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6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SHASTA**

10 JENIFER FISHER, individually and on behalf
11 of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 SHASCADE COMMUNITY SERVICES,
15 INC., a California Corporation; and DOES 1 to
16 100, inclusive,

17 Defendants.

Case No. CVCV21-0198378

*Assigned for All Purposes to Hon. Tamara L.
Wood, Department 8*

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT; DISMISS
CLASS CLAIMS WITHOUT PREJUDICE,
PAGA CLAIMS AND INDIVIDUAL CLAIM
WITH PREJUDICE**

Date: August 28, 2023

Time: 8:30 a.m.

Dept.: 8

Judge: Hon. Tamara L. Wood

Filed: October 15, 2021

FAC Filed: January 20, 2022

SAC Filed: July 21, 2022

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Jenifer Fisher (“Plaintiff”) herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private Attorneys
5 General Act Settlement And Dismiss Class Claims Without Prejudice. A true and correct copy of the
6 Private Attorneys General Act Settlement is being filed with this Motion as Exhibit A.

7 2. This case was originally brought as a Private Attorneys General Act (“PAGA”) and
8 class action lawsuit based on Plaintiff’s contention that Defendant Shascade Community Services, Inc.
9 (“Defendant”) violated California law by failing to pay minimum wages, failing to pay overtime wages,
10 failing to provide meal periods or pay premium in lieu thereof, failing to provide rest periods or pay
11 premium in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, failing
12 to pay reimbursement for expenses, failing to maintain accurate records, failing to provide all required
13 sick pay, and violating California Labor Code sections 558 & 558.1. These claims primarily stemmed
14 from Plaintiff’s allegations that Defendant violated California law by 1) Defendant requiring Plaintiff
15 and Aggrieved Employees to work on-duty meal and rest periods despite being able to schedule relief
16 employees; 2) Defendants’ failure to pay Plaintiff and Aggrieved Employees for all hours worked,
17 including minimum wages and overtime due to pre-shift set up, post-shift paperwork, and time spent
18 getting tested for COVID-19; and 3) Defendant’s failure to reimburse Plaintiff and Aggrieved
19 Employees for the use of their personal cell phones for work purposes. Plaintiff also alleges that these
20 policies and practices resulted in derivative violations of the California Labor Code.

21 3. However, Defendant raised claims of financial distress and ability to pay any settlement
22 and/or judgment, even if we were successful at certification and trial. I reviewed Defendant’s filed tax
23 returns to verify these claims. Considering the value of the class claims and Defendant’s financial
24 condition, I did not think that a class settlement could be achieved in this matter given the level of
25 compromise necessary to ensure the settlement could be funded. I felt that it would require too much
26 compromise and raise serious questions about whether or not such a settlement would be deemed fair,
27 reasonable, and adequate in any approval proceedings. Yet, based on the facts of the case and range of
28 potential PAGA penalties, I believed that a PAGA settlement could still be achieved and be deemed

1 fair, reasonable, and adequate. Thus, dismissing the class claims and allegations without prejudice
2 allows putative class members to preserve and pursue their individual claims on their own, avoiding
3 any excess compromises necessary in a group action. The remainder of the action, including Plaintiff's
4 individual claims and the PAGA claims, would be dismissed with prejudice.

5 4. Plaintiff is the only named Plaintiff in this matter. From our initial investigations of
6 Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
7 PAGA action. Plaintiff filed the original complaint on October 15, 2021. Plaintiff exhausted
8 administrative remedies through the Labor and Workforce Development Agency ("LWDA") prior to
9 filing the Complaint in order to pursue penalties under the PAGA. Plaintiff filed a notice with the
10 LWDA on September 9, 2021, and January 19, 2022, setting forth the facts and theories of liability. A
11 true and correct copy of the notices filed with the LWDA is being filed with this Motion as Exhibit C.
12 A copy of the notices was also sent to Defendant via certified mail and the \$75.00 filing fee was
13 remitted to the LWDA at that time. There was no response by the LWDA regarding its intent to
14 investigate the claims alleged in Plaintiff's notice. As such, Plaintiff became authorized to commence a
15 civil action under the PAGA. Copies of the First Amended Complaint and Second Amended
16 Complaint were uploaded to the LWDA shortly thereafter on January 25, 2022, and July 22, 2022,
17 respectively, after we received a file stamped copy back from Court. A true and correct copy of
18 Plaintiff's operative Complaint is being filed with this Motion as Exhibit B. Currently, there is no trial
19 date set in this matter.

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

25 6. Defendant is represented in this matter by Sims, Lawrence & Broghammer. From the
26 beginning, Defendant has contested the merits of this case, the manageability of the case at trial, and
27 Plaintiff's ability to prove a violation in each pay period for each employee among other defenses and
28 contentions they made challenging the propriety of this action. Defendant further contended that, even

1 assuming there was a finding supporting the imposition of PAGA penalties, the Court would likely
2 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
3 attempts to comply with Labor Code obligations by Defendant. Notwithstanding its agreement to settle
4 this matter, Defendant believes the practices Plaintiff is contending are unlawful either do not exist or,
5 to the extent they do exist, fully comply with all state and federal employment laws with respect to
6 Plaintiff and Aggrieved Employees. Defendant believes that Defendant complied with meal and rest
7 period employment laws because Plaintiff and Aggrieved Employees had signed on duty meal period
8 agreements which were valid. Further, Defendant contends that Plaintiff and Aggrieved Employees
9 were paid for all hours worked and are not entitled to additional pay for off-the-clock work. Defendant
10 also contends that Plaintiff and Aggrieved Employees did not inform Defendant of off the clock work
11 at the time it was alleged to have been performed, and Defendant asserts that all employees were paid
12 for all hours marked on their respective time sheets for each pay period. Defendant further disputes the
13 total number of pay periods identified by Plaintiff for the calculation of potential liability, believing
14 they would be much lower due to Aggrieved Employees working in positions other than Job Coach
15 intermittently during their employment.

16 7. Based on the expected testimony from Plaintiff and Aggrieved Employees, a review of
17 Defendant's policies and procedures and other documents relating to the alleged claims, information on
18 the number of Aggrieved Employees, Aggrieved Employees' dates of employment, and a representative
19 sample of Aggrieved Employees' payroll data, the scope of the potential penalties at issue in light of the
20 claims alleged, the Court's statutorily authorized discretion to reduce any penalties assessed, and the
21 negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of
22 the Plaintiff, Aggrieved Employees affected by the Agreement and the LWDA. The length and risks of
23 trial and other normal perils of complex litigation that impact the value of the claims were also
24 considered and weighed in reaching the proposed settlement. These risks were also exacerbated in this
25 case in that it would have been necessary for Plaintiff to litigate the existence of violations for numerous
26 individual Aggrieved Employees in each pay period that they worked. In addition, I carefully
27 considered the difficulties of complex litigation, and the lengthy process of establishing specific
28 damages and various possible delays and appeals in agreeing to the proposed settlement. I further

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

7 8. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, my
8 prior associate, Jessica Hart, our paralegals, and myself, along with Plaintiff's assistance, thoroughly
9 investigated the merits of the claims and potential damages for such claims. The parties engaged in
10 formal and informal discovery and exchange of documents, including a representative sampling of
11 employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the
12 statute of limitations applicable to the PAGA claims. The discovery covered all aspects of the asserted
13 claims, including merits issues, damages, the scope and configuration of Aggrieved Employees, the
14 content and implementation of the wage and hour policies at issue, issues relating to manageability
15 concerns at trial, among other relevant areas. The parties engaged in numerous rounds of formal
16 discovery and depositions. Defendant took the deposition of Plaintiff, and Plaintiff deposed Defendant's
17 manager, Amber Mayo. From the production of the discovery, we were able to determine information
18 critical to a reliable damages analysis such as the average hourly rate, average daily hours worked,
19 average number of pay periods that had potential violations based on the asserted claims, and the
20 number of former employees. This information allowed my office to assess both liability and damages
21 and create an accurate damages model. Plaintiff assisted in all aspects of this litigation including
22 providing factual information relating to Defendant's employment conditions, potential witness
23 information, and answered questions regarding Defendant's factual contentions in this matter. This was
24 important because it directly related to our ability to maintain this case as a PAGA action under
25 manageability concerns and our ability to obtain a favorable settlement for the PAGA claims.

26 9. Throughout this litigation, our office had numerous communications with Defendant's
27 Counsel discussing our respective positions. The parties engaged in mediation on April 11, 2023, using
28 an experienced mediator, Kimberly S. Deck. It was only after approximately sixteen (16) months of

1 extensive, arm's length negotiations and a mediator's proposal that the parties were able to reach a
2 settlement, which only occurred after a full-day mediation. The negotiations were at all times
3 contentious and adversarial, though still professional in nature.

4 10. The following represents the potential maximum recovery for Plaintiff's PAGA claims
5 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,
6 including a sample of time and payroll records for Aggrieved Employees. We also interviewed several
7 putative Aggrieved Employees, covering their work experiences in relation to the asserted claims and
8 utilizing that information in conducting a merits and damages analysis. There were approximately
9 1,281 pay periods worked by Aggrieved Employees during the PAGA Claim Period. Based on our
10 research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's
11 practices and/or policies were improper. As such, a "subsequent violation" may not be found for
12 penalty calculation purposes, and the exposure analysis here is based on an "initial violation" valuation
13 being adopted by any fact finder if this matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163
14 Cal.App.4th 1157, 1207-1209 (2008). Defendant disputes Plaintiff's estimated potential maximum
15 recover amounts. Defendant disputes the estimated number of pay periods worked by Aggrieved
16 Employees during the PAGA Claim Period because some Aggrieved Employees worked in positions
17 other than Job Coach intermittently during the PAGA Claim Period.

18 a) Unpaid Minimum Wages: This theory of PAGA liability is based on allegations that
19 Defendant did not pay Plaintiff for all hours worked as Defendant's time records did not
20 reflect Plaintiff's accurate hours worked. At 1,281 pay periods, the maximum possible
21 recovery for this claim is \$128,100 in civil penalties. The estimate of maximum
22 possible recovery assumes 100% of the employees worked overtime at least once every
23 pay period, which was heavily disputed by Defendant. There were substantial amounts
24 of risk with respect to proving the merits or damages. Defendants argued that Aggrieved
25 Employees were overpaid, contending that the actual hours worked were less than what
26 was stated on their timecards. To the extent that Aggrieved Employees were paid for
27 more hours than actually worked, this amount of time, and damages, would be an offset
28 to any time and wages owed. The worked hours and alleged off-the-clock time varied

1 substantially depending on the season and holidays that usually corresponded to higher
2 hotel occupancy and, therefore, more work. Although we contended that, on average,
3 there were approximately two (2) unpaid hours worked per week, this is a relatively low
4 number per week that could easily be offset entirely by an Aggrieved Employee leaving
5 early. Additionally, to the extent any of the hours worked were overtime hours, the
6 substantive loss would be accounted for under Plaintiff's overtime claims rather than
7 both the minimum wage and overtime claims. Given these facts, it is more likely that
8 only 40% to 50% of the maximum 1,281 pay periods were affected, reducing available
9 civil penalties to \$51,240 to 64,050.

10 b) Unpaid Overtime Wages: This theory of PAGA liability is based on the same
11 allegations of unpaid hours worked that support the minimum wage claims. As a result,
12 it is subject to the same factual issues and risks. Defendant asserted that it was
13 Defendant's policy to pay for all hours reported on each employee's self-prepared time
14 sheet. At 1,281 pay periods, the maximum possible recovery for this claim is \$64,050.
15 Given the risks outlined above, it is more likely that only 40% to 50% of the maximum
16 1,281 pay periods were affected, reducing available civil penalties to \$25,620 to
17 \$ 32,025.

18 c) Meal Periods: This theory of PAGA liability is based on allegations that the on-duty
19 meal period agreements Aggrieved Employees entered into were invalid due to the
20 ability to schedule relief employees. At 1,281 pay periods, the maximum possible
21 recovery for this claim is \$64,050. This claim was subject to substantial risks in that a
22 Court may have found that the level and nature of Defendant's staffing as well as the
23 nature of the work being performed actually justified the on-duty meal period
24 agreements, which would have completely eliminated this claim. Given the "all or
25 nothing" nature of the legal issue, the value of this claim could range from \$0 to
26 \$64,050.

27 d) Rest Periods: This theory of PAGA liability is based on allegations that Aggrieved
28 Employees were on duty their entire shift, consistent with the on-duty requirement

1 during meal periods, preventing legally compliant rest periods. At 1,281 pay periods,
2 the maximum possible recovery for this claim is \$128,100. This claim was subject to
3 the risk that, while meal periods were on-duty, rest periods were not required to be on
4 duty as they were of shorter duration, which allowed sites with multiple Aggrieved
5 Employees to provide adequate coverage. This evaluation would depend on the level of
6 staffing at any given site during the claim period, which makes it extremely unlikely that
7 a violation would be proven in each period. I believe the risks for this theory of liability
8 reduce the range of likely recovery to \$76,860 to 102,480.

9 e) Reimbursement: This theory of PAGA liability is based on allegations that Aggrieved
10 Employees were required to communicate with supervisors, other employees, and
11 consumers using their personal cell phone. At 1,281, pay periods, the maximum
12 possible recovery for this claim is \$128,100. Risks associated with this claim included
13 the fact that at many of the jobsites Aggrieved Employees worked at there was at least
14 one hardline phone that could have been used to communicate with the office.
15 Additionally, Defendant argued that Aggrieved Employees either came to the main
16 office, or had office staff go out to job sites, for all necessary communications.
17 Furthermore, Defendant contended that the majority, if not all, of the cell phone
18 communications were voluntary and/or non-work related. There was substantial risk
19 that a Court may find the existence of alternative communication methods made the use
20 of personal cell phone unnecessary, which would eliminate the value of the claim
21 entirely. Additionally, the personal/work difference in use may cause findings that there
22 were pay periods in which no reimbursable phone use existed even if use of phones was
23 required in general. Given these facts, the more likely range of recovery for this theory
24 of liability is \$51,240 to \$102,480.

25 f) Wage Statement Violations and Failure to Maintain Accurate Records: These theories
26 of PAGA liability are derivative of Plaintiff's overtime, minimum wage, and meal and
27 rest period claims. At 1,281 pay periods, the maximum possible recovery for these
28 claims is \$256,200 (\$128,100 for each). Because this claim is derivative of Plaintiff's

other claims, the same risks identified above for Plaintiff's minimum wages, overtime, meal period, and rest period claims apply equally here. A violation for any of the claims above may support a wage statement violation and/or records violation. As such, the more likely range of recovery for these claims is \$51,240 to \$102,480, for wage statement violations and \$51,240 to \$102,480 for record keeping violations. These reductions match the risk reductions of the claims they are derivative of.

g) Waiting Time Penalties: This claim is derivative of the minimum wage, overtime and meal and rest period claims above. There were approximately 16 Aggrieved Employees who were also former employees. Based on a \$117.68 daily rate of pay, this equates to a maximum of approximately \$56,486.40 in civil penalties. Because this claim is derivative, the same risks mentioned above also apply to this claim. However, this claim is subject to the additional risk that a good faith dispute defense to waiting time penalty claims would apply here. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Thus, the value of this claim could range from \$0 to \$56,486.40.

11. In addition to the risks on the merits, I believe the Court may exercise its discretion to reduce PAGA penalties in this case in light of Defendant's financial condition, the fact that some of the violations are due to technical non-compliance with the Labor Code, such as derivative wage statement violations, and the potential of good faith reliance on the on-duty meal period agreements that a Court may find demonstrates a good faith attempt at compliance. Courts are statutorily authorized to use discretion to reduce penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). The 82% reduction equates to roughly \$9-\$50 worth of civil penalties per pay period per employee depending on the total potential value of the civil penalty (*i.e.* \$50-\$250), which is more in line with actual awards based on my experience and review of awards in other cases. Thus, even if using the maximum values possible and setting aside risks of proving the claims on the merits, the total exposure may be cut to approximately \$148,515.55 (82% reduction from \$825,086.40) to \$577,560.48 (30%) or lower. Given the substantial risks associated with the claims, we believe the amount that might ultimately be awarded

1 under the PAGA would be significantly lower than our maximum exposure calculation. Using a more
2 realistic range of recovery that accounts for the risks associated with the merits (\$307,440 to
3 \$626,531.40) would lower the potential exposure range to between \$55,339.20 and \$438,571.98. As a
4 result, the settlement represents a recovery of approximately 10% to 81% depending on the level of
5 discretion exercised by the Court in reducing any PAGA penalties awarded. I believe the Agreement
6 represents a reasonable compromise of claims based on the legal and factual disputes in this case,
7 especially in light of amounts that Courts have approved as reasonable valuations in other cases. See
8 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases
9 with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018
10 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated
11 value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016)
12 (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately
13 \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S.
14 Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000
15 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving
16 \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
17 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation
18 in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D.
19 Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands*
20 *Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in
21 \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017)
22 (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was
23 calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012
24 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000
25 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in
26 PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
27 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of
28 \$6.9 million common-fund settlement).

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

9 13. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
10 practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I
11 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
12 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
13 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
14 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
15 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
16 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
17 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
18 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
19 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
20 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
21 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
22 and an officer for the Latino Law Students Association from 2009 to 2010.

23 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
24 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
25 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
26 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
27 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
28 of seminars covering issues in wage and hour litigation in general and complex class and PAGA

litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);

- 1 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
2 00271174 (Sac. Sup. Ct.);
- 3 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
4 Ct.);
- 5 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.
6 Sup. Ct.);
- 7 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
8 (Sac. Sup. Ct.);
- 9 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 10 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
11 Ct.);
- 12 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 13 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
14 00209613 (Sac. Sup. Ct.);
- 15 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 16 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-
17 2017-00222101 (Sac. Sup. Ct.);
- 18 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 19 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.
20 Ct.);
- 21 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 22 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 23 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
24 Ct.);
- 25 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
26 Sup. Ct.);
- 27 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 28 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);

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

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

16. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance

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

11 17. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
12 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
13 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
14 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
15 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
16 Federal Courts, including up to certification, settlement, preliminary and final approval, and
17 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
18 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
19 include the following:

- 20 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 21 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 22 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 23 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 24 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 25 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 26 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 27 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 28 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.

- Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
 - *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
 - *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
 - *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);

- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

19. My former associate, Jessica L. Hart, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Ms. Hart graduated from the University of California Davis School of Law. Prior to joining Shimoda & Rodriguez Law, PC, Ms. Hart worked alongside a number of attorneys in the Sacramento area focusing almost exclusively on plaintiff's side litigation and employment law for several years prior to becoming licensed in 2020. While with my firm, Ms. Hart worked on a variety of individual, class action, and Private Attorneys General Act cases involving wage and hour claims. As an associate, some of the class action and/or PAGA cases Ms. Hart litigated include the following:

- *Afoa v. Milestone Retirement Communities, LLC., et al.*, Case No. 34-2020-00282555 (Sac. Sup. Ct.);
- *Cota v. Milestone Management (CA) – Meadows, LLC.*, Case No. 34-2020-00280648 (Sac. Sup. Ct.);
- *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD (E.D. Cal.);
- *Dreyer v. Automation Anywhere, Inc.* Case. No 20CV372730 (Santa Clara Sup. Ct.);
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. Aquality Water Management, Inc.* Case No. 34-2021-00292794 (Sac. Sup. Ct.);
- *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- *Hussaini v. Integrated Resources, Inc, et al.*, Case. No. 34-2021-00297152 (Sac. Sup. Ct.);

- *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-0000543 (San Joaquin Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP (E.D. Cal.);
- *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.);
- *Perez v. Too Infinity Management, LLC, et al.*, Case No. 34-2020-00285276 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Valentin v Sacramento Laundry Company, Inc.* Case.No. 34-2019-00270987 (Sac. Sup. Ct.);
- and
- *Whiteside v. SPSG Partners, et al.*, Case. No. 2:20-cv-01643-TLN-DMC (Sac. Sup. Ct.).

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

21. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on the written and oral discovery, including defending a PAGA representative's deposition, drafting special interrogatories and request for production of documents, calculating class-wide damages, communicating with class representatives, drafting mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages

1 calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other
2 class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and*
3 *Chemicals, Inc.*, Case No. 34-2018-00236898, *Carr v. Howroyd-Wright Employment Agency, Inc.*,
4 Case No. 34-2018-00228290, *Gomez v. Vander Schaaf Dairy*, et al., Case No. STK-CV-UOE-2020-
5 0003954, *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473, *Hussaini v. Integrated*
6 *Resources, Inc.*, et al, Case No. 34-2021-00297152. Mr. Konini's practice largely revolves around
7 wage and hour matters, including PAGA claims.

8 22. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
9 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
10 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
11 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
12 identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost
13 of the representation should be born equally amongst all who are receiving these benefits. The
14 settlement recovery provides an excellent result and is the product of substantial time and effort in
15 analyzing the facts and law applicable to this case. Our firm agreed to take this case on a contingency
16 basis and as a representative action with the possibility that we would not receive any compensation for
17 our time and efforts due to issues regarding the merits and have carried that risk over the course of this
18 case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I
19 believe that the thirty-five (35%) fee request is within the accepted ranges. In my experience with
20 contingency cases in employment law cases, the typical percentage negotiated between parties ranges
21 from thirty-five to forty percent (35% to 40%) in individual litigation. In class action and PAGA
22 litigation, my experience in our firm and working with several other firms has been that the typical
23 percentage negotiated between parties and approved by a court ranges from thirty to forty percent (30%
24 to 40%) based on the same factors. I have also reviewed several recent Federal District Court Cases
25 where the Court has approved common fund-based fee requests. These cases include *In re Activision*
26 *Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC
27 Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District,
28 Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case

1 No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez*
2 *et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-*
3 *Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695, which are cited in Plaintiff's
4 Memorandum of Points and Authorities. I believe our request of \$15,750 (approximately 35%) for
5 attorneys' fees is justified given the results obtained on behalf of Aggrieved Employees and the
6 LWDA. Moreover, at this time, my firm has advanced all costs for Plaintiff and Aggrieved Employees
7 and has not received any compensation whatsoever for our time expended in this case. The incurred
8 costs to date and the expected costs through overseeing the complete distribution of all settlement
9 proceeds are \$15,395.97. Attached as Exhibit G is a true and correct copy of an itemization of our
10 firm's incurred costs and expected costs through the complete distribution of all settlement proceeds.

11 23. I have used several settlement administrator companies in the wage and hour class
12 actions and PAGA actions I have resolved in the past and believe ILYM Group, Inc. will provide the
13 best service to administer the proposed class settlement. A true and correct copy of a cost estimate
14 provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. Any difference in the actual costs
15 and the allocated amounts to cover costs will be redistributed to Aggrieved Employees pro rata per the
16 terms of the Agreement.

17 24. A copy of the proposed Agreement and the entire Motion to Approve the PAGA
18 Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court
19 pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents
20 demonstrating the settlement documents were provided to the LWDA and that the LWDA has
21 confirmed receipt are being filed with this Motion as Exhibit F.

22 25. A true and correct copy of the proposed Notice of Settlement to be distributed to
23 Aggrieved Employees informing them of the settlement and all material terms is being filed with this
24 Motion as Exhibit E.

25 26. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and
26 The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement
27 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.4 of the Agreement.
28

1 27. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
2 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
3 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
4 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
5 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
6 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
7 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
8 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
9 Superior Court.

10 28. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
11 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
12 their current or former employment. This assistance regularly includes, but is not limited to, free legal
13 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
14 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
15 forms, and direct representation in administrative hearings, including administrative hearings in front of
16 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
17 who provide assistance, along with experienced employment law attorney volunteers. These services
18 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
19 and continuing through today under CPB.

20 29. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
21 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
22 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
23 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
24 workers and advises them as to the available legal remedies. In addition to individual counseling on
25 employment issues, the CFWR educates workers, unions, and community members about workplace
26 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

27 30. The CFWR provides limited representation for low-wage workers in wage claims before
28 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety

1 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
2 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
3 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
4 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
5 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
6 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
7 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
8 respect to those wage claims.

9 31. I believe the services provided by CPB and the CFWR promote the law consistent with
10 the objective of wage and hour class actions in general and in this case specifically.

11 32. I have spoken with every other attorney at my firm to determine whether they have any
12 relationship with either of the proposed *cy pres* beneficiaries.

13 33. I have volunteered for both organizations numerous times over the past several years,
14 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students
15 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory
16 committee. These organizations are non-profits that assist low-income workers throughout California,
17 giving free legal advice regarding employment law issues and representing employees with wage claims
18 before the California Labor Commissioner. I have witnessed firsthand the quality service and attention
19 these entities provide to individuals in need of employment law advice and representation at the
20 California Labor Commissioner.

21 34. Brittany V. Berzin has never done any work, volunteer or otherwise, with CPB. During
22 law school, Ms. Berzin was a student volunteer for the CFWR for two summers. Since graduating law
23 school, she has volunteered for the CFWR approximately one to two times per year, assisting in the
24 advice clinic. Recently, Ms. Berzin volunteered to be on the Board of Directors and is currently the
25 Chair, which is an unpaid position. As Chair, Ms. Berzin is one of seven Board Members, who are all
26 from different law firms and/or local public and private organizations. No compensation or benefits,
27 monetary or otherwise, are provided to any Board Member or organization a Board Member is
28 associated with. The Executive Director of the CFWR supervises, directs, and controls the day-to-day

1 operations of the CFWR, not Ms. Berzin or the Board of Directors. As Chair, Ms. Berzin's additional
2 duties include scheduling meetings, drafting meeting agendas and presiding over meetings.

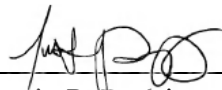
3 Furthermore, CFWR has not, and does not, provide any referrals to Shimoda & Rodriguez Law, P.C.

4 35. Galen T. Shimoda has volunteered for both organizations on and off over the past several
5 years through either presenting wage and hour seminars to law students who staff the free advice clinics
6 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
7 work with either organization since approximately March 2020. Mr. Shimoda has never received
8 payment or compensation of any kind in connection with any work he's done with either of the proposed
9 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
10 Bono, Inc. or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor
11 Mr. Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as
12 *cy pres* beneficiaries or in connection with any of the volunteer work we have done with the
13 organizations.

14 36. Plaintiff entered into an individual settlement agreement to resolve her individual claims
15 for \$15,000 in exchange for a general release of all claims, known and unknown, and waiver of all
16 protections afforded under Civil Code section 1542. In resolving Plaintiff's individual claims and the
17 PAGA claims, there was no inappropriate preferential treatment given to Plaintiff's individual claims
18 over the PAGA Claims. First, Plaintiff's individual settlement represents approximately 22% of her
19 maximum potential damages, which were calculated as follows: 1) unpaid minimum wages: \$11,291
20 (liquidated damages only under 1194.2); 2) unpaid overtime wages: \$20,824.50; 3) unpaid meal period
21 premiums: \$13,883; 4) unpaid rest period premiums: \$13,883; 5) wage statement penalties: \$1,000; 6)
22 waiting time penalties: \$4,320; and 7) unreimbursed expenses: \$1,923.30 for a total of \$67,124.80. The
23 78% compromise on her individual claims (\$15,000/\$67,124.80) is higher than the compromise applied
24 to the PAGA claims, which were 24% (\$626,531.40/\$825,086.40) to 63% (\$307,440/\$825,086.40)
25 based on the range of potential outcomes. Thus, Plaintiff has compromised more on her individual
26 claims than she did on the PAGA claims when coming to a settlement. Second, Plaintiff's individual
27 claims were stronger than Aggrieved Employees claim in that the value of her individual claims are not
28 subject to any discretionary reductions otherwise applicable to PAGA claims in general. I believe this

1 demonstrates that the amount of any further compromises for issues affecting both the Individual
2 Claims and PAGA Claims were made equally. Thus, the Individual Claims and the PAGA Claims are
3 fairly valued
4

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct. Executed on August 1, 2023 in Sacramento, California.
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Justin P. Rodriguez
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