Postage	Per Piece	\$0.64	625	\$400.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	125	\$250.00
Preparation of Taxes	Hourly	\$150.00	3	\$450.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$4,087.50

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Process Unclaimed Funds to the State	Flat Fee	\$450.00	1	\$450.00
Declaration	Hourly	\$120.00	1	\$120.00

Subtotal \$770.00

Total Case Estimate: \$5,550.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM 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, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit E

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

Case No. 34-2021-00305106

ANDREA WALKER, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who have worked, for Defendants in California from May 12, 2020, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Walker v. Yan Kalika Dental Corporation, et al.*, Sacramento County Superior Court of California, Case No. 34-2021-00305106, filed July 29, 2021 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Andrea Walker ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of herself and Aggrieved Employees. Plaintiff alleged that Yan Kalika Dental Corporation and Yan Kalika. ("Defendants") violated California law by 1) failing to pay overtime wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to provide accurate wage statements, 4) failing to pay final wages, 5) failing to pay reimbursement for expenses, 6) violating Labor Code §§ 558, 558.1 (provisions regulating hours and days of work in any industrial welfare commission order), and 7) failing to provide paid sick leave. Defendants have denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 510, 1194, 226.7, 512, 226, 226.3, 201-203, 256, 558, 558.1, 246, 246.5, 248.5, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between May 12, 2020, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$285,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], the fees and expenses of the Settlement Administrator in the amount of \$[REDACTED], Enhancement payment to Plaintiff in the amount of \$[REDACTED], which will resulted in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between PAGA Claim Period from May 12, 2020, up to [REDACTED], dividing that number by the number of pay periods worked for all

Aggrieved Employees between PAGA Claim Period from May 12, 2020, up to , and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

Galen T. Shimoda
Justin P. Rodriguez
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Lukas J. Clary
Olatomiwa T. Aina
Weintraub Tobin Chediak Coleman Grodin
400 Capitol Mall, 11th Floor
Sacramento, CA 95814
Phone: (916) 558-6000
On behalf of Defendants

Exhibit F

Exhibit G

Entered	Description	Amount
4/28/2021	Administration Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fee	\$500.00
5/12/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
5/12/2021	Postage - Certified PAGA Letters to Employers	\$8.62
7/30/2021	Service Fee to Court - Complaint	\$40.00
7/30/2021	Payment to Court - Complaint Fee Superior Court	\$435.00
8/12/2021	ALS Service Fee - Yan Kailika	\$65.00
8/12/2021	ALS Service Fee - Yan Kalika Dental Corp	\$65.00
8/17/2021	Service Fee to Court - Proof of Service of Summons (Yan Kalika Dental Corp)	\$40.00
8/20/2021	Service Fee to Court - Proof of Service of Summons (Yan Kalika)	\$40.00
9/27/2021	Payment to Court - Stipulation and Proposed Protective Order	\$20.00
1/19/2022	Payment for Records - Public Records Request Documents from Dept of Indust. Relations	\$8.36
3/2/2022	Administrator Fee - Belaire Notice Mailing	\$174.50
3/4/2022	Deposition Transcripts - Andrea Walker	\$1,207.30
4/13/2022	Service Fee to Court - Case Management Conference Statement	\$40.00
10/20/2022	One Legal Service Fee - Opposition to Motion for Judgement on Pleadings	\$293.15
9/7/2023	Mediation - Mediator Fee	\$9,758.30
9/7/2023	Mediation - ADR Service Administrative Fee	\$475.00
10/16/2023	Mediation - Service Fee - Hard Copy of Brief/Exhibits to Mediator	\$51.49
10/19/2023	One Legal Service Fee & Complex Filing Fee	\$1,112.89
11/6/2023	One Legal Service Fee & Filing Fee - Motion for Fees re Arb	\$302.67
1/19/2024	One Legal Service Fee - Reply re Motion for Fees re Arb	\$16.88
2/2/2024	One Legal Service Fee - Notice of Entry of Order/Judgement re Motion for Fees re Arb	\$16.88
3/26/2024	One Legal Service Fee - Notice of Disassociation	\$16.88
5/31/2024	One Legal Service Fee - Case Management Statement	\$16.88
Anticipated	Capital Process Service - Personal Service of Motion for Approval of Settlement	\$150.00
Anticipated	One Legal Service Fee & Filing Fee - Motion for Approval of Settlement	\$125.00
Anticipated	One Legal Fee - Joint Case Management Conference Statement	\$20.00
Anticipated	One Legal Fee - Compliance Declaration	\$20.00

TOTAL: \$15,094.80

Exhibit H

TASK CATEGORY

	<u>GTS</u>	<u>JPR</u>	<u>BVB</u>	<u>RK</u>
<u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law & Motion.</u> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendants; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings and court filings; Communications with opposing counsel regarding same, internal communications at SRL regarding same, and communications with client regarding same; Includes law and motion regarding pleadings such as Motion for Judgement on the Pleadings.	13.6	7.1	9.3	-
<u>Case Review, Management, Strategy Meetings, Dispositive Motions.</u> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from the Court regarding case management and assignments; Research regarding motion for summary judgment/adjudication and re-filing summary judgment/adjudication in Court; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	9	6.8	.7	.4
<u>Discovery (Pre-Mediation/Non-Mediation Related), Related Law & Motion, and Hearings.</u> Includes time spent preparing discovery requests, responses to discovery, Belaire Notices, Protective Orders, and Confidentiality Agreements; Preparing for and attending Plaintiff's deposition; Research regarding discovery issues and objections; Document review and analysis; Seek out witnesses for interviews and obtaining declarations; Review public records requests regarding prior labor commissioner filings and prior wage and hour Lawsuits Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	12.1	25.9	43.1	-
<u>Discovery / Investigation for Mediation.</u> Includes time spent preparing informal discovery specifically geared towards mediation; Reviewing informal mediation productions and formal discovery responses, including data, analyses, documents, and public records; Analyzing sample data and preparing damages analysis; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	4.3	22.4	8.6	-
<u>Mediation / Settlement Conference / Direct Negotiations.</u> Includes time spent drafting/revising mediation brief and accompanying exhibits; Drafting pocket briefs; Review documents productions for potential exhibits; Preparing for and attending mediation; Pre-mediation calls with mediator; Legal research relating to issues on day of mediation; Direct negotiations with opposing counsel both before and after mediations; Post-mediation calls with mediator regarding continued negotiations; Preparing working draft of MOU; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	10.9	13.4	19.6	-
<u>Drafting Settlement Agreement.</u> Includes time spent preparing long form agreement and exhibit, revisions relating thereto; Research regarding any approval procedures or issues regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same.	.8	5.8	-	4.7
<u>Settlement Approval and Administration.</u> Includes time spent drafting motion for approval of PAGA settlement, supporting declarations, and order; Communications with opposing counsel regarding same, internal communications at SRL regarding same, communications with client regarding same. This also includes an estimated 15 hours for J. Rodriguez supervising final distributions and compliance with the Court's approval order including Settlement Administrator calculations, distributions, and mailings, reviewing weekly reports from Settlement Administrator, responding to any Aggrieved Employees calls/inquiries regarding the settlement, and preparing compliance hearing filings.	2.2	34.2	-	-
TOTAL:	52.9	115.6	81.3	5.1

Exhibit I

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 22

JUDICIAL OFFICER: HONORABLE LAURI A. DAMRELL

Courtroom Clerk: V. Aleman

CSR: None

Court Attendant: J. Flores

34-2021-00305106-CU-OE-GDS

January 26, 2024

9:00 AM

**Andrea Walker vs. Yan Kalika Dental Corporation, a
California Corporation**

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion for Attorney Fees

There being no request for oral argument the Court affirmed the tentative ruling.

TENTATIVE RULING:

Plaintiff Andrea Walker's ("Plaintiff") motion for attorneys' fees is ruled upon as follows.

Background

Plaintiff filed this Private Attorneys General Act ("PAGA") against Defendants Yan Kalika Dental Corporation and Yan Kalika ("Defendants") on July 29, 2021. (Berzin Decl., ¶ 2.) On June 21, 2022, after the decision in *Viking River Cruises, Inc. v. Moriana* (2022)142 S.Ct. 1906 ("*Viking River*"), Defendants made a demand for Plaintiff's individual PAGA claims to proceed in arbitration before the American Arbitration Association while the PAGA claims for other aggrieved employees remained in court. (Berzin Decl., ¶ 2.) The arbitration was pending from June 21, 2022 through July 27, 2023. (*Ibid.*)

On June 20, 2023, the American Arbitration Association ("AAA") issued an invoice to Defendants. (Berzin Decl., ¶ 3, Exh. A.) On July 27, 2023, notice was provided that Defendants failed to make payment. (*Id.*, ¶ 4, Exh. B.) On July 27, 2023, Plaintiff exercised her option pursuant to California Code of Civil Procedure ("CCP") section 1281.98(b)(1) to withdraw her claims from arbitration and proceed in court. (*Id.*, ¶ 5, Exh. C.)

Plaintiff now moves for a total of \$80,595.00 in attorneys' fees and \$1,923.44 in costs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

pursuant to Code of Civil Procedure (“CCP”) Section 1281.98.

Legal Standard

CCP section 1281.98 provides as follows:

In an employment or consumer arbitration that requires, either expressly or through the application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain fees and costs during the pendency of the arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with the arbitration as a result of the material breach.

(CCP § 1281.98(a)(1).) CCP section 1281.98 also states “[i]f the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may unilaterally elect to ... [w]ithdraw the claim from arbitration and proceed in a court of competent jurisdiction.” (*Id.*, § 1281.98(b)(1).) If the employee elects to withdraw, “[t]he employee or consumer may bring a motion ... to recover all attorney’s fees and all costs associated with the abandoned arbitration proceeding. The recovery of arbitration fees, interest, and related attorney’s fees shall be without regard to any findings on the merits in the underlying action or arbitration.” (*Id.*, § 1281.98(c)(1).) Section 1281.98 further provides that the “The court shall impose sanctions on the drafting party in accordance with Section 1281.99.” (*Id.*, § 1281.98(c)(2).)

Pursuant to Section 1281.99, the Court is authorized to “impose a monetary sanction against a drafting party that materially breaches an arbitration agreement pursuant to subdivision (a) of Section 1281.97 or subdivision (a) of Section 1281.98, by ordering the drafting party to pay the reasonable expenses, including attorney’s fees and costs, incurred by the employee or consumer as a result of the material breach.” (CCP § 1281.99(a).)

Analysis

Whether Plaintiff Is Entitled to Attorneys’ Fees and Costs

Here, AAA’s rules required Defendants to pay arbitration fees. (AAA’s Employment Arbitration Rules, Rule 45; Employment Costs of Arbitration, Rule 6.) AAA issued an invoice to Defendants on June 20, 2023 that was not paid within 30 days. After receiving notice of Defendants’ nonpayment, Plaintiff withdrew her claims from arbitration to proceed in court. The reason Defendants failed to make payment is not

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

relevant. (*Williams v. West Coast Hospitals* (2022) 86 Cal. App. 5th 1054, 1073 [holding fees and costs are due even where the party's nonpayment was unintentional and only past due by a few days].) As a result, Plaintiff is entitled to an award of attorneys' fees and costs.

Lodestar Analysis

It is well established that "[i]n California, the fee setting inquiry ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (*Bldg. a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 870; *PLCM Group, supra*, 22 Cal.4th at p. 1095; *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131-1132.) After determining this lodestar amount, the trial court may adjust that amount – by either enhancing it or reducing it – based on various factors, including the novelty and difficulty of the questions involved; the skill displayed in presenting them; the extent to which the nature of the litigation precluded other employment by the attorneys; the contingent nature of the fee award; and the success achieved. (*Serrano v. Priest* (1977) Cal.3d 25, 49; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 61.)

1. Reasonableness of the Hourly Rate

A reasonable hourly rate 'is the product of a multiplicity of factors,' including the general market rate. (See *Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1003-1004.) 'The determination of the 'market rate' is generally based on the rates prevalent in the community where the court is located.' (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 701; see also *PLCM Group, Inc. v. Droder* (2000) 22 Cal.4th 1084, 1094.) Generally, the reasonable hourly rate is the rate to which attorneys of like skill in the court's jurisdiction would typically be entitled. (*Ketchum, supra*, 24 Cal.4th at p. 1132.)

Here, this action was entirely litigated in Sacramento. Plaintiff claims the following hourly rates:

Galen T. Shimoda \$725
Justin P. Rodriguez \$625
Brittany V. Berzin \$425

Plaintiff argues the requested hourly rates are reasonable and consistent with the prevailing rates in the Sacramento community. (Mot., pp. 3:21-4:3.) Plaintiff's counsel has substantial experience in litigating wage and hour cases, with Mr. Shimoda having approximately 21 years' experience, Mr. Rodriguez having approximately 13 years' experience, and Ms. Berzin having approximately five years' experience. (Berzin Decl., ¶¶ 9-15.) In support, Counsel provides several orders from this Court approving the requested rates. (*Id.*, Exh. F.) Defendants argue that the requested hourly rates are "anything but reasonable" for a case venued in Sacramento County. (Opp., pp. 4:24-6:5.) Defendants suggest that Ms. Berzin's declaration is speculative, unsupported and

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

self-serving and Plaintiff should have provided declarations from other attorneys in the region. (*Ibid.*)

Defendants' arguments are not persuasive. In the Court's experience, including the referenced cases in which this Court previously considered Counsel's hourly rates in wage and hour class and/or PAGA actions, these hourly rates are reasonable and appropriate in this region.

2. *Hours Reasonably Expended*

'Generally speaking, hours are reasonable if they were 'reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter.' (Cal. Attorney Fee Awards (Cont. Ed. Bar 3d ed. 2023) § 9.4 [quoting *Hensley v. Eckerhart* (1983) 461 U.S. 424, 431].) "A trial court may not rubber stamp a request for attorneys' fees, but must determine the number of hours reasonably expended." (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271 [italics omitted].) In evaluating whether the attorney fee request is reasonable, the trial court should consider "whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended." (*Ibid.*) "Reasonable compensation does not include compensation for "padding" in the form of inefficient or duplicative efforts...' [Citations] 'A reduced award might be fully justified by a general observation that an attorney over-litigated a case or submitted a padded bill or that the opposing party has stated valid objections.'" (*Ibid.*; see *Ketchum, supra*, 24 Cal.4th at p. 1132, ["trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation"].) Ultimately, the trial court has discretion to decide which of the hours expended by the attorneys were "reasonably spent" on the litigation and what a "reasonable" hourly rate is. (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1260.)

Here, Plaintiff's Counsel incurred a total of 157 hours billed by three attorneys for a total lodestar of \$80,595.00. Specifically, Mr. Shimoda billed 13.3 hours for an individual lodestar of \$9,642.50; Mr. Rodriguez billed 49.4 hours for an individual lodestar of \$30,875; and Ms. Berzin billed 94.3 hours for an individual lodestar of \$40,077.50. (Mot., p. 3:9-13; Berzin Decl., ¶ 6, Exh. D.) Plaintiff argues that extra caution was taken to ensure that there was not duplicative effort on this litigation and several entries (totaling 2.4 hours for Mr. Rodriguez, 6.7 for Mr. Shimoda, and 7.4 hours by Ms. Berzin) were either stricken or reduced to the extent Counsel felt they could be construed as duplicative or not add value to the litigation. (*Id.*, ¶ 8.) Counsel also entirely discounted any hours billed by their paralegal. (*Ibid.*) The requested hours also include hours expended (and anticipated) on the instant motion. (*Id.*, ¶ 6.)

Defendants argue that the requested hours are unreasonable in two ways. First, Defendants argue that Plaintiff is only entitled to those fees and costs associated with the material breach, meaning those fees incurred **after** the material breach. (Opp., pp. 2:27-4:11.) Defendants are wrong. Section 1281.98 expressly allows recovery of "all

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

attorney's fees and all costs associated with the abandoned arbitration proceeding." (CCP § 1281.98(c)(1).) While Defendants are correct that sanctions under Section 1281.99 are limited to those incurred as a result of the material breach, those sanctions are in addition to the costs of the abandoned arbitration. (*Id.*, § 1281.98(c) [If the employee or consumer withdraws the claim from arbitration and proceeds in a court ... both of the following apply: (1) The employee or consumer may bring a motion, or a separate action, to recover all attorney's fees and all costs associated with the abandoned arbitration proceeding. The recovery of arbitration fees, interest, and related attorney's fees shall be without regard to any findings on the merits in the underlying action or arbitration. (2) The court shall impose sanctions on the drafting party in accordance with Section 1281.99.']; see also Reply, pp. 3:12-4:24.) The Court does not find this language ambiguous. The statute plainly allows recovery of both the costs of the abandoned arbitration and sanctions under Section 1281.99. Sanctions pursuant to Section 1281.99 consist of "the reasonable expenses, including attorney's fees and costs, incurred by the employee or consumer as a result of the material breach." (*Id.*, § 1281.99(a).) Accordingly, the Court rejects Defendants' argument and declines to limit Plaintiff's recovery to those fees incurred after July 20, 2023.

Next, Defendants argue that the requested hours are excessive. (Opp., pp. 6:6-8:6.) Specifically, Defendants take issue with Mr. Rodriguez billing a total of 9.3 hours over four days to "research" for an MSJ/MSA, arguing that "[i]t is clearly excessive for Mr. Rodriguez to have dedicated that much time to research, especially in light of his claimed expertise gained during his more than 12 years of practice as an employment litigator." (*Id.*, p. 7:11-19.) However, Defendants' argument is disingenuous. The highlighted billing entries evidence that Mr. Rodriguez spent 9.3 hours conducting research, reviewing Defendants' motion for summary judgment, reviewing an outline of Plaintiff's opposition, reviewing and revising Plaintiff's opposition, and pulling relevant citations and documents. (Berzin Decl., Exh. D.) In reply, Plaintiff stresses that these hours reflect time actually spent researching, reviewing, and opposing Defendant's motion for summary judgment as to all of Plaintiff's claims, which the arbitrator granted Defendant leave to file. (Reply, p. 2:6-27.) The Court does not find these hours excessive or unreasonable.

Defendants also take issue with hours associated with the instant motion. (Opp., p. 7:20-27.) Ms. Berzin attests that she spent 6.4 hours drafting the instant motion and Mr. Rodriguez spent 2.3 hours reviewing the draft. (Berzin Decl., Exh. D.) Plaintiff's Counsel also anticipates spending an additional 8 hours (6 by Ms. Berzin and 2 by Mr. Rodriguez) to review Defendants' opposition, prepare and review Plaintiff's reply, and prepare for the hearing. (*Ibid.*) Plaintiff requests \$7,957.50 in attorneys' fees associated with the instant motion. In the Court's experience, this is not unreasonable or excessive.

Costs

Plaintiff's Counsel has itemized all costs they purportedly incurred associated with the arbitration, totaling \$1,923.44. (Berzin Decl., ¶ 6, Exh. E.) Defendants' only argument regarding these costs is that Plaintiff is not entitled to recover costs incurred before

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Defendants' material breach. (Opp., pp. 3:2-6, 3:28-4:4, 4:10-11.) As discussed above, Defendants' argument is not persuasive and the Court will not reduce Plaintiff's costs on this basis.

Disposition

For the reasons stated above, Plaintiff's motion for attorneys' fees and costs is GRANTED. The Court awards Plaintiff \$80,595.00 in attorneys' fees and \$1,923.44 in costs.

This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc., § 1019.5; Cal. Rules of Court, rule 3.1312.)

To request oral argument on this matter, you must call Department 22 at (916) 874-5762 by 4:00 p.m. the court day before this hearing and notify the opposing party/counsel of oral argument. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government Code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

*If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge. **The signed form must be filed with the clerk prior to the hearing.***

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

*To join by Zoom link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>
To join by phone dial (833) 568-8864 ID 16184738886*

Counsel for Defendant is directed to notice all parties of this order.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at <https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx>. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.

/s/ V. Aleman

By:

V. Aleman, Deputy Clerk

Minutes of: 01/26/2024

Entered on: 01/26/2024

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ANDREA WALKER
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ANDREA WALKER, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00305106

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 22*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. A-305106004

Date: September 13, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 29, 2021

FAC Filed: September 18, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on September 13, 2024, at 9:00 a.m., in Department 22 before
4 the Honorable Lauri A. Damrell, presiding. Plaintiff Andrea Walker (“Plaintiff”) filed this Private
5 Attorneys General Act (“PAGA”) action on July 29, 2021. The operative Complaint alleges a claim
6 under the PAGA as well as Plaintiff’s individual wage and hour claims based on the same violations of
7 the California Labor Code. Plaintiff alleges that Yan Kalika Dental Corporation and Yan Kalika
8 (“Defendants”) violated California law by failing to pay overtime wages, failing to provide meal periods
9 or pay premiums in lieu thereof, failing to provide accurate wage statements, failing to pay final wages,
10 failing to pay reimbursement for expenses, violating Labor Code §§ 558, 558.1, and failing to provide
11 paid sick leave. Plaintiff also asserts an individual claim for unfair competition based on these
12 violations. The Complaint further alleges that Defendants are liable for civil penalties under the PAGA
13 as a result of the alleged violations. Defendants have denied all of Plaintiff’s allegations. Plaintiff
14 sought attorneys’ fees and costs as part of this Action.

15 The parties have agreed to a settlement of the PAGA claims and Plaintiff’s individual claims.
16 Defendants will provide monetary consideration in exchange for a release of claims and dismissal
17 consistent with the terms of the PAGA Settlement (“Agreement” or “Settlement”). Any capitalized
18 terms herein shall have the same meaning as set forth in the Agreement. The Court, having received
19 and considered Plaintiff’s Motion, the declarations in support, the Agreement, the Notice of Settlement,
20 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

21 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
22 **EMPLOYEES**

23 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
24 PAGA claims asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and
25 Workforce Development Agency (“LWDA”) with respect to the PAGA claims being released under the
26 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the
27 Agreement, its releases, and all rights and obligations thereunder include the following:
28

1 All non-exempt employees who have worked for Defendants in California
2 from May 12, 2020, up to July 16, 2024

3 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
4 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
5 the Agreement.

6 **II. APPROVING THE AGREEMENT**

7 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
8 A. The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as
9 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties
10 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to
11 each individual as required by statute for damages purposes, and the Court's statutorily authorized
12 discretion to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees
13 and the LWDA to further the LWDA's purpose in enforcing the California Labor Code. The Court also
14 finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any
15 potential future non-compliance, furthering the purpose of the California Labor Code and LWDA.

16 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
17 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
18 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

19 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
20 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
21 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
22 reference in its entirety, as if stated here in full, including the \$285,000 Gross Settlement Amount.

23 On January 26, 2024, the Court awarded Plaintiff's Counsel \$80,595 in attorney's and \$1,923.44
24 in costs incurred in, and related to, arbitration pursuant to Code of Civil Procedure section 1281.98.
25 Under the Agreement, Defendants remain obligated to pay this amount. The Agreement provides for,
26 and Plaintiff's Counsel seeks in the Motion, an additional \$19,155 in attorney's fees and an additional
27 \$15,094.80 (out of a maximum allocation of \$17,500) in litigation costs. As stated in the Declaration of
28 Justin P. Rodriguez, these additional amounts cover time and expenses that were outside the scope of
Plaintiff's prior motion under section 1281.98. The Court finds that the additional award of \$19,155 in

1 fees and additional \$15,094.80 in costs is reasonable and appropriate in this case. The total amount of
2 attorney's fees awarded in this litigation (\$99,750) would not exceed 35% of the Gross Settlement
3 Amount, which is within the range of percentages that have been approved by this Court and other
4 Courts in similar cases. The total fee amount is also reasonable in light of the circumstances of this
5 case, the substantial and beneficial results obtained on behalf of Aggrieved Employees and the LWDA,
6 and the contingent nature of the recovery over the course of this case, which included potential loss at
7 summary judgment and/or trial proceedings. Furthermore, the Court has already reviewed and approved
8 the hours and expenses awarded in connection with the 1281.98 motion, and a lodestar cross check
9 against the remaining \$19,155 demonstrates it is a reasonable additional sum for the additional work
10 performed by Plaintiff's Counsel in this case. Additionally, the Court finds that the \$15,094.80 in
11 additional costs incurred outside the scope of section 1281.98 motion (for a total of \$17,018.24 incurred
12 in this litigation) to be reasonable. The Court grants Plaintiff's request for fees and costs as set forth in
13 the Agreement.

14 The Court orders and approves ILYM Group, Inc. to act as the Settlement Administrator in this
15 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are
16 estimated to be \$5,550. Any difference between the actual Settlement Administrator Costs and the
17 \$15,000 will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved
18 Employees consistent with the allocations and formulas set forth in the Agreement.

19 The Court orders that Plaintiff will receive an Enhancement Payment of \$10,000 from the Gross
20 Settlement Amount for her work on behalf of the Aggrieved Employees and the LWDA and in exchange
21 for the general release of all her individual claims in addition to any amount Plaintiff may be entitled to
22 under the Agreement's pro rata distribution formula.

23 The Court approves of plan for distribution wherein any uncashed checks will be remitted to the
24 California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee each check
25 pertains to. Thus, there will be no residue and no portion of the Gross Settlement Amount will revert to
26 Defendants for any reason.

27 The releases and waivers for Plaintiff and the Aggrieved Employees are also approved by the
28 Court as set forth in the Agreement.

III. APPROVAL OF THE NOTICE OF SETTLEMENT

The Court finds that the proposed Notice of Settlement, attached to this Order as Exhibit A and incorporated by reference, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to each identified Aggrieved Employees at his or her most recent address based on a National Change of Address database search from the Aggrieved Employees' last known address and a skip trace on any Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Aggrieved Employees the opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide all necessary information as set forth in the Agreement to the Settlement Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information

Last day for Defendants to fund Gross Settlement Amount	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendants have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this action will be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein upon a finding that all terms under the Agreement and this order have been complied with. A compliance hearing shall take place on June 6, 2025, at 9:00 a.m. in this Department. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court

Exhibit A

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

Case No. 34-2021-00305106

ANDREA WALKER, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

YAN KALIKA DENTAL CORPORATION, a
California Corporation; YAN KALIKA, an
individual; and DOES 1 to 100, inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who have worked, for Defendants in California from May 12, 2020, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Walker v. Yan Kalika Dental Corporation, et al.*, Sacramento County Superior Court of California, Case No. 34-2021-00305106, filed July 29, 2021 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Andrea Walker ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of herself and Aggrieved Employees. Plaintiff alleged that Yan Kalika Dental Corporation and Yan Kalika. ("Defendants") violated California law by 1) failing to pay overtime wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to provide accurate wage statements, 4) failing to pay final wages, 5) failing to pay reimbursement for expenses, 6) violating Labor Code §§ 558, 558.1 (provisions regulating hours and days of work in any industrial welfare commission order), and 7) failing to provide paid sick leave. Defendants have denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 510, 1194, 226.7, 512, 226, 226.3, 201-203, 256, 558, 558.1, 246, 246.5, 248.5, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between May 12, 2020, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$285,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], the fees and expenses of the Settlement Administrator in the amount of \$[REDACTED], Enhancement payment to Plaintiff in the amount of \$[REDACTED], which will result in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between PAGA Claim Period from May 12, 2020, up to [REDACTED], dividing that number by the number of pay periods worked for all

Aggrieved Employees between PAGA Claim Period from May 12, 2020, up to , and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

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On behalf of Plaintiff

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On behalf of Defendants