

1 **SHADIE L. BERENJI (SBN 235021)**
2 **KRISTOPHER N. TAYYEB (SBN 320126)**
3 **BERENJI LAW FIRM, APC**
4 8383 Wilshire Boulevard, Suite 708
5 Beverly Hills, California 90211
6 Telephone: (310) 855-3270
7 Facsimile: (310) 855-3751
8 Email: berenji@employeejustice.law
9 Email: tayyeb@employeejustice.law

10 Attorneys for Plaintiff
11 ERIC ELLIS, individually and on behalf
12 of all other persons similarly situated,
13 and on behalf of the general public.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ERIC ELLIS, an individual,
Plaintiff,
v.

WARREN PROPERTIES, INC., a
California corporation; and Does 1
through 30, inclusive;
Defendants.

CONSOLIDATED ACTION:
Case No. 21STCV26332 (the "Lead Action")
Case No. 21STCV26336
*Assigned for all purposes to Hon. Robert S.
Draper, Dept. 78*

**PLAINTIFF'S UNOPPOSED
APPLICATION FOR APPROVAL OF
SETTLEMENT FOR PENALTIES
UNDER LABOR CODE SECTIONS
2698, ET. SEQ.; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF SHADIE L.
BERENJI IN SUPPORT THEREOF**

*[[Proposed] Order and Judgment filed
concurrently herewith]*
Complaint Filed: July 16, 2021

ERIC ELLIS, individually and on behalf
of all other persons similarly situated, and
on behalf of the general public,
Plaintiff,
v.
WARREN PROPERTIES, INC., a
California corporation, and DOES 1
through 30, inclusive,
Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	STATEMENT OF RELEVANT FACTS	1
A.	Plaintiff’s Wage and Hour Action.....	1
B.	Plaintiff’s Individual FEHA Action	2
C.	Plaintiff’s Class and PAGA Claims.....	2
D.	The Parties Reach a Settlement of all Claims.....	3
II.	THE PRIVATE ATTORNEYS GENERAL ACT OF 2004.....	4
A.	Plaintiff Exhausted PAGA’s Administrative Procedures.....	4
B.	PAGA Settlement Notice & Payment to the LWDA & Aggrieved Employees.....	5
III.	PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED	5
A.	The Settlement Is the Product of Serious, Informed and Non-Collusive Negotiations	6
B.	The PAGA Settlement Falls Well Within the Range for Approval According to Class Action Standards.....	8
IV.	PLAINTIFFS’ COUNSEL’S REQUESTED ATTORNEYS’ FEES & COSTS	13
V.	CONCLUSION	15

TABLE OF AUTHORITIES

CASES

<i>Alvidrez v. Unifirst Corporation</i> , (San Bernardino Super Ct., November 25, 2013) Case No. CIVRS1308105	11
<i>Amaral v. Cintas Corp. No. 2</i> , (2008) 163 Cal.App.4th 1157	12
<i>Arias v. Superior Court</i> , (2009) 46 Cal.4th 969	<i>passim</i>
<i>Bart v. Parkview Community Hospital Medical Center</i> , (Riverside Super Ct., June 19, 2014) Case No. RIC1406044	11
<i>Brown v. Ralph's Grocery Co.</i> , (2011) 197 Cal.App.4th 489	5
<i>Caliber Bodyworks, Inc. v. Superior Court</i> , (2005) 134 Cal.App.4th 365	4
<i>Carrington v. Starbucks</i> , (2018) 30 Cal.App.5th 504	12
<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal.App.4th 43	14
<i>Chu v. Wells Fargo Investments, LLC</i> , (N.D. Cal. 2011) 2011 WL 672645	11
<i>Class Plaintiffs v. City of Seattle</i> , (9th Cir. 1992) 955 F.2d 1268	8
<i>Delao v. Oldcastle Building Products, Inc.</i> , (Riverside Super Ct., January 14, 2015) Case No. RIC1500457	11
<i>Doty v. Costco Wholesale Corp.</i> , (C.D. Cal. May 14, 2007) Case No. CV05-3241 FMC-JWJx	12
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal.App.4th 1794	8
<i>Dunlap v. Superior Court</i> , (2006) 142 Cal.App.4th 330	5
<i>Franco v. Athens Disposal Co., Inc.</i> , (2009) 171 Cal.App.4th 1277	6, 12, 14

1	<i>Franco v. Ruiz Food Prods., Inc.</i> ,	
2	(E.D. Cal. 2012) 2012 WL 5941801.....	11
3	<i>Gomez v. Amadeus Salon, Inc.</i> ,	
4	(L.A. County Super. Ct. July 23, 2010) Case No. BC392297	12
5	<i>Graham v. DaimlerChrysler Corp.</i> ,	
6	(2005) 34 Cal. 4th 553	13
7	<i>Hanlon v. Chrysler Corp.</i> ,	
8	(9th Cir. 1998) 150 F.3d 1011	10
9	<i>Hicks v. Toys “R” Us–Delaware, Inc.</i> ,	
10	(C.D. Cal. 2014), 2014 WL 4703915.....	11
11	<i>Hopson v. 7 Hanesbrands Inc.</i> ,	
12	(N.D. Cal. 2009) 2009 WL 928133	11
13	<i>In re M.L. Stern Overtime Litig.</i> ,	
14	(S.D. Cal. 2009) 2009 WL 995864.....	11
15	<i>In re Walsh Public Power Supply Sys. Sec. Litig.</i> ,	
16	(1989) 720 F. Supp. 1379.....	8
17	<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> ,	
18	(2014) 59 Cal.4th 348	6
19	<i>Ketchum v. Moses</i> ,	
20	(2001) 24 Cal.4th 1122	13
21	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
22	(2008) 168 Cal.App.4th 116.....	8
23	<i>Laffitte v. Robert Half Int’l Inc.</i> ,	
24	(2016) 1 Cal.5th 480	14
25	<i>Lealao v. Beneficial California, Inc.</i> ,	
26	(2000) 82 Cal.App.4th 19.....	14
27	<i>Lim v. Victoria's Secret Stores, Inc.</i> ,	
28	(Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213.....	12
	<i>Makabi v. Gedalia</i> ,	
	(2016) 2016 WL 815937.....	11, 12
	<i>McKenzie v. Fed. Express Corp.</i> ,	
	(C.D. Cal. 2012) 2012 WL 12882124.....	11

1	<i>Mendizabal v. Crothall Healthcare Inc.,</i>	
2	(C.D. Cal. 2016) No. 2:14-CV-08901-DSF-AJW	11
3	<i>Munoz v. BCI Coca-Cola Bottling Co.,</i>	
4	(2010) 186 Cal.App.4th 399.....	8
5	<i>Munoz v. UPS Ground Freight, Inc.,</i>	
6	(N.D. Cal. 2009), 2009 WL 1626376	11
7	<i>Nesbit v. Procare One Nurses, LLC,</i>	
8	(C.D. Cal. 2011) 2011 WL 10451909.....	11
9	<i>Palencia v. 99 Cents Only Stores,</i>	
10	(Sacramento County Super. Ct.) Case No. 34-2010-00079619	12
11	<i>Ressler v. Federated Dep't Stores, Inc.,</i>	
12	(L.A. County Super. Ct. Jan. 27, 2009) Case No. BC335018.....	12
13	<i>Salazar v. PODS Enterprise, LLC,</i>	
14	(C.D. Cal. May 8, 2019) 2019 WL 2023726.....	9
15	<i>Schiller v. David's Bridal, Inc.,</i>	
16	(E.D. Cal., July 14, 2010, No. 1:10-CV-00616 AWI) 2010 WL 2793650	9
17	<i>Serrano v. Priest,</i>	
18	(1977) 20 Cal.3d 25	14
19	<i>Smith v. Brinker Intern., Inc.,</i>	
20	(N.D. Cal. May 5, 2010, No. C 10-0213 VRW) 2010 WL 1838726	9
21	<i>Smith v. Lux Retail North America,</i>	
22	(N.D. Cal. June 13, 2013) 2013 WL 2932243	9
23	<i>Snow v. United Parcel Service, Inc.,</i>	
24	(C.D. Cal., Apr. 1, 2020, No. EDCV20025PSGAFMX) 2020 WL 1638250.....	9
25	<i>Sorenson v. PetSmart, Inc.,</i>	
26	(E.D. Cal. Dec. 17, 2008) Case No. 2:06-CV-02674-JAM-DAD	12
27	<i>Viceral v. Mistras Group,</i>	
28	(N.D. Cal. 2016) 2016 WL 5907869	11
	<i>Wershba v. Apple Computer,</i>	
	(2001) 91 Cal.App.4th 224.....	8, 14
	STATUTES	
	California Labor Code §2699	4, 13

1 California Labor Code §2699.3 4, 5

2 California Labor Code §2699.5 4

3 **TREATISES**

4 Newberg, § 14.6 14

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 **A. Plaintiff's Wage and Hour Action**

4 On July 16, 2021, Plaintiff ERIC ELLIS ("Plaintiff") commenced a class action lawsuit
5 against Defendant WARREN PROPERTIES, INC. ("Defendant") (Plaintiff and Defendant
6 collectively, "the Parties") for violations of California wage and hour laws during his
7 employment with Defendant (the "Wage and Hour Action"). See Declaration of Shadie L.
8 Berenji, Esq. ("Berenji Decl.") attached hereto, ¶ 3. Plaintiff's complaint alleged that
9 Defendant violated the California Labor Code and Industrial Welfare Commission ("IWC")
10 wage order by (1) failing to include the value of quarterly productivity bonuses and the fair
11 market value of employer-provided lodging when determining Plaintiff's and other Aggrieved
12 Employees' regular rate of pay for calculating his overtime wages; (2) failing to pay Plaintiff
13 and other Aggrieved Employees for all hours worked in excess of eight in one workday, or
14 forty in one workweek, or for the first eight hours on the seventh consecutive day of work; (3)
15 failing to provide Plaintiff and other Aggrieved Employees with their vested vacation wages at
16 their final rates of pay upon the separation of his employment; (4) failing to reimburse
17 necessary business expenses that Plaintiff and other Aggrieved Employees incurred from being
18 required to have a personal cell phone so that Defendant could reach them at all times; (5)
19 failing to pay all wages due upon Plaintiff's and other Aggrieved Employees' termination
20 because they did not timely receive all compensation due including overtime and vacation
21 wages; (6) failing to provide Plaintiff and other Aggrieved Employees accurate itemized wage
22 statements because the wage statements did not accurately state gross wages earned, all
23 applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate, number of overtime hours worked, and net wages earned due to
25 Defendant's failure to properly calculate and pay overtime wages and vested vacation; (7)
26 failing to provide Plaintiff and other Aggrieved Employees a copy of Defendant's investigative
27 consumer report about them within three business days of when it was provided to Defendant,
28 even though they indicated on a written form to Defendant that they wished to receive a copy

1 of any such report that was prepared on them. as well as (8) violating the California Unfair
2 Competition Laws by the foregoing conduct. *Id.* at ¶ 4; see also Plaintiff’s Class Action
3 Complaint for Damages filed on July 16, 2021 (LASC Case No. 21STCV26336).

4 On July 16, 2021, pursuant to California Labor Code section 2698 *et seq.*, Plaintiff sent
5 a letter to the California Labor and Workforce Development Agency (“LWDA”) advising of
6 his intent to seek Private Attorneys General Act of 2004 (“PAGA”) penalties for Defendant’s
7 violations of the California Labor Code. Berenji Decl., ¶ 5. To date, the LWDA has not
8 expressed an intent to investigate Plaintiff’s alleged violations. *Ibid.* Plaintiff later amended
9 his class action complaint to add a cause of action pursuant to PAGA. *Id.* at ¶ 6; see also,
10 Plaintiff’s First Amended Class Action Complaint for Damages filed on November 18, 2021.

11 **B. Plaintiff’s Individual FEHA Action**

12 Plaintiff also filed an individual lawsuit against Defendant on July 16, 2021 for: (1)
13 retaliation in violation of Labor Code section 1102.5; (2) retaliation in violation of the Fair
14 Employment and Housing Act (“FEHA”); (3) race harassment; (4) race discrimination; (5)
15 failure to prevent discrimination/retaliation; and (6) wrongful termination in violation of public
16 policy (the “Individual FEHA Action”). See Berenji Decl., ¶ 7; see also, Plaintiff’s Complaint
17 for Damages filed on July 16, 2021 (LASC Case No. 21STCV26332). That day, Plaintiff sent
18 a letter to the LWDA advising of his intent to seek PAGA penalties for Defendant’s violations
19 of California Labor Code sections 1102.5 and 6310. Berenji Decl., ¶ 8. To date, the LWDA
20 has not expressed an intent to investigate Plaintiff’s alleged violations. *Ibid.* On December
21 28, 2021, Plaintiff amended his complaint in the Individual FEHA Action to add: (1) a cause of
22 action for discrimination/discharge in violation of Labor Code section 6310; and (2) a cause of
23 action pursuant to PAGA. *Id.* at ¶ 9; see also, Plaintiff’s First Amended Complaint for
24 Damages filed on December 28, 2021.

25 **C. Plaintiff’s Class and PAGA Claims**

26 In response to Plaintiff’s Wage and Hour Action, Defendant moved to compel
27 Plaintiff’s individual claims to arbitration, dismiss his class claims, and stay the litigation
28 pending the completion of arbitration. Berenji Decl., ¶ 11. On December 10, 2021, the Court

(Hon. Carolyn B. Kuhl presiding) granted Defendant's motion, dismissed Plaintiff's class claims, compelled Plaintiff's individual claims to arbitration, and stayed the Superior Court action (including litigation of Plaintiff's PAGA claims) pending arbitration of his individual claims. *Ibid.*

In response to Plaintiff's Individual FEHA Action, Defendant similarly moved to compel his individual claims to arbitration and stay the PAGA litigation pending completion of arbitration. *Id.* at ¶ 12. On January 7, 2022, the Court (Hon. Robert S. Draper presiding) granted Defendant's motion, compelled Plaintiff's individual claims to arbitration, and stayed his PAGA claim. *Ibid.*

After the class claims were dismissed, Plaintiff continued to litigate his individual claims in arbitration against Defendant. *Id.* at ¶ 13.

D. The Parties Reach a Settlement of all Claims

At all times relevant herein, Defendant disputed and denied, and continue to dispute and deny, that it was liable to Plaintiff for any of the claims asserted in Plaintiff's LWDA letters and complaints. Berenji Decl., ¶ 14. Additionally, there has been no determination on the merits of Plaintiff's legal claims and request for damages or civil penalties. *Ibid.*

Recently, in order to avoid the additional cost of litigation, the inconvenience and burden of legal proceedings, as well as the uncertainties of trial and appeals, the Parties agreed to resolve both Plaintiff's Individual FEHA Action and Wage and Hour Action. In November 2022, the parties entered into separate settlement agreements for the Individual FEHA Action and Wage and Hour Action that included, in pertinent part, a release of Plaintiff's PAGA claims in both actions (the "PAGA Settlement Agreement"). *Id.* at ¶ 15. In exchange for a release and judgment on Plaintiff's PAGA claims, Defendant agreed to pay One Hundred Thousand Dollars and Zero Cents in civil penalties under PAGA ("Gross Settlement Sum"). Sixty Thousand Four Hundred and Fifteen Dollars and Zero Cents (\$60,415.00) of the Gross Settlement Sum will be distributed to the LWDA and Aggrieved Employees ("Net Settlement Sum") and Thirty-Nine Thousand Five Hundred and Eighty-Five Dollars and Zero Cents (\$39,585.00) will cover Plaintiff's counsel's attorney fees and litigation costs. *Id.* at ¶ 15, Ex.

1 A. Pursuant to California Labor Code section 2699, subdivision (i), seventy-five percent (75%)
2 of the Net Settlement Sum will be paid to the LWDA and the remaining twenty-five percent
3 (25%) will be paid to the Aggrieved Employees. *Ibid.* at ¶ 32. For purposes of this settlement,
4 “Aggrieved Employees” are all current and former hourly employees of Defendant in
5 California who worked for Defendant at any time between July 16, 2020 to the last date upon
6 which the PAGA Settlement Agreement was signed by the Parties (i.e., November 17, 2022).
7 *Id.* at ¶ 33.

8 Defendant also agreed to pay a confidential sum to settle Plaintiff’s non-PAGA claims
9 in the Individual FEHA Action. Berenji Decl. at ¶¶ 16-17; see also, Confidential Declaration of
10 Shadie L. Berenji in Support of Plaintiff’s Application for Approval of Settlement for Penalties
11 Under Labor Code Sections 2698, et. seq., filed concurrently herewith conditionally under seal.

12 **II. THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

13 With a stated goal of improving enforcement of existing California Labor Code
14 obligations, the Legislature adopted the California Labor Code Private Attorneys General Act
15 of 2004, codified at Labor Code section 2698 *et seq.*, which allows an aggrieved employee to
16 initiate a private civil action for “civil penalties” that were previously enforceable only by the
17 State of California’s labor law enforcement agencies. Lab. Code, §2699; *Caliber Bodyworks,*
18 *Inc. v. Super. Ct.* (2005) 134 Cal.App.4th 365, 377 (“*Caliber*”). If parties settle PAGA claims
19 in a case that was filed after July 1, 2016, the superior court must review and approve any
20 penalties sought as part of a proposed settlement agreement. See Lab. Code, §2699, subd.
21 (1)(2).

22 **A. Plaintiff Exhausted PAGA’s Administrative Procedures**

23 Before an employee may file an action seeking to recover such “civil penalties” for
24 violations of any of the California Labor Code provisions enumerated in section 2699.5, he or
25 she must comply with PAGA’s administrative procedures as set forth in Labor Code section
26 2699.3, subdivision (a), which includes providing notice to the LWDA and the employer, and
27 waiting a prescribed period of time to permit the LWDA to investigate and decide whether to
28 cite the employer for the alleged violations. See *Caliber, supra*, 134 Cal.App.4th at p. 370; see

1 also, *Dunlap v. Super. Ct.* (2006) 142 Cal.App.4th 330. If the LWDA declines to pursue the
2 penalties, the employee may proceed in court.

3 Here, on July 16, 2021, Plaintiff exhausted his administrative claims for PAGA
4 penalties by sending letters to the LWDA for both the Individual FEHA Action and Wage and
5 Hour Action. See Berenji Decl., ¶¶ 5, 8. The LWDA did not notify Plaintiff that the agency
6 intended to pursue any allegations per Labor Code section 2699.3, subdivision (a)(2)(A). *Ibid.*

7 **B. PAGA Settlement Notice & Payment to the LWDA & Aggrieved Employees**

8 On the same date that this application is submitted to the Court, December 16, 2022,
9 Plaintiff's counsel submitted a copy of the proposed PAGA Settlement Agreement to the
10 LWDA via its online system that is used to transmit notices and requests. See Berenji Decl., ¶
11 47, Ex. B. The Parties have agreed to give notice of the PAGA settlement to the Aggrieved
12 Employees with the use of a settlement administrator. *Id.* at ¶ 34. The settlement administrator
13 will be paid costs which are currently estimated not to exceed Ten Thousand Dollars and Zero
14 Cents (\$10,000.00) for administering the settlement. *Ibid.* Importantly, this amount is separate
15 from the PAGA settlement fund. *Ibid.* Defendant has agreed to provide the settlement
16 administrator with a list of all Aggrieved Employees no later than ten (10) calendar days after
17 the Court issues a final order and judgment approving the PAGA settlement and enters the
18 judgment. *Ibid.* Defendant will thereafter deposit the settlement sum with the settlement
19 administrator within fourteen (14) calendar days of the Court issuing a final order and judgment
20 approving the PAGA settlement and entering judgment. *Ibid.* The settlement administrator
21 shall make the settlement payments to all the Aggrieved Employees on a pay period basis
22 within fourteen (14) calendar days of the settlement sum being funded. *Ibid.*

23 **III. PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

24 In PAGA actions, the California Court of Appeal has suggested that the overall intent of
25 PAGA is to provide a mechanism for private enforcement of labor laws that is not necessarily
26 tied to the recovery of a specific threshold amount of penalties. See *Brown v. Ralph's Grocery*
27 *Co.* (2011) 197 Cal.App.4th 489, 401 ("The purpose of the PAGA is not to recover damages or
28 restitution"). The primary objective of a PAGA action "is to supplement enforcement actions

1 by public agencies, which lack adequate resources to bring all such actions themselves.” *Arias*
2 *v. Superior Court* (2009) 46 Cal.4th 969, 980–981, 986. “**Restitution is not the**
3 **primary object of a PAGA action, as it is in most class actions.**” *Franco v. Athens Disposal*
4 *Co., Inc.* (2009) 171 Cal.App.4th 1277, 1300 (emphasis added). Rather, a PAGA action is
5 “fundamentally a law enforcement action designed to protect the public and penalize the
6 employer for past illegal conduct.” *Ibid.* Prior to the enactment of PAGA, the California
7 Legislature determined that it lacked adequate financing to enforce California labor laws and in
8 order “**to achieve maximum compliance with state labor laws,**” it declared that it was in the
9 public interest to allow employees, acting as private attorneys general, to recover civil penalties
10 that otherwise would have been assessed and collected by the LWDA. *Arias, supra*, 46 Cal.4th
11 at pp. 980-981. A plaintiff suing under PAGA does so as “the proxy or agent” of the State of
12 California to enforce labor laws on behalf of the state’s law enforcement agencies. *Iskanian v.*
13 *CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-381.

14 As a result of Plaintiff’s counsel’s efforts, Plaintiff’s PAGA action undoubtedly
15 achieves the “primary objective of a PAGA action” when Plaintiff’s counsel “supplemented the
16 [LWDA’s] enforcement action” by filing the PAGA complaint on the behalf of Plaintiff and the
17 State of California, and utilizing Plaintiff’s counsel’s law firm’s resources to litigate the action
18 against the Defendant in an effort to compel “maximum compliance with labor laws.” See
19 Berenji Decl., ¶¶ 38-42; *Arias, supra*, 46 Cal.4th at pp. 980-981.

20 **A. The Settlement Is the Product of Serious, Informed and Non-Collusive**
21 **Negotiations**

22 The “PAGA Settlement Agreement” that was entered by and between the Plaintiff and
23 Defendant on November 21, 2022 is the result of arms-length and non-collusive negotiations
24 after substantial investigation. See Berenji Decl., ¶ 18. In reaching the settlement, counsel on
25 both sides relied on their respective substantial litigation experience in similar actions, and the
26 analysis of the legal and factual issues presented in this case. *Ibid.* During the matter,
27 Plaintiff’s counsel conducted extensive informal discovery which resulted in the production of
28 more than fourteen-hundred (1,400) pages of documents from Defendant. *Id.* at ¶ 19. A

1 substantial amount of time was spent by Plaintiff's counsel analyzing the information and data
2 provided by Defendant. *Ibid.* The information obtained through informal discovery informed
3 Plaintiff's counsel's assessment of the strengths and weaknesses of the case and the benefits of
4 settlement. *Ibid.* Plaintiff's liability and damages evaluation was premised on, among other
5 things, a careful and extensive analysis of the scope and applicability of the defenses claimed
6 by Defendant, and a thorough analysis of the number of Aggrieved Employees and their
7 employment data. *Ibid.*

8 The Parties ultimately concluded it was desirable to settle this action in order to avoid
9 the further expense, inconvenience, and burden of additional legal proceedings, as well as the
10 uncertainties of trial, the amount of the *discretionary* PAGA award for either party, appeals
11 and/or changes in case law interpreting PAGA. *Id.* at ¶ 21. The settlement negotiations took
12 place before Mariam Zadeh, Esq., a well-established and highly-regarded neutral mediator of
13 wage and hour class and PAGA actions in California. *Id.* at ¶ 22. The mediation occurred only
14 after Plaintiff's counsel had the opportunity to conduct a thorough independent investigation of
15 the facts and review over 1,400 pages of documents produced by Defendant. *Id.* at ¶ 23. Based
16 on these documents and information Defendant previously provided, Plaintiff's counsel was
17 able to conduct an in-depth damages analysis. *Ibid.* Ultimately, Plaintiff's counsel spent a
18 substantial amount of time analyzing the Plaintiff's and Aggrieved Employees' time records,
19 wage statements, related payroll records, employee handbooks, and pertinent wage and hour
20 policies. *Id.* at ¶ 24.

21 The mediation lasted nearly ten (10) hours and was contentious. *Id.* at ¶ 25. The Parties
22 were at an impasse at the end of the mediation hearing, at which time Ms. Zadeh made a
23 mediator's proposal, which the Parties rejected. *Ibid.* After later follow-up and negotiation
24 from Ms. Zadeh, she made a second mediator's proposal – which the Parties this time accepted.
25 *Ibid.* Importantly, the settlement sums and written settlement agreements for Plaintiff's PAGA
26 claims and individual claims were negotiated separately. *Id.* at ¶ 26. This matter has been
27 hard-fought with aggressive and capable advocacy on both sides for more than a year.
28 Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were

1 vigorously conducted at arms' length and without any suggestion of undue influence.” *In re*
2 *Walsh Public Power Supply Sys. Sec. Litig.* (1989) 720 F. Supp. 1379, 1392, aff’d sub nom
3 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268.

4 **B. The PAGA Settlement Falls Well Within the Range for Approval**
5 **According to Class Action Standards**

6 Even though PAGA actions are not subject to the heightened class certification or
7 settlement standards, the subject PAGA settlement falls within the range for approval according
8 to class action standards. In class action lawsuits, settlements are entitled to a presumption of
9 fairness where: "(1) the settlement is reached through arm's-length bargaining; (2) investigation
10 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
11 experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk v. Ford*
12 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.

13 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127-128 (“*Kullar*”),
14 the appellate court explained that, although “not exhaustive,” a determination of whether a
15 settlement is “fair, adequate and reasonable” should take into account the strength of a
16 plaintiff’s case, as well as the risk, expense, complexity, and likely duration of further
17 litigation. See also *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 245. Following
18 *Kullar*, in the more recent case, *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th
19 399 (“*Munoz*”), there was a sole objector to the \$1.1 million settlement of a wage and hour
20 class action who appealed the trial court’s approval of the settlement. The objector/appellant
21 contended that the trial court lacked evidence concerning “the potential value of the claims,”
22 and that such a defect violated the *Kullar* standards because an “informed evaluation cannot be
23 made without an understanding of the amount that is in controversy and the realistic range of
24 outcomes of the litigation.” *Id.* at p. 409. The *Munoz* court disagreed, and held that “*Kullar*
25 does not . . . require any such explicit statement of value; it requires a record, which allows ‘an
26 understanding of the amount that is in controversy and the realistic range of outcomes of the
27 litigation.’” *Ibid.* Accordingly, under the *Munoz* standard, a plaintiff need only provide enough
28 information to give an understanding of the amount in controversy and the realistic range of

1 outcomes, not an explicit quantification of the maximum amount of damages recoverable for
2 each claim on a class-wide basis.

3 Moreover, as discussed above, California appellate courts have suggested that the
4 overall intent of PAGA is to provide a mechanism for private enforcement of the labor laws
5 that is not necessarily tied to the recovery of a specific threshold amount of penalties. These
6 principles, coupled with the concepts borrowed from the class action context, militate strongly
7 in favor of approving the proposed PAGA Settlement Agreement.

8 Plaintiff's operative complaints for damages seek the recovery of all penalties available
9 under PAGA. For all the reasons cited herein, the Parties have agreed to settle Plaintiff's
10 PAGA claims in exchange for Defendant's payment of civil penalties under PAGA. Defendant
11 will pay 75% of the net settlement amount to the LWDA and the remaining 25% to the
12 Aggrieved Employees. Berenji Decl., ¶ 32. The Parties and their respective counsel believe
13 that the settlement reached is fair, reasonable, and adequate, and falls well within the range of
14 reasonable outcomes based on *class action* standards for the following reasons:

15 At the time of mediation, there were a total of 44 Aggrieved Employees and 1,313 pay
16 periods that fell within the applicable statutory time period. *Id.* at ¶ 28. There were only 24
17 Aggrieved Employees who are former employees of Defendant, resulting in a maximum of 24
18 pay periods for the unpaid vacation wages and untimely pay PAGA claims. *Ibid.* Plaintiff
19 accordingly valued the PAGA claims at mediation between \$328,250 and \$595,650, based on
20 whether or not the Court would permit Plaintiff to "stack" the PAGA penalties.¹ *Ibid.*

21 The maximum value for this litigation was discounted, and the parties ultimately settled
22 the PAGA claim for \$100,000, due to an analysis of Defendant's defenses for each claim, the
23

24 ¹ Presently, there is no binding legal authority that establishes whether multiple PAGA penalties may be
25 assessed for multiple different types of Labor Code violations in a single pay period (i.e., "stacking" the
26 penalties), or if only one PAGA penalty may be assessed for each pay period in the PAGA action
27 regardless of the total number of different types of Labor Code violations. See, e.g., courts
28 that **permit** stacking: *Schiller v. David's Bridal, Inc.* (E.D. Cal., July 14, 2010, No. 1:10-CV-00616
AWI) 2010 WL 2793650, at *6; *Smith v. Brinker Intern., Inc.* (N.D. Cal. May 5, 2010, No. C 10-0213
VRW) 2010 WL 1838726, at * 2-6; *Snow v. United Parcel Service, Inc.* (C.D. Cal., Apr. 1, 2020, No.
EDCV20025PSGAFMX) 2020 WL 1638250, at *3; see also, e.g., courts that **do not**
permit stacking: *Salazar v. PODS Enterprise, LLC* (C.D. Cal. May 8, 2019) 2019 WL 2023726, at
*6; *Smith v. Lux Retail North America* (N.D. Cal. June 13, 2013) 2013 WL 2932243, at *4.

1 probability of prevailing at trial, the risk that the Court would decline to award and stack
2 PAGA penalties to Plaintiff or significantly reduce the requested penalties, as well as the risk of
3 appeals. *Id.* at ¶ 29. Although Plaintiff believes his claims are meritorious, Plaintiff faced
4 substantial risks in trying to obtain a judgment and a large PAGA penalty award against
5 Defendant in light of its defenses. Several factors were considered in arriving at the proposed
6 settlement, including: (1) Defendant's denial of any liability in this matter; (2) Defendant's
7 denial of any violations of the California Labor Code which would have entitled Plaintiff to
8 recover penalties under PAGA; (3) the disputed underlying facts of the case; (4) Defendant's
9 argument that each Aggrieved Employee would be entitled to only a single PAGA penalty
10 payment for unreimbursed business expenses, rather than one penalty per pay period, (5) the
11 significant investments of time and expense in the future by the Parties to litigate the claims for
12 penalties under PAGA; (6) the non-existent guarantee of an outcome on the PAGA claims for
13 either party at trial; (7) the delayed resolution of this dispute until trial, and regardless of the
14 outcome, the significant risk of further delay due to appeals; (8) the case law interpreting the
15 PAGA which is sparse and subject to change; and, (9) the fact that any award of penalties under
16 PAGA is within the discretion of the trial court. *Id.* at ¶¶ 27, 29. Where both sides face
17 significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir.
18 1998) 150 F.3d 1011, 1026.

19 Importantly, during settlement negotiations, Plaintiff discovered that a significant
20 majority of the relevant pay periods did not include the payment of a bonus or employer-
21 provided lodging when the Aggrieved Employees received overtime wages; thus, overtime
22 wages were correctly paid based on the straight rate of pay. Berenji Decl. at ¶ 30.
23 Accordingly, Plaintiff discovered that only 66 pay periods - as opposed to 1,313 pay periods -
24 involved the payment of overtime wages at the incorrect rate of pay and resulting wage
25 statement violations. *Ibid.*

26 Based on this new critical discovery, Plaintiff determined that if he prevailed on all of
27 his legal claims and the Court only awarded the maximum civil penalty for the highest number
28 of pay periods on one PAGA violation (in other words, the Court did not permit stacking),

1 Plaintiff valued the amount in controversy at \$131,300 (i.e., \$100 for 1,313 pay periods for
2 business-expense reimbursement violations). Berenji Decl. at ¶ 31. Alternatively, if the Court
3 permitted Plaintiff to stack the PAGA penalties, Plaintiff valued the amount in controversy at
4 \$159,200. *Ibid.* As a result of the PAGA Settlement Agreement, Defendant has agreed to pay
5 approximately sixty-three percent (63%) of its maximum liability amount. *Ibid.*

6 Pursuant to the terms of the PAGA Settlement Agreement: (1) Defendant will pay
7 \$100,000.00 in civil penalties to resolve the PAGA claims; (2) the LWDA – the primary
8 beneficiary in a PAGA action – will receive approximately \$45,311.25; (3) 44 Aggrieved
9 Employees will receive a PAGA penalty check - the average of which will be approximately
10 \$343.27; (4) and, Plaintiff’s counsel will receive \$39,585 for attorney fees and litigation costs.
11 *Id.* at ¶ 35. Even though restitution is not the primary objective of a PAGA action, the Net
12 Settlement Sum (i.e., \$60,415) that Plaintiff’s counsel has proposed awarding to the LWDA is
13 sixty percent (60%) of the Gross Settlement Amount and well within the range of PAGA
14 awards approved by other courts.²

15 The \$343.27 average net recovery for each Aggrieved Employee is also well within the
16

17 ² See, e.g., *Hopson v. 7 Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, at *1 [approving a PAGA
18 settlement of \$1,500 or 0.3% of total settlement amount]; *Viceral v. Mistras Group* (N.D. Cal. 2016)
19 2016 WL 5907869 [approving \$20,000 PAGA payment or 0.15% of its total value of \$12,952,000];
20 *McKenzie v. Fed. Express Corp.* (C.D. Cal. 2012) 2012 WL 12882124 at *5 [approving \$82,500 PAGA
21 payment that represents one percent (1%) of the \$8.25 million maximum settlement amount]; *Munoz v.*
22 *UPS Ground Freight, Inc.*, (N.D. Cal. 2009), 2009 WL 1626376, at *1 [approving PAGA settlement of
23 \$60,000 or 2 percent (2%) of total settlement amount]; *In re M.L. Stern Overtime Litig.*, (S.D. Cal.
24 2009) 2009 WL 995864, at *1 [approving PAGA settlement of \$20,000 or 2 percent (2%) of total
25 settlement amount]; *Chu v. Wells Fargo Investments, LLC*, (N.D. Cal. 2011) 2011 WL 672645, at *1
26 [approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-
27 fund settlement]; *Hicks v. Toys “R” Us–Delaware, Inc.*, (C.D. Cal. 2014), 2014 WL 4703915, at *1
28 [approving \$5,000 PAGA payment in a case involving a \$4 million settlement]; *Franco v. Ruiz Food*
Prods., Inc. (E.D. Cal. 2012) 2012 WL 5941801, at *14 [approving PAGA penalties of just \$10,000 in
\$2.5 million common fund settlement and noting that amount was in line with settlement approval
of PAGA awards in other cases]; *Mendizabal v. Crothall Healthcare Inc.* (C.D. Cal. 2016) No. 2:14-
CV-08901-DSF-AJW [approving a \$7,500 PAGA payment]; *Delao v. Oldcastle Building Products, Inc.*
(Riverside Super Ct., January 14, 2015) Case No. RIC1500457 [approving a \$5,000 PAGA payment];
Alvidrez v. Unifirst Corporation (San Bernardino Super Ct., November 25, 2013) Case No.
CIVRS1308105 [approving a \$3,750 PAGA payment]; *Bart v. Parkview Community Hospital Medical*
Center (Riverside Super Ct., June 19, 2014) Case No. RIC1406044 [approving a \$10,000 PAGA
payment]; *Nesbit v. Procare One Nurses, LLC* (C.D. Cal. 2011) 2011 WL 10451909 [approving a
\$18,750 PAGA payment]; *Makabi v. Gedalia* (2016) 2016 WL 815937, at *2 [after trial, the court found
in favor of plaintiffs on Labor Code claims, but *declined* to award PAGA penalties].

1 range of recoveries of approved class actions. See e.g., *Ressler v. Federated Dep't Stores, Inc.*
2 (L.A. County Super. Ct. Jan. 27, 2009) Case No. BC335018 (average net recovery of
3 approximately \$90); *Palencia v. 99 Cents Only Stores* (Sacramento County Super. Ct.) Case
4 No. 34-2010-00079619 (average net recovery of approximately \$80); *Doty v. Costco Wholesale*
5 *Corp.* (C.D. Cal. May 14, 2007) Case No. CV05-3241 FMC-JWJx (average net recovery of
6 approximately \$65); *Sorenson v. PetSmart, Inc.* (E.D. Cal. Dec. 17, 2008) Case No. 2:06-CV-
7 02674-JAM-DAD (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores,*
8 *Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 (average net recovery of
9 approximately \$35); and, *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23,
10 2010) Case No. BC392297 (average net recovery of approximately \$20).

11 Plaintiff's counsel has achieved a fair and reasonable results by any measure, but
12 particularly in comparison to some other PAGA lawsuits that have been adjudicated by trial.
13 See, e.g., *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504, 529 ("*Carrington*") (after trial,
14 the court imposed **a maximum penalty of \$5 per violation, totaling \$150,000** in PAGA
15 penalties); *Makabi v. Gedalia* (2016) 2016 WL 815937, at *2 (after trial, the court found in
16 favor of plaintiffs on Labor Code claims, but *declined* to award *any* PAGA penalties); *Amaral*
17 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157 ("*Amaral*") (after trial, awarded \$258,900
18 in PAGA penalties, thereby declining to impose the higher penalty rates plaintiffs sought).

19 Based on the foregoing, the Court should find that Plaintiff's counsel negotiated a fair,
20 reasonable and adequate PAGA settlement despite significant legal, factual, and procedural
21 obstacles. As a result of Plaintiff's counsel's efforts, Plaintiff's PAGA action undoubtedly
22 achieved the "primary objective of a PAGA action," as Plaintiff's counsel "supplemented the
23 [State of California's] enforcement action" by filing the PAGA complaint on the behalf of
24 Plaintiffs and the State of California and utilized its law firm's resources to litigate the action
25 against the Defendant in an effort to compel "maximum compliance with [California] labor
26 laws." See Berenji Decl. at ¶¶ 38-42; *Arias, supra*, 46 Cal.4th at pp. 980-981.

27 As set forth above, restitution (i.e., the recovery of money for the LWDA) is not the
28 primary objective of a PAGA action. *Franco, supra*, 171 Cal.App.4th at p. 1300. Rather, by

1 and through PAGA, the State of California is attempting to achieve maximum compliance with
2 state labor laws and thus wants to incentivize employees to act as private attorneys general and
3 bring these actions to deter and penalize employers for illegal conduct. *Arias, supra*, 46
4 Cal.4th at pp. 980-981. Plaintiff's PAGA action done exactly that here. The PAGA Settlement
5 Agreement also achieves the objective of penalizing Defendant by requiring them to pay
6 \$60,415 in civil penalties to the LWDA and Aggrieved Employees and \$39,585 in attorney fees
7 and costs in an effort to compel "compliance with California labor laws," and the settlement
8 provides the LWDA with money that will assist with the financing of its labor law enforcement
9 actions to further protect the public interest. Berenji Decl. at ¶¶ 35, 37. This penalty is in
10 addition to the confidential individual settlement to Plaintiff for his non-PAGA claims. *Id.* at
11 ¶¶ 16-17.

12 **IV. PLAINTIFFS' COUNSEL'S REQUESTED ATTORNEYS' FEES & COSTS**

13 The California legislature unequivocally provides in California Labor Code section
14 2699, subdivision (g)(1), that a plaintiff that recovers a civil penalty is entitled to an award of
15 reasonable attorneys' fees and costs. Otherwise, competent counsel would not accept these
16 cases and the State of California would not be able to successfully supplement enforcement
17 actions with employees acting as private attorneys general. Cf. *Graham v. DaimlerChrysler*
18 *Corp.* (2005) 34 Cal. 4th 553, 579-580, citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-
19 1133 (in permitting the use of a contingency fee multiplier in calculating private attorney
20 general fees, the Supreme Court stated, "[a] lawyer who both bears the risk of not being paid
21 and provides legal services is not receiving the fair market value of his work if he is paid only
22 for the second of these functions. If he is paid no more, competent counsel will be reluctant to
23 accept fee award cases."). Thereby, considering this is a representative action, and consistent
24 with the terms of the PAGA Settlement Agreement and California Labor Code section 2699,
25 subdivision (g)(1), Plaintiff respectfully moves the Court to award Plaintiff's counsel's request
26 for attorney fees and litigation costs in the amount of Thirty-Nine Thousand Five-Hundred
27 Eighty-Five Dollars and Zero Cents (\$39,585.00). See Berenji Decl., ¶ 15, Ex. A.

28 Such an award is both reasonable and consistent with the prevailing California practice

1 of awarding attorney fees in the amount of one-third (1/3) of a common fund. See *Laffitte v.*
2 *Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 502, 506 (holding that the percentage method to
3 calculate attorneys' fees in a common fund case is acceptable and approving an attorneys' fee
4 award that was one-third (33.33%) of the common fund); *Chavez v. Netflix, Inc.* (2008) 162
5 Cal.App.4th 43, 66 n.11; Newberg, § 14.6 (same); *Wershba, supra*, 91 Cal.App.4th at p. 254
6 (recognizing both the "percentage of recovery" and "lodestar/ multiplier" methods); *Lealao v.*
7 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-50 (discussing fees under common
8 fund and fee-shifting statutes and use of common fund as a "cross check" of fee-shifting
9 award). Here, as a result of Plaintiff's counsel's work, Defendant has agreed to pay \$60,415 in
10 civil penalties to the LWDA and Aggrieved Employees and \$39,585 in attorney fees and costs
11 (i.e., \$100,000 total). Berenji Decl., ¶¶ 15, Ex. A. Thus, considering Plaintiff's counsel has
12 incurred \$6,252 in litigation costs, the subject attorney fees request is 1/3 (\$33,333) of the total
13 amount Defendant has agreed to pay for the release of Plaintiff's PAGA claims. *Id.* at ¶ 37.

14 Courts may also assess the reasonableness of a request for attorneys' fees by examining
15 the results of the settlement. See *Serrano v. Priest* (1977) 20 Cal.3d 25, 49. In assessing the
16 reasonableness of a PAGA settlement, the Court should consider that the primary objective of a
17 PAGA action "is to supplement enforcement actions by public agencies, which lack adequate
18 resources to bring all such actions themselves." See *Arias, supra*, 46 Cal.4th at pp. 980–981,
19 986; see generally *Franco, supra*, 171 Cal.App.4th at pp. 1300–1303. As set forth more fully
20 in Section III above, Plaintiff's counsel negotiated a fair and reasonable PAGA settlement
21 despite significant legal, factual and procedural obstacles, and which is approximately 63% of
22 the maximum expected reasonable value of the claims. The PAGA Settlement Agreement
23 undoubtedly achieves the objectives of a PAGA action by penalizing Defendant in an effort to
24 compel compliance with California labor laws and by providing the LWDA with funds that will
25 help finance its labor law enforcement actions to further protect the public interest.

26 The PAGA Settlement Agreement is the product of Plaintiff's counsel's skill and
27 experience in the narrow field of wage and hour litigation and its diligent efforts to obtain the
28 best consensual resolution for the LWDA and Aggrieved Employees. Berenji Decl., ¶ 38.

1 Plaintiff's counsel undertook a substantial amount of work and bore great risks to obtain a
2 settlement that achieves the objectives of PAGA and confers a substantial benefit to the LWDA
3 and Aggrieved Employees. *Id.* at ¶¶ 38-42. Beginning shortly after this action was filed and
4 continuing over the next year-and-a-half, Plaintiff's counsel has spent over 209 hours
5 thoroughly investigating and researching the claims in controversy, Defendant's defenses, and
6 the developing body of law, and litigating this action on behalf of Plaintiff and the Aggrieved
7 Employees. *Id.* at ¶¶ 19-20, 38-42.

8 Furthermore, Plaintiff's counsel's time investment and advancement of litigation costs
9 on a contingency basis carry the risk that its time and out-of-pocket costs would be lost if the
10 case was not resolved successfully. Berenji Decl., ¶ 37. This risk created by the contingent
11 nature of the fee is substantial and such a risk should bear a commensurate reward. To date,
12 Plaintiff's counsel has incurred at least \$130,997 in uncompensated attorney fees and \$6,252 in
13 litigation costs. *Ibid.* Pursuant to the PAGA Settlement Agreement, Plaintiff's counsel will not
14 receive more than \$39,585 in attorney fees and litigation costs for all of its work regarding
15 Plaintiff's PAGA claims. *Id.* at ¶ 45. Accordingly, the Court should further find that a lodestar
16 "cross-check" confirms that the amount of the requested attorney fees is reasonable, as
17 Plaintiff's counsel's lodestar is significantly more than the requested attorney fees and costs.
18 *Id.* at ¶¶ 40-43. For the foregoing reasons, the Court should find that the requested attorney
19 fees and litigation costs are appropriate and reasonable.

20 **V. CONCLUSION**

21 Based on the foregoing, the Parties respectfully request the Court enter an order
22 approving the Parties' PAGA Settlement Agreement.

23 DATE: December 16, 2022

BERENJI LAW FIRM, APC

24 By: 

25 SHADIE L. BERENJI

26 KRISTOPHER N. TAYYEB

27 Attorneys for Plaintiff ERIC ELLIS, individually
28 and on behalf of all other persons similarly
situated, and on behalf of the general public.

DECLARATION OF SHADIE L. BERENJI

I, SHADIE L. BERENJI, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and am the principal at the Berenji Law Firm, APC, attorney of record for Plaintiff ERIC ELLIS ("Plaintiff"). I have personal knowledge of the material facts set forth herein, except those where I have indicated my statement is based on information and belief. If called upon as a witness, I could competently testify thereto.

2. I make this declaration in support of Plaintiff's Application for Approval of Settlement for Penalties under Labor Code Section 2698, *et. seq.*

3. On July 16, 2021, Plaintiff ERIC ELLIS (“Plaintiff”) commenced a class action lawsuit against Defendant WARREN PROPERTIES, INC. (“Defendant”) (Plaintiff and Defendant collectively, “the Parties”) for violations of California wage and hour laws during his employment with Defendant (the “Wage and Hour Action”).

4. In the Wage and Hour Action, Plaintiff contends that Defendant failed to (1) include the value of quarterly productivity bonuses and the fair market value of employer-provided lodging when determining Plaintiff's and other Aggrieved Employees' regular rate of pay for calculating his overtime wages; (2) pay Plaintiff and other Aggrieved Employees for all hours worked in excess of eight in one workday, or forty in one workweek, or for the first eight hours on the seventh consecutive day of work; (3) provide Plaintiff and other Aggrieved Employees with their vested vacation wages at their final rates of pay upon the separation of his employment; (4) reimburse necessary business expenses that Plaintiff and other Aggrieved Employees incurred from being required to have a personal cell phone so that Defendant could reach them at all times; (5) pay all wages due upon Plaintiff's and other Aggrieved Employees' termination because they did not timely receive all compensation due including overtime and vacation wages; (6) provide Plaintiff and other Aggrieved Employees accurate itemized wage statements because the wage statements did not accurately state gross wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, number of overtime hours worked, and net wages earned due to

1 Defendant's failure to properly calculate and pay overtime wages and vested vacation; and (7)
2 provide Plaintiff and other Aggrieved Employees a copy of Defendant's investigative consumer
3 report about them within three business days of when it was provided to Defendant, even
4 though they indicated on a written form to Defendant that they wished to receive a copy of any
5 such report that was prepared on them.

6 5. On July 16, 2021, pursuant to California Labor Code sections 2698 *et seq.*,
7 Plaintiff sent a letter to the California Labor and Workforce Development Agency ("LWDA")
8 advising of his intent to seek Private Attorneys General Act of 2004 ("PAGA") penalties for
9 Defendant's violations of the California Labor Code. To date, the LWDA has not expressed an
10 intent to investigate Plaintiff's alleged violations.

11 6. On November 18, 2021, Plaintiff subsequently amended his class action
12 complaint to add a cause of action pursuant to PAGA.

13 7. Plaintiff also filed an individual lawsuit against Defendant on July 16, 2021 for:
14 (1) retaliation in violation of Labor Code section 1102.5; (2) retaliation in violation of the Fair
15 Employment and Housing Act ("FEHA"); (3) race harassment; (4) race discrimination; (5)
16 failure to prevent discrimination/retaliation; and (6) wrongful termination in violation of public
17 policy (the "Individual FEHA Action").

18 8. On July 16, 2021, Plaintiff sent a letter to the LWDA advising of his intent to
19 seek PAGA penalties for Defendant's violations of California Labor Code sections 1002.5 and
20 6310. To date, the LWDA has not expressed an intent to investigate Plaintiff's alleged
21 violations.

22 9. On December 28, 2021, Plaintiff amended his complaint in the Individual FEHA
23 Action to add: (1) a cause of action for discrimination/discharge in violation of Labor Code
24 section 6310; and (2) a cause of action pursuant to PAGA.

25 10. Plaintiff alleged a violation of the following California Labor Code sections in
26 his PAGA claims: 201, 201.3, 202, 203, 204, 206, 226(a), 226.3, 227.3, 510, 1102.5, 1194,
27 1197, 1197.1, 1198, 2800, 2802, and 6310.

1 11. In response to Plaintiff's Wage and Hour Action, Defendant moved to compel
2 Plaintiff's individual claims to arbitration, dismiss his class claims, and stay the litigation
3 pending the completion of arbitration. On December 10, 2021, the Court (Hon. Carolyn B.
4 Kuhl presiding) granted Defendant's motion, dismissed Plaintiff's class claims, compelled
5 Plaintiff's individual claims to arbitration, and stayed the Superior Court action (including
6 litigation of Plaintiff's PAGA claims) pending arbitration of his individual claims.

7 12. In response to Plaintiff's Individual FEHA Action, Defendant similarly moved
8 to compel his individual claims to arbitration and stay the litigation pending completion of
9 arbitration. On January 7, 2022, the Court (Hon. Robert S. Draper presiding) granted
10 Defendant's motion, compelled Plaintiff's individual claims to arbitration, and stayed his
11 PAGA claim.

12 13. After the class claims were dismissed, Plaintiff continued to litigate his
13 individual claims in arbitration against Defendant.

14 14. At all times relevant herein, Defendant disputed and denied, and continue to
15 dispute and deny, that it was liable to Plaintiff for any of the claims asserted in Plaintiff's
16 LWDA letters and/or complaints. Additionally, there has been no determination on the merits
17 of Plaintiff's legal claims and request for damages or civil penalties.

18 15. In order to avoid the additional cost of litigation, the inconvenience and burden
19 of legal proceedings, as well as the uncertainties of trial and appeals, the Parties agreed to
20 resolve this matter and entered into a settlement agreement that included, in pertinent part, a
21 release of Plaintiff's PAGA claim ("PAGA Settlement Agreement"). In exchange for a release
22 and judgment on Plaintiff's PAGA claims in both the Wage and Hour Action and Individual
23 FEHA Action, Defendant agreed to pay One Hundred Thousand Dollars and Zero Cents
24 (\$100,000.00) in civil penalties under PAGA. Sixty Thousand Four Hundred and Fifteen
25 Dollars and Zero Cents (\$60,415.00) will be distributed to the LWDA and Aggrieved
26 Employees. Thirty-Nine Thousand Five Hundred and Eighty-Five Dollars and Zero Cents
27 (\$39,585.00) will be paid to Plaintiff's counsel for its attorney fees and litigation costs. A true
28 and correct copy of the PAGA Settlement Agreement is attached hereto as "**Exhibit A.**"

1 16. Defendant has additionally agreed to pay a confidential amount to Plaintiff for
2 the settlement of his individual claims in the Individual FEHA Action, including retaliation in
3 violation of Labor Code section 1102.5; retaliation in violation of the Fair Employment and
4 Housing Act; race harassment; race discrimination; failure to prevent discrimination and
5 retaliation; wrongful termination in violation of public policy; and discrimination and discharge
6 in violation of Labor Code section 6310, pursuant to the execution of a separate individual
7 settlement agreement (the “Individual FEHA Settlement Agreement”).

8 17. The concurrently-filed Confidential Declaration of Shadie L. Berenji in Support
9 of Plaintiff’s Application for Approval of Settlement for Penalties Under Labor Code Sections
10 2698, et. seq. attaches a copy of the Individual FEHA Settlement Agreement and explains the
11 factual basis of Plaintiff’s individual claims and how they were valued.

12 18. The PAGA Settlement Agreement and the Individual FEHA Settlement
13 Agreement (collectively, the “Settlement Agreements”) are the result of arms-length and non-
14 collusive negotiations. In reaching the Settlement Agreements, counsel on both sides relied on
15 their respective substantial litigation experience in similar actions, and the analysis of the legal
16 and factual issues presented in the two cases.

17 19. During the Wage and Hour Action, my firm conducted extensive informal
18 discovery prior to mediation which resulted in the production of more than fourteen-hundred
19 (1,400) pages of documents from Defendant. These documents included Defendant’s (1)
20 employee handbooks; policies regarding payment of wages, timekeeping, vacation, employer-
21 provided lodging, and/or expense reimbursements; and pay plans from during the applicable
22 statutory time period; (2) the wage statements and time records for 50% of the Aggrieved
23 Employees; (3) the final wage statements for all Aggrieved Employees who are former
24 employees of Defendant that had vested vacation at the separation of their employment; and (4)
25 all of Plaintiff’s time and payroll records, employment agreements or contracts, and his
26 personnel file. A substantial amount of time was spent by my firm analyzing the information
27 and data Defendant provided. The information obtained through informal discovery informed
28 our assessment of the strengths and weaknesses of the case and the benefits of settlement.

1 Plaintiff's liability and damages evaluation was premised on, among other things, a careful and
2 extensive analysis of the scope and applicability of the defenses claimed by Defendant, and a
3 thorough analysis of the number of Aggrieved Employees and their employment data.

4 20. Beginning shortly after this action was filed and continuing over the next year-
5 and-a-half, my firm thoroughly investigated and researched the claims in controversy,
6 Defendant's defenses, and the developing body of law, and litigated this action on behalf of
7 Plaintiff and the Aggrieved Employees. Amongst various other things, my firm: (1) thoroughly
8 investigated and researched the facts and circumstances underlying the pertinent issues and the
9 law applicable thereto, prior to filing the lawsuit; (2) conducted extensive informal discovery
10 which resulted in the production of more than fourteen-hundred (1,400) pages from Defendant,
11 which we thoroughly analyzed; (3) prepared for and attended mediation; and, (4) zealously
12 negotiated the PAGA Settlement Agreement.

13 21. The Parties ultimately concluded it was desirable to settle this action in order to
14 avoid the further expense, inconvenience, and burden of additional legal proceedings, as well as
15 the uncertainties of trial, the amount of the *discretionary* PAGA award for either party, appeals
16 and/or changes in case law interpreting PAGA.

17 22. The settlement negotiations took place before Mariam Zadeh, Esq. a well-
18 established and highly regarded neutral mediator of wage and hour class and PAGA actions in
19 California.

20 23. The mediation occurred only after my firm had the opportunity to conduct a
21 thorough independent investigation of the facts and review more than 1,400 pages produced by
22 Defendant informally before mediation. Based on these documents and information previously
23 provided by Defendant, I was able to conduct an in-depth damages analysis.

24 24. The Berenji Law Firm, APC has spent a substantial amount of time analyzing
25 the aggrieved employees' time records, related payroll records, employee handbooks, and
26 pertinent wage and hour policies.

27 25. The mediation lasted nearly ten (10) hours, was contentious, and involved arm's
28 length negotiations through the aid of Ms. Zadeh. The Parties were still at an impasse at the

1 end of the mediation hearing, at which time Ms. Zadeh made a mediator's proposal, which the
2 Parties rejected. After Ms. Zadeh continued efforts to effectuate a settlement, she made another
3 mediator's proposal, which the Parties accepted in September 2022.

4 26. Importantly, Plaintiff negotiated the settlement amounts of his PAGA claims
5 and individual claims separately from one another.

6 27. Several factors were considered in arriving at the proposed PAGA settlement,
7 including: (1) Defendant's denial of any liability in this matter; (2) Defendant's denial of any
8 violations of the California Labor Code which would have entitled Plaintiff to recover penalties
9 under PAGA; (3) the disputed underlying facts of the case; (4) the significant investments of
10 time and expense in the future by the Parties to litigate the claims for penalties under PAGA;
11 (5) the non-existent guarantee of an outcome on the PAGA claims for either party at trial; (6)
12 the delayed resolution of this dispute until trial, and regardless of the outcome, the significant
13 risk of further delay due to appeals; (7) the case law interpreting the PAGA which is sparse and
14 subject to change; and, (8) the fact that any award of penalties under PAGA is within the
15 discretion of the trial court.

16 28. At the time of mediation, there were a total of 44 Aggrieved Employees and
17 1,313 pay periods that fell within the applicable statutory time period. There were only 24
18 Aggrieved Employees who are former employees of Defendant, which means there are a
19 maximum of 24 pay periods for the unpaid vacation wages and untimely pay PAGA claims.
20 Based on that information, my firm valued the maximum value of Plaintiff's PAGA claims at
21 mediation as follows:

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

CLAIM	LABOR CODE VIOLATION (and calculations)	LIABILITY
Unpaid Overtime Wages	Labor Code §§510, 1194, 1197, 1197.1 (<i>\$100 x 1313 pay periods</i>)	\$131,300
Wage Statements	Labor Code §226(a)/226.3 (<i>\$250 x 1313 pay periods</i>)	\$328,250
Unpaid Business Expenses	Labor Code §§ 2800-2802, 1198 (<i>\$100 x 1313 pay periods</i>)	\$131,300
Unpaid Vacation Wages	Labor Code § 227.3 (<i>\$100 x 24 pay periods</i>)	\$2,400
Untimely Pay	Labor Code §§ 201-203 (<i>\$100 x 24 pay periods</i>)	\$2,400
PAGA TOTAL WITHOUT STACKING		\$328,250
PAGA TOTAL WITH STACKING		\$595,650

29. This maximum value outcome for the litigation was discounted, and the Parties ultimately settled the PAGA claims for \$100,00.00, due to an analysis of Defendant's defenses for each claim (including an argument that each Aggrieved Employee would be entitled to only a single PAGA penalty payment for unreimbursed business expenses, rather than one penalty per pay period), the probability of prevailing at trial, the risk that the court would decline to award and stack PAGA penalties to Plaintiff or significantly reduce the requested penalties, as well as the risk of appeals.

30. Importantly, during settlement negotiations, Plaintiff discovered that a significant majority of the relevant pay periods did not include the payment of a bonus or employer-provided lodging when the Aggrieved Employees received overtime wages; thus, overtime wages were correctly paid based on the straight rate of pay. Accordingly, Plaintiff

discovered that only 66 pay periods - as opposed to 1,313 pay periods - involved the payment of overtime wages at the incorrect rate of pay and resulting wage statement violations.

31. As a result of this new information, the realistic value of the PAGA claims is significantly lower than Plaintiff's initial valuation at mediation. Thus, if Plaintiff prevailed on all of his legal claims and the Court declined to let Plaintiff "stack" the PAGA penalties, and instead awarded the maximum civil penalty for the highest number of pay periods (i.e., \$100 for 1,313 pay periods for business-expense reimbursement violations), my firm values the reasonable amount in controversy at \$131,300. Alternatively, if the Court permitted Plaintiff to stack the PAGA penalties by awarding the reasonable maximum civil penalty for all of the pay periods and Aggrieved Employees within each legal claim, my firm values the amount in controversy at \$159,200. The calculations for the reasonable value of the penalties are as follows:

CLAIM	LABOR CODE VIOLATION (and calculations)	LIABILITY
Unpaid OT Wages	Labor Code §§510, 1194, 1197, 1197.1 (<i>\$100 x 66 pay periods</i>)	\$6,600
Wage Statements	Labor Code §226(a)/226.3 (<i>\$250 x 66 pay periods</i>)	\$16,500
Unpaid Business Expenses	Labor Code §§ 2800-2802, 1198 (<i>\$100 x 1313 pay periods</i>)	\$131,300
Unpaid Vacation Wages	Labor Code § 227.3 (<i>\$100 x 24 pay periods</i>)	\$2,400
Untimely Pay	Labor Code §§ 201-203 (<i>\$100 x 24 pay periods</i>)	\$2,400
PAGA TOTAL WITHOUT STACKING		\$131,300
PAGA TOTAL WITH STACKING		\$159,200

SETTLEMENT VALUE AS % OF PAGA TOTAL WITHOUT STACKING	$\$100,000 / \$131,300 * 100 = 76.16\%$
SETTLEMENT VALUE AS % OF PAGA TOTAL WITH STACKING	$\$100,000 / \$159,200 * 100 = 62.81\%$

32. Pursuant to the settlement agreement and California Labor Code section 2699, subdivision (i), seventy-five percent (75%) of the net settlement amount will be paid to the LWDA and the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees.

33. For purposes of this settlement, “Aggrieved Employees” are all current and former hourly employees of Defendant in California who worked for Defendant at any time between July 16, 2020 to the last date upon which the PAGA Settlement Agreement was signed by the Parties (i.e., November 17, 2022).

34. The Parties have agreed to give notice of the PAGA settlement to the Aggrieved Employees with the use of a settlement administrator. The settlement administrator will be paid costs which are not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) for administering the settlement. Importantly, this sum is separate and not deducted from the PAGA settlement funds. Defendant has agreed to provide the settlement administrator with a list of all Aggrieved Employees no later than 10 business days after the Court issues a final order and judgment approving the PAGA settlement and enters the judgment. Defendant will thereafter deposit the settlement sum with the settlement administrator within fourteen (14) calendar days of the Court issuing a final order and judgment approving the PAGA settlement and entering the judgment. The settlement administrator shall make the settlement payments to all the Aggrieved Employees on a pay period basis within fourteen (14) calendar days of the settlement sum being funded. Aggrieved Employees assume full responsibility and liability for any taxes owed on their individual PAGA payment.

35. Pursuant to the terms of the PAGA Settlement Agreement: (1) Defendant will pay \$100,000.00 in civil penalties to resolve the PAGA claims; (2) the LWDA – the primary

beneficiary in a PAGA action – will receive approximately \$45,311.25; (3) 44 Aggrieved Employees will receive a PAGA penalty check - the average of which will be approximately \$343.27; (4) and, Plaintiff's counsel will receive \$39,585 for attorney fees and litigation costs.

36. The proposed gross PAGA settlement amount here (i.e., \$100,000) represents 63% of its maximum liability amount, and the net settlement amount represents 60% of the gross settlement amount. Plaintiff's counsel has received other recent court orders, wherein the Court approved PAGA civil penalty awards that were significantly less than one-third of the gross settlement amount:

(1). *Arminda Sevilla v. Aaron's, Inc.* (C.D. Cal. 2017) Case No. 2:17-cv-04053-DMG: Court approved \$510,000 in PAGA penalties - 10% of \$5,100,000 gross settlement amount;

(2). *Larry Hudson v. Sterling Jewelers Inc., et al.* (C.D. Cal. 2017) Case No. 2:17-cv-09301-DSF: Court approved \$75,000 in PAGA penalties - 5% of \$1,500,000 gross settlement amount;

(3). *Amir Benjamini v. Robbins Bros. Jewelry, Inc.* (2017) Case No. BC665164 (Hon. Ann I. Jones): Court approved \$47,500 in PAGA penalties - 5% of 950,000 gross settlement amount;

(4). *Michael Sanchez v. Envent Corp.* (2017) Case No. BC683827 (Hon. Kenneth R. Freeman); Court approved \$15,000 in PAGA penalties – 2% of 800,000 gross settlement amount;

(5). *Alex Lorre v. Virgin America, Inc.* (2017) Case No. BC554740 (Hon. Elihu M. Berle); Court approved \$10,000 in PAGA penalties - 1% of 1,000,000 gross settlement amount;

(6). *Thomas Sale vs. Frisco Baking Company, Inc.* (2016), Case No. BC529131 (Hon. Ann I. Jones); Court approved \$13,333.33 in PAGA penalties - 1.7% of \$750,000 gross settlement amount;

(7). *Matthews v. Petco Animal Supplies Stores, Inc.* (2015), Case No. BC539637 (Hon. William F. Highberger); Court approved \$35,000 in PAGA penalties -

1 less than 1% of \$8,000,000 gross settlement amount and company changed its
2 employment policies and compensation practices; and,

3 (8). *Meeks v. California Cinema Investments, Inc.* (2015), Case No.
4 BC534863 (Hon. Amy D. Hogue); Court approved \$35,000 in PAGA penalties - 1.3%
5 of 2,612,000 gross settlement amount.

6 37. Consistent with the terms of the PAGA Settlement Agreement and California
7 Labor Code section 2699, subdivision (g)(1), I am requesting attorney fees and litigation costs
8 in the amount of Thirty-Nine Thousand Five Hundred and Eighty-Five Dollars and Zero Cents
9 (\$39,585.00). To date, the Berenji Law Firm, APC has incurred more than One Hundred Thirty
10 Thousand Nine Hundred and Ninety-Seven Dollars and Zero Cents (\$130,997) in
11 uncompensated attorney fees, and Six Thousand Two Hundred Fifty-Two Dollars and Zero
12 Cents (\$6,252.00) in litigation costs in this action.

13 38. The PAGA Settlement Agreement is the product of the Berenji Law Firm's skill
14 and experience in the narrow field of wage and hour litigation, as set forth below, and our
15 diligent effort to obtain the best consensual resolution for the LWDA and aggrieved employees:

16 a. I graduated from the University of California, Los Angeles ("UCLA") in
17 2000 with a degree in Political Science and Sociology. In 2004, I graduated from the
18 University of Southern California ("USC") Gould School of Law and was admitted to
19 practice before the California Supreme Court, the United States Court of Appeals for
20 the Ninth Circuit, the United States District Court for the Central and Northern District
21 of California, and all California State Courts.

22 b. I have extensive experience in employment law actions, especially wage
23 and hour class actions and PAGA complaints. Since 2007, I have exclusively practiced
24 employment law and represented employees and employers in numerous class action
25 lawsuits involving wage and hour violations. For approximately two and one-half
26 years, I worked as a defense attorney at Fisher & Phillips LLP, and a majority of my
27 cases involved defending employers in wage and hour class actions and PAGA
28 lawsuits.

1 c. Since 2010, one hundred percent (100%) of my legal practice has been
2 devoted to litigating employment law violations on the behalf of employees on a
3 contingency fee basis and the majority of my cases are wage and hour class actions and
4 PAGA lawsuits.

5 d. The Berenji Law Firm has litigated and successfully settled a number of
6 wage and hour class action and PAGA lawsuits involving claims for unpaid overtime
7 wages; unpaid vacation wages; failure to reimburse business expenses; failure to timely
8 pay wages; and failure to provide accurate wage statements – the matters at issue in this
9 case.

10 e. Mr. Kristopher N. Tayyeb works as an associate at the Berenji Law
11 Firm, APC and assisted me in prosecuting this action by performing various legal work.
12 Mr. Tayyeb holds a Bachelor of Arts degree in Political Science-Public Service and
13 Philosophy from the University of California, Davis that he obtained in 2012, and a
14 Juris Doctorate that he obtained from the University of California, Los Angeles in
15 2015. Prior to joining the Berenji Law Firm, Mr. Tayyeb has second-chaired two jury
16 trials, including a complex, five-week, seven-figure whistleblower trial involving a fired
17 medical resident.

18 f. The Berenji Law Firm has achieved numerous six and seven figure
19 settlements for employees in wage and hour class actions and PAGA lawsuits. Several
20 of the wage and hour settlements we have obtained were featured in news articles
21 published by Bloomberg BNA, the Los Angeles Daily Journal, and Law360.

22 g. The Berenji Law Firm's extensive experience in litigating employment
23 wage and hour matters was integral in identifying all the legal issues, evaluating the
24 strengths and weaknesses of the case against Defendant, and negotiating a fair and
25 reasonable settlement. Practice in the narrow field of wage and hour litigation requires
26 skill and knowledge concerning the *constantly evolving* substantive law (state and
27 federal), as well as the procedural law of class action litigation and PAGA lawsuits. In
28 this action, the Berenji Law Firm used the skills and knowledge that we have developed

1 through years of prosecuting and defending wage and hour class actions to successfully
2 negotiate a fair and reasonable settlement.

3 39. The Berenji Law Firm has diverted many of its resources to this case and spent a
4 significant amount of time investigating this case in order to effectively prosecute and settle
5 this action. We undertook a substantial amount of work and bore great risks to obtain a
6 settlement that achieves the objectives of PAGA and confers a substantial benefit to the LWDA
7 and Aggrieved Employees.

8 40. The Berenji Law Firm took this case on a contingency-fee basis and has
9 invested over 209.3 billable hours investigating, researching, and litigating this matter without
10 any guarantee of being paid. I have invested over 137.1 billable hours and Mr. Tayyeb has
11 invested over 72.3 billable hours in this case.

12 41. My current billable hourly rate is \$705. From 2015 - 2021, the Los Angeles
13 Superior Court approved my rate of \$670 an hour in the following wage-and-hour class action
14 and/or PAGA settlements: *Matthews v. Petco Animal Supplies Stores, Inc.* (2015), Case No.
15 BC539637 (Hon. William F. Highberger); *Meeks v. California Cinema Investments, Inc.*
16 (2015), Case No. BC534863 (Hon. Amy D. Hogue); *Sepehrom v. GHP Management*
17 *Corporation*, (2016), Case No. BC555819 (Hon. William F. Highberger); *Thomas Sale vs.*
18 *Frisco Baking Company, Inc.* (2016), Case No. BC529131 (Hon. Ann I. Jones); *Keith Huckaby*
19 *v. Traffic Management* (2016) Case No. BC612803 (Hon. Michael J. Raphael); *Jesse Livitski v.*
20 *Frontier Auto Sales, Inc.* (2017) Case No. BC578382 (Hon. William F. Highberger); *Alex*
21 *Lorre v. Virgin America, Inc.* (2017) Case No. BC554740 (Hon. Elihu M. Berle); *Michael*
22 *Sanchez v. Envent Corp.* (2017) Case No. BC683827 (Hon. Kenneth R. Freeman); *Stephen*
23 *Spolsky v. Earthbar, LLC* (2018) Case No. BC581587 (Hon. William F. Highberger); and,
24 *David Antonov v. Santa Monica Brentwood Automotive, LLC* (2018) Case No. BC708577
25 (Hon. Maureen Duffy-Lewis); *Dennis Murray v. Keyes European, LLC* (2019) Case No.
26 19STCV37996 (Hon. John P. Doyle).

27 42. Mr. Tayyeb's billable hourly rate is \$475.
28

43. Our lodestar is \$130,997 ((137.1 hours * \$705) + (72.3 hours * \$475)) and thus does not necessitate a multiplier for the requested attorney fees.

44. The Berenji Law Firm has also incurred \$6,252.00 in litigation costs in this action

45. Pursuant to the PAGA Settlement Agreement, the Berenji Law Firm will not receive more than \$39,585.00 in attorney fees and litigation costs for all of its work with respect to Plaintiff's PAGA claims.

46. On December 16, 2022, the Berenji Law Firm submitted a copy of the proposed PAGA Settlement Agreement to the LWDA via its online system that is used to transmit notices and requests. A true and correct copy of the LWDA's email confirming submission of the proposed settlement is attached hereto as "**Exhibit B.**"

47. I am not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the PAGA Settlement Agreement.

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

Executed this 16th day of December 2022 at Los Angeles, California.

SHADIE L. BERENJI

EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Eric Ellis (“Plaintiff”) and defendant Warren Properties, Inc. (“Warren Prop.”). The Agreement refers to Plaintiff and Warren Prop. collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuits alleging California Labor Code violations against Warren Prop. captioned *Eric Ellis v. Warren Properties, Inc.* (Los Angeles County Superior Court, Case No. 21STCV26332, herein referred to as “the Individual Action”) and *Eric Ellis v. Warren Properties, Inc.* (Los Angeles County Superior Court, Case No. 21STCV26336, herein referred to as “the Wage and Hour Action”) initiated on July 16, 2021 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means CPT Group, a neutral entity the Parties have agreed to appoint to administer the Settlement and approved by the Court.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid by Warren Prop., separate from the Gross Settlement Amount and an amount not to exceed \$10,000.00, to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Warren Prop. in California and classified as an hourly employee who worked for Warren Prop. during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Warren Prop.’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Thomas S. Ingrassia, Esq. and Christine Y. Dixon, Esq. of Pettit Kohn Ingrassia Lutz & Dolin PC.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the

Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

- 1.10. “Gross Settlement Amount” means \$100,000, which is the total amount Warren Prop. agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment.
- 1.11. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. “PAGA Counsel” means Shadie L. Berenji and Kristopher N. Tayyeb of the Berenji Law Firm, APC, the attorneys representing the Plaintiff in the Action.
- 1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.18. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Warren Prop. for at least one day during the PAGA Period.
- 1.19. “PAGA Period” means the period from July 16, 2020 to the last date upon which this Agreement is signed by the Parties.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.21. “PAGA Notice” means Plaintiff’s two July 16, 2021 letters to Warren Prop. and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid

from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$15,103.75) and the 75% to LWDA (\$45,311.25) in settlement of PAGA claims.

- 1.23. “Plaintiff” means Eric Ellis, the named plaintiff in the Action.
- 1.24. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. “Released Parties” means: Warren Prop. and each of its former and present directors, officers, shareholders, owners, members, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers, predecessors, successors, assigns, subsidiaries, affiliates, and any individual entity that could be alleged to be jointly liable with Warren Prop.
- 1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. “Warren Prop.” means named Defendant Warren Properties, Inc.

2. RECITALS.

- 2.1. On July 26, 2021, Plaintiff commenced this Action by filing two Complaints alleging causes of action against Warren Prop. for: (1) failure to properly calculate and pay overtime compensation; (2) failure to pay accrued vacation wages upon termination; (3) failure to timely pay final wages upon termination; (4) failure to furnish accurate wage statements; (5) failure to reimburse necessary business expenses; and (6) retaliation in violation of California Labor Code sections 1102.5 and 6310. Plaintiff filed a First Amended Complaint in the Wage and Hour Action on October 18, 2021, as well as a First Amended Complaint in the Individual Action on December 28, 2021, to add causes of action seeking the recovery of civil penalties under PAGA. The First Amended Complaint in each respective Action are the operative complaints (the “Operative Complaints”). Warren Prop. denies the allegations in the Operative Complaints, denies any failure to comply with the laws identified in in the Operative Complaints and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Warren Prop. and the LWDA by sending the PAGA Notice.
- 2.3. On August 2, 2022, the Parties participated in an all-day mediation presided over by Mariam Zadeh, Esq. which led to this Agreement to settle the Wage and Hour Action. The Parties also agreed to a confidential settlement of Plaintiff’s non-PAGA claims alleged in the Individual Action (i.e, wrongful termination, race harassment and discrimination, retaliation).

- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the production Plaintiff's timekeeping and pay records, Warren Prop.'s wage and hour, timekeeping, and pay practices, a fifty percent sampling of the Aggrieved Employees time and payroll records, and the total number of applicable pay periods.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Warren Prop. promises to pay \$100,000 as the Gross Settlement Amount, as well as the Administrator's fee in an amount that does not exceed \$10,000 and no more. Warren Prop. has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Warren Prop.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third or 33.333% which is currently estimated to be \$33,333 and PAGA Counsel Litigation Expenses Payment of not more than \$6,252. Warren Prop. will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Warren Prop. harmless, and indemnifies Warren Prop., from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.2. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$60,415 to be paid from the Gross Settlement Amount, with 75% (\$45,311.25) allocated to the LWDA PAGA Payment and 25% (\$15,103.75) allocated to the Individual PAGA Payments.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$15,103.75) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

3.2.3. Warren Prop.'s share of taxes, including statutory FICA, FUTA and California payroll withholding taxes arising from any payments to the Aggrieved Employees, shall be paid by Warren Prop. separately. The Administrator shall be responsible for making all necessary payments and filings in connection with such payments.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Warren Prop. estimates there are 44 Aggrieved Employees who worked a total of 1,313 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 10 days of the Effective Date, Warren Prop. will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Warren Prop. has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Warren Prop. must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Warren Prop. shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Warren Prop. funds the Gross Settlement Amount, the Administrator will mail: (i) the Notice of PAGA Settlement (attached hereto as "Exhibit A") and checks for all Individual PAGA

Payments to the Aggrieved Employees; (ii) the LWDA PAGA Payment; (iii) the Administration Expenses Payment; and, (iv) the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

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

- 4.4.1. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
- 4.4.2. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
- 4.4.3. The payment of Individual PAGA Payments shall not obligate Warren Prop. to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Warren Prop. fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

- 5.1 Plaintiff's Release. With the exception of Plaintiff's non-PAGA claims alleged in the operative Complaint in the Individual Action, Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice; and (b) all of Plaintiff's individual claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint ("Plaintiff's Release"). Plaintiff's Release does

not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA facts stated in the Operative Complaints, and the PAGA Notice. The released claims specifically include the following: (1) that Warren Prop. did not properly calculate the overtime wages of Plaintiff and the PAGA Class in violation of California Labor Code sections 510, 1194, and 1198; (2) that Warren Prop. did not pay Plaintiff and the PAGA Class their vested vacation wages upon termination of employment in violation of California Labor Code section 227.3; (3) that Warren Prop. failed to timely pay final wages at discharge in violation of California Labor Code sections 201, 201.3, and 202, and then failed to pay waiting time penalties pursuant to section 203 of the California Labor Code; (4) that Warren Prop. failed to provide accurate and compliant wage statements to Plaintiff and the PAGA Class in violation of California Labor Code sections 226; (5) that Warren Prop. violated the California Labor Code section 2802 in failing to indemnify Plaintiff and the PAGA Class for business expenses; (6) that Warren Prop. retaliated against Plaintiff and the PAGA Class in violation of California Labor Code sections 1102.5 and 6310; (7) that Warren Prop. owes penalties pursuant to the PAGA, premised on the alleged violations articulated above; and (8) that the Warren Prop. owes penalties, interest, attorney fees, or other damages arising out of the Warren Prop.'s alleged California Labor Code violations released herein.

5.3 Release by PAGA Counsel: Except as expressly provided herein (e.g., paragraphs 1.10, 3.2.1), PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

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

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee

Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected CPT Group to serve as the Administrator and verified that, as a condition of appointment, CPT Group agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES

Based on its records, Warren Prop. estimates that, as of the date of this Settlement Agreement, (1) there are 44 Aggrieved Employees who worked 1,313 Pay Periods during the PAGA Period.

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

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Warren Prop. that any of the allegations in the Operative Complaint have merit or that Warren Prop. has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Warren Prop.’s defenses in the Action have merit. In agreeing to this settlement, Plaintiff has taken into account the uncertainty and risk of further litigation, the difficulties and delays inherent in such litigation, the relatively small size of the PAGA Class, the Warren Prop.’s efforts to improve its wage and hour policies and procedures following notification of Plaintiff’s claims, and Warren Prop.’s defenses to Plaintiff’s claims for recovery of civil penalties under PAGA. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this

Settlement, Warren Prop. reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Warren Prop.'s defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Attorney Fees and Costs. Except as expressly provided herein, Warren Prop. and Plaintiff shall each bear his/its own attorney fees and costs.
- 10.3 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.4 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Warren Prop., respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.5 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.6 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.7 No Tax Advice. Neither Plaintiff, PAGA Counsel, Warren Prop. nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.8 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.9 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

- 10.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.11 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.12 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.13 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Warren Prop. in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Warren Prop. unless, prior to the Administrator's payment of all Settlement Funds, Warren Prop. makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.15 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.16 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
Shadie L. Berenji, Esq.
Kristopher N. Tayyeb, Esq.
Berenji Law Firm, APC
8383 Wilshire Blvd., Suite 708
Beverly Hills, California 90211

To Warren Prop.:
Thomas S. Ingrassia, Esq.
Christine Y. Dixon, Esq.
Pettit Kohn Ingrassia Lutz & Dolin PC
11622 El Camino Real, Suite 300
San Diego, California 92130

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

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

IT IS SO AGREED:

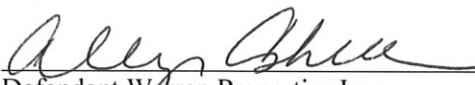
Dated: November __, 2022

Plaintiff Eric Ellis

Dated: November __, 2022

Shadie Berenji
Plaintiff's and PAGA Counsel

Dated: November 17, 2022



Defendant Warren Properties Inc.

By: Allyson Asbell

Dated: November 21, 2022



Christine Dixon
Defendant's Counsel

To Warren Prop.:
Thomas S. Ingrassia, Esq.
Christine Y. Dixon, Esq.
Pettit Kohn Ingrassia Lutz & Dolin PC
11622 El Camino Real, Suite 300
San Diego, California 92130

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

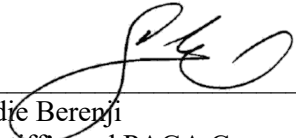
10.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a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

IT IS SO AGREED:

Dated: November __, 2022

Plaintiff Eric Ellis

Dated: November 15, 2022



Shadie Berenji
Plaintiff's and PAGA Counsel

Dated: November __, 2022

Defendant Warren Properties Inc.

By: _____

Dated: November __, 2022

Christine Dixon
Defendant's Counsel

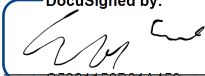
To Warren Prop.:
Thomas S. Ingrassia, Esq.
Christine Y. Dixon, Esq.
Pettit Kohn Ingrassia Lutz & Dolin PC
11622 El Camino Real, Suite 300
San Diego, California 92130

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

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

IT IS SO AGREED:

Dated: November 15, 2022

DocuSigned by:

C5327156B81A459
Plaintiff Eric Ellis

Dated: November __, 2022

Shadie Berenji
Plaintiff's and PAGA Counsel

Dated: November __, 2022

Defendant Warren Properties Inc.

By: _____

Dated: November __, 2022

Christine Dixon
Defendant's Counsel

EXHIBIT B

1 **PROOF OF SERVICE**

2 I, Molly Stapelfeldt, am employed in the County of Los Angeles, State of California. I
3 am over the age of 18 and not a party to the within action; my business address is 8383
Wilshire Blvd., Suite 708, Los Angeles, California, 90211.

4 On the date set forth below, I served the foregoing documents, entitled: **PLAINTIFF'S**
5 **UNOPPOSED APPLICATION FOR APPROVAL OF SETTLEMENT FOR**
6 **PENALTIES UNDER LABOR CODE SECTIONS 2698, ET. SEQ.; MEMORANDUM**
OF POINTS AND AUTHORITIES; DECLARATION OF SHADIE L. BERENJI IN
SUPPORT THEREOF on the following interested parties:

7 Thomas S. Ingrassia, Esq. Attorneys for Defendant WARREN
8 Christine Y. Dixon, Esq. PROPERTIES, INC.
9 PETTIT KOHN INGRASSIA LUTZ &
DOLIN P.C.
10 11622 El Camino Real, Suite 300
San Diego, CA 92130

11 E-mail: tingrassia@PettitKohn.com
12 E-mail: cdixon@PettitKohn.com
13 E-mail: kwood@PettitKohn.com
E-mail: lriveramason@PettitKohn.com

14 ☒ **[by ELECTRONIC SERVICE]** Pursuant to California Code of Civil Procedure
15 section 1010.6, I electronically served the above-listed document(s) on the parties listed
16 herein by electronic transmission.

17 ☒ **STATE** - I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

18 Executed on December 16, 2022, at Beverly Hills, California.

19
20 Molly Stapelfeldt

21 Print Name

By: _____

Signature