

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
LIANE KATZENSTEIN LY, Esq., (SBN 259230)
liane@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

ABRAMSON LABOR GROUP
WILLIAM ZEV ABRAMSON, Esq. (SBN 289387)
wza@abramsonlabor.com
11846 Ventura Blvd., Suite 100
Studio City, CA 91604
Tel: (213) 493-6300, Fax: (213) 382-4083

Attorneys for Plaintiff and the proposed class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

GILDARDO MOTA STEVENS, an
individual, on behalf of himself and others
similarly situated,

PLAINTIFF,

v.

PURPLE EAGLE LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. MSC21-02204

[Case Assigned for All Purposes to Hon.
Charles S. Treat in Dept. 12]

**DECLARATION OF LIANE
KATZENSTEIN LY IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT
AND MOTION FOR APPROVAL OF
ATTORNEYS' FEES AND COSTS**

*[Filed concurrently with Motion for Final
Approval; Motion for Approval of Attorneys'
Fees and Costs; Declarations of Gildardo
Mota Stevens, William Zev Abramson, and
Lluvia Islas, Proposed Order, and Judgment]*

Date: October 19, 2023
Time: 9:00 a.m.
Dept.: 12

Complaint Filed: October 26, 2021
Trial Date: None Set

**DECLARATION OF LIANE KATZENSTEIN LY IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT AND MOTION FOR APPROVAL OF ATTORNEYS' FEES AND
COSTS**

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1. I am an attorney licensed to practice before all of the courts of the State of California. I am partner in the law firm of Kingsley & Kingsley, APC and one of the attorneys of record for Plaintiff GILDARDO MOTA STEVENS in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

3. I graduated from Florida State University in 2005 with a degree in English. I graduated from University of California, Davis School of Law in 2008. I am admitted to practice before the following Courts: United States District Court, Northern, Southern, Eastern, and Central of California; all of California State Courts.

4. I have been involved in all of the settlement discussions leading to the present settlement as embodied in the Class Action and PAGA Settlement Agreement (“Settlement” or “Agreement”) (“Settlement”). A true and correct copy of the (“Settlement is attached hereto as Exhibit “1”.

5. On October 26, 2021, Plaintiff filed a putative class action lawsuit entitled *GILDARDO MOTA STEVENS v. PURPLE EAGLE LLC* in the Contra Costa County Superior Court, case number MSC21-02204.

6. In the Complaint, Plaintiff alleged six causes of action, alleging that Defendant 1) failed to pay wages and/or overtime as required by the Labor Code and Wage Orders under Labor Code §§510, 1194, and 1199; 2) failed to provide compliant rest breaks pursuant to Labor Code §226.7 and IWC Wage Order 2-2001; 3) failed to reimburse for the cost of Plaintiff and the Proposed Class using their personal cellphones for necessary work purposes pursuant to Labor Code §2802; 4) failed to issue accurate itemized wage statements showing the total hours worked

1 by Plaintiff and other employees and all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
3 Code §226(a); 5) failed to pay all wages due upon termination or resignation pursuant to pursuant
4 to Labor Code §§201-203; and 6) is liable for penalties pursuant to Business & Professions Code
5 §17200.

6 7. Also, On October 25, 2021, Plaintiff also provided written notice to the Labor and
7 Workforce Development Agency (“LWDA”) and Defendant setting forth his intent to pursue
8 claims pursuant to Labor Code §2699, et seq. (“PAGA”) for Defendant’s alleged aforementioned
9 violations.

10 8. Plaintiff filed a First Amended Class and Representative Action Complaint on
11 January 3, 2022, adding an additional cause of action for penalties pursuant to pursuant to Labor
12 Code § 2699, *et seq.* based upon the same alleged Labor Code violations at issue in the Complaint.
13 (hereafter, the “Lawsuit” or “Operative Complaint”).

14 **THE DISCOVERY PROCESS**

15 9. The Parties have engaged in early stages of discovery and settlement negotiations
16 but have primarily focused their efforts on resolving this case through early mediation. On
17 February 10, 2022, Plaintiff served his first set of Special Interrogatories and Requests for
18 Production.

19 10. The Parties scheduled a private mediation with Todd A. Smith, Esq. on January 25,
20 2023. In preparation for mediation, Defendant informally produced multiple documents and
21 provided other information necessary to evaluate settlement.

22 11. This included a sample of time and pay data and financial data for mediation.

23 12. Additionally, Defendant provided financial documents to support its argument that
24 its ability to pay should be a factor in the Settlement.

25 13. Plaintiff also retained an accounting expert to review the documents and provide
26 guidance on the financial stability of the company.

27 14. Ultimately, as described below, the financials resulted in a steep discount based on
28 the company’s solvency.

15. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders.

16. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here.

PRELIMINARY APPROVAL

17. On July 6, 2023, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Settlement Administrator send notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing.

SETTLEMENT

18. For purposes of Agreement, the settlement class is defined as: “all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period.” (“Settlement Class Members” or “Settlement Class”).

19. The Class Period is October 26, 2017 to March 25, 2023.

20. For purposes of the Agreement, the Aggrieved Employees are defined as: “all individuals who were employed by Defendant as non-exempt employees in California during the PAGA Period” (“Aggrieved Employees” or “PAGA Members”).

21. The PAGA Period is October 26, 2020 through March 25, 2023.

22. There are 388 PAGA Members.

23. As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$150,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs.

24. The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.

CLASS NOTICE

25. The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule.

THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

26. As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm's-length negotiations overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Settlement Class Members.

27. The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place.

28. Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. This included the sampling of time and pay data relevant to Settlement Class Members and financial data.

29. Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit.

30. Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations.

31. Class Counsel is thus qualified to evaluate the class claims and viability of the

1 defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best
2 interests of the class and that the average recovery for each Settlement Class Member of over
3 \$155.00 is substantial, given the risks inherent in litigation and the defenses asserted.

4 **CLASS COUNSEL’S KULLAR ANALYSIS**

5 32. Class Counsel conducted extensive informal discovery before entering into
6 meaningful settlement negotiations in this matter.

7 33. This discovery permitted Class Counsel to fairly evaluate the strength of the case
8 and the risks associated with ongoing litigation.

9 34. Class Counsel is experienced in handling wage and hour class actions and, after
10 weighing all of the following factors, supports this Agreement.

11 35. Throughout the relevant time, Plaintiff and the Proposed Class were subject to the
12 control of Defendant prior their scheduled start times, without being compensated for those “hours
13 worked.”

14 36. Despite being off the clock, Defendant required employees to report to the job site
15 approximately 15 to 20 minutes before the schedule start of each shift despite knowing Plaintiff
16 and the Proposed Class were not “clocked” in.

17 37. Plaintiff and Class Members were required to prepare each spa room prior to their
18 shift because Defendant scheduled appointments at to start exactly at the start of their shifts.

19 38. All of this was done with the knowledge and direction of Defendant, thus Plaintiff
20 and the Proposed Class are certainly entitled to be compensated for this time worked.

21 39. Defendant denied that these allegations were true.

22 40. Defendant argued that no employees were required to report early, and if they did
23 report early they could clock in early and receive payment.

24 41. Given that this time was “off the clock” and not captured by the time clock, and
25 given that Defendant’s counter-argument, Plaintiff applied a discount to this claim.

26 42. Plaintiff and the Proposed Class’s rest period claims arise from a common course
27 of conduct wherein Defendant did not provide employees with the opportunity to take a second
28 10-minute rest break for shifts between 6-8 hours in compliance with California law.

1 43. Plaintiff and the Class Members consistently worked shifts of 6+ hours and were
2 not authorized or permitted to take second rest breaks.

3 44. Therefore, for each rest period Plaintiff and the Class Members were not provided
4 with, Defendant is liable for one (1) additional hour of pay at the employee's regular rate of
5 compensation. (Lab. Code, § 226.7, subd. (b).)

6 45. Again, Defendant disagreed and maintained that there was accurate rest period
7 policy and employees took their breaks.

8 46. Given that rest period claims can be difficult to certify, Plaintiff factored in a
9 discount for this claim.

10 47. Here, Defendant has failed to reimburse Plaintiff and the Proposed Class for
11 business-related expenses, including for use of their cell phones, necessary in executing the
12 Proposed Class's duties under Defendant's employ.

13 48. Plaintiff and the Proposed Class phone applications on their personal cell phones
14 and consistently use these personal cell phones for necessary work-related purposes such as, but
15 not limited to, clocking in, communicating with management, and managing client documents.

16 49. These cell phones were not provided by Defendant and Defendant failed to
17 reimburse Plaintiff and the Proposed Class for the costs associated with using these personal cell
18 phones.

19 50. Defendant argued that each location also had a physical time clock and employees
20 could choose whether to clock in and clock out on their personal phones or the store computer.

21 51. Plaintiff contends that Defendant issued wage statements that undeniably violate
22 Labor Code §§ 226(a)(2) and (9). Labor Code § 226(a) specifically requires that the employer
23 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
24 an accurate itemized statement in writing showing all applicable hourly rates in effect during the
25 pay period and the corresponding number of hours worked at each hourly rate by the employee.

26 52. As this is a derivative claim, the same risks present for the above claims were
27 present for this claim.

28 53. Here, many Class Members, including Plaintiff, are no longer employed by

1 Defendant. Defendant has failed to pay employees wages immediately or within 72 hours of
2 termination and/or resignation by not paying all wages and overtime owed.

3 54. Given that the underlying wage claims were relatively small in value, Defendant's
4 defense was considered when determining a fair settlement value.

5 55. The Parties discounted the PAGA claim for multiple reasons.

6 56. First, the aggrieved employees' PAGA claims are derivative of all the foregoing
7 class claims.

8 57. Second, a court has discretion to award less than the maximum penalty.

9 58. Finally, the Settlement Class is compensated for these violations in the proposed
10 Agreement, and thus any PAGA recovery for these same violations would be duplicative.

11 59. As such, the Agreement's contemplated PAGA payment of \$10,000.00 is
12 appropriate.

13 60. There is significant expense associated with the class certification process, which
14 the Parties can avoid by entering into the contemplated Agreement now.

15 61. If the Court did eventually certify a class, trial of a case involving 388 Settlement
16 Class Members would require the retention of expensive expert witnesses, the accrual of extensive
17 litigation costs, and a significant time overlay by the parties.

18 62. Moreover, given the complexity and unsettled nature of the issues in this case it is
19 likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal
20 would result in further delay for the Settlement Class Members who are waiting for a resolution in
21 this matter.

22 63. This case has not been certified to be tried as a class action. While Plaintiff believes
23 there is strong evidence to support certification of several possible subclasses, certification is
24 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification
25 is always a possibility. In attempting to certify a class, the parties would need to conduct multiple
26 depositions, including of the Class Representative and of several person(s) most knowledgeable
27 regarding Defendant's wage and hour policies. There is a risk for both sides as to what these
28 depositions will reveal and whether they will support class certification to the extent expected.

64. It was very difficult for the Parties to reach this Settlement of \$150,000.00.

65. This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator, Todd A. Smith, Esq.

66. Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount, at approximately \$159,527.00.

67. Plaintiff used an hourly average rate of \$20.00 and utilized an average shift length of 6.2 hours.

68. The full value of the Rest Period claim (with an assumption that 50% of the shifts resulted in a missed rest period), was approximately \$281,478.00.

69. This brought the damages for this claim to \$32,400.00.

70. Plaintiff valued the Wage Statement Claim, without discount, at \$406,150.00.

71. This figure is overstated because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts a \$4,000 cap on wage statement penalties per employee.

72. Plaintiff valued the Waiting Time Claim at \$958,432.00.

73. Considering the derivative nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate.

74. Finally, Plaintiff calculated the value of the PAGA claim at \$812,300.00 for Settlement Class Members.

75. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Settlement Class Members' claims was approximately \$2,650,287.00.

76. The value of the actual underlying claims (without penalties) was \$473,405.00. However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of \$150,000.00 is fair and reasonable.

77. As outlined above, Class Counsel conducted a thorough investigation into the facts

1 of the claims alleged. The agreement to settle did not occur until Class Counsel exchanged and
2 possessed sufficient information to make an informed judgement regarding the likelihood of
3 success on the merits and the results that could be obtained through further litigation.

4 **ATTORNEY COMPETENCE**

5 78. Kingsley & Kingsley is experienced in prosecuting employment litigation, and
6 since 2000 we have focused a substantial percentage of our practice on complex wage, hour, and
7 working condition violations. My firm is extremely well-versed in class action litigation and has
8 diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class
9 counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
10 Below is a small but representative sampling of wage and hour class cases handled by my firm:

- 11 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
12 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
13 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 14 b. *Daniel v. Network Management Corp.* (No. BC274004, L.A. Super. Ct.) In
15 September 2003, the court granted final approval of Settlement in the gross amount
16 of \$475,000 and the court approved the attorneys' fee request of 30%.
- 17 c. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
18 December 2005, Honorable Rita Miller granted final approval of Settlement in the
19 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 20 d. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the
21 Honorable Conrad R. Aragon granted final approval of Settlement in the gross
22 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 23 e. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
24 2008, the Honorable Mary Thornton House granted final approval of Settlement in
25 the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of
26 33 1/3%.
- 27 f. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
28 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the

gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

g. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

h. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.

i. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.

k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.

l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.

m. *Pineda, et al. v. Grimmway Enterprises, Inc.*, (No. BCV-15-101333, Kern Super. Ct.) In January 2018, the Hon. Stephen D. Schuett granted final approval of

Settlement in the gross amount of \$9,000,000 with attorneys' fees request of 33.33%.

79. Kingsley & Kingsley, APC filed its first motion for class certification in the year 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for class certification in 15 matters and has successfully obtained class certification in 15 of those cases. A brief sampling of which includes:

- a. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed Kingsley & Kingsley class counsel).
- b. *Amaro et al. v Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley & Kingsley co-class counsel).
- c. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct., filed January 27, 2015) (court granted contested class certification and appointed Kingsley & Kingsley class counsel).
- d. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16C0214). contested class certification granted in June 2020.
- e. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court (BCV-16-102833), contested class certification granted in 2018.
- f. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544), contested class certification granted in June 2020.
- g. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876), contested class certification granted in August 2020.

80. After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable.

81. There is no governmental participation in this action.

82. The proposed plan of allocation distributes Settlement funds proportionally based

1 on each class member's damages, and should therefore be approved as fair, adequate, and
2 reasonable.

3 **ATTORNEYS' FEE AWARD**

4 83. From that fund, Plaintiff requests an award of attorneys' fees in the amount of
5 \$50,000.00, or 1/3 of the Gross Settlement Amount created on behalf of members of the Settlement
6 Class.

7 84. In addition to the complexity of this case, Class Counsel has borne the entire risk
8 and costs of this litigation during the entire time that it has been pending, all on a pure contingency
9 basis.

10 85. I am very familiar with the contingent fee market throughout California and in the
11 Contra Costa County area, particularly as it pertains to complex employment, wage and hour, and
12 class action litigation. On behalf of my firm, I have negotiated numerous contingency fee
13 agreements with plaintiffs, both as individuals and as representatives in class action suits. Many
14 of those agreements provided that counsel will receive a fee that is between 33% and 40% of any
15 recovery that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred
16 out of the recovery amount. The named Plaintiff in this action signed a contingency fee agreement
17 that stated that counsel would be able to make a fee of up to 40% of any recovery if the case settles.
18 These are typical and standard percentages in employment-related contingency agreements
19 throughout California. Indeed, in my opinion, the Settlement Class Members in this complex wage
20 and hour case could not have retained competent counsel in California, particularly with the
21 considerable skill and expertise of my firm, for any amount significantly less than the contingency
22 fee percentage provided in this retainer agreement. Class Counsel has never been paid any money
23 for attorneys' fees in this case and has advanced all costs.

24 86. There are always risks attendant to billing cases on a contingency basis. Those
25 risks are even higher in the current economic climate. Kingsley & Kingsley bills the vast majority
26 of its cases on contingency, and has been affected by recent bankruptcy filings. In three separate
27 cases, *Lozoya v. Shore House Café, Inc.*, No. 30-2008-00082103-CU-OE-CJC (Orange Super. Ct.
28 filed Mar. 7, 2008) and *Davis v. Crossfire Marketing Group, LLC*, No. CIVRS1207797 (San

1 Bernardino Super. Ct. filed October 5, 2012), the defendants both filed for bankruptcy protection
2 in June 2011 and January 2015 after years of litigation. My firm advanced costs and incurred
3 thousands of dollars in fees that will never be recovered.

4 87. Additionally, there are cases where Class Counsel takes on the extreme risk of
5 attempting to certify a class case, often times turning down class or individual settlement offers
6 that Class Counsel feels are not in the best interest of the class, only to lose class certification and
7 the costs and fees associated with the litigation. *See e.g., Prosad v. Del Taco Restaurant Services,*
8 *Inc.*, No. BC426538 (L.A. Super. Ct. filed Nov. 2009); *Perez v. Safelite Group, Inc.*, CV-10-8653-
9 RGK(FFMx) (C.D. Cal. filed October 5, 2010).

10 88. When Class Counsel's motions for class certification are denied, Class Counsel
11 often appeals the orders. Sometimes, these denials are overturned (*Perez v. Safelite Group, Inc.*,
12 553 Fed.Appx. 667 (9th Cir. 2015); *Anderson v. Total Renal Care, Inc.*, No. B236207 (Cal. Ct.
13 App. 2012)) and other times Class Counsel is unsuccessful (*Prosad v. Del Taco Restaurant*
14 *Services, Inc.*, No. B238605 (CA. Ct. App. 2012)).

15 89. In addition to appealing class certification denials, Kingsley & Kingsley has been
16 involved in numerous lengthy and protracted appeals process before the California Court of
17 Appeal, the Ninth Circuit, the Seventh Circuit, and the United States Supreme Court. Our firm
18 specifically has taken and lost some issues on appeal that required the write-off of significant legal
19 fees. Also, our firm has been successful on appeal and overturned unfavorable lower court rulings
20 or successfully fought to have successful rulings affirmed. Below is just a sample of some of these
21 appeals:

22 n. *D'Este v. Bayer Corp.*, 565 F.3d 1119 (9th Cir. 2009) (lower court ruling that
23 pharmaceutical sales representatives are exempt employees affirmed);

24 o. *Budrow v. Dave & Buster's of California, Inc.*, 171 Cal. App. 4th 875 (2009) (lower
25 court ruling in employer's favor that certain employees can share in mandatory tip
26 pool affirmed);

27 p. *Etheridge v. Reins Int'l California, Inc.*, 172 Cal. App. 4th 908 (2009) (lower court
28 ruling in employer's favor that certain employees can share in mandatory tip pool

1 affirmed);

2 q. *Areso v. CarMax, Inc.*, 195 Cal. App. 4th 996 (2011) (lower court ruling in
3 employer's favor approving employer's commission pay plan affirmed) ;

4 r. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 183 L. Ed. 2d 153
5 (2012) (lower court ruling that pharmaceutical sales representatives are exempt
6 employees affirmed);

7 s. *Schaefer-LaRose v. Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) (lower court ruling
8 that pharmaceutical sales representatives are exempt employees affirmed);

9 t. *Fowler v. Carmax, Inc.*, No. B238426, 2013 WL 1208111 (Cal. Ct. App. Mar. 26,
10 2013), cert. granted, judgment vacated sub nom. *CarMax Auto Superstores*
11 *California, LLC v. Fowler*, 134 S. Ct. 1277, 188 L. Ed. 2d 290 (2014) (lower court
12 granted employer's motion to compel arbitration, Court of Appeal reversed, U.S.
13 Supreme Court affirmed lower court);

14 u. *Salazar v. Apple Am. Grp., LLC*, No. E059562, 2015 WL 314703 (Cal. Ct. App.
15 Jan. 26, 2015), review denied (Apr. 22, 2015), cert. denied, 136 S. Ct. 688, 193 L.
16 Ed. 2d 519 (2015) (lower court ruling in employee's favor on motion to compel
17 arbitration affirmed);

18 v. *Anaya v. J's Maint. Serv., Inc.*, No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb.
19 9, 2016) (lower court ruling in employee's favor on motion to compel arbitration
20 affirmed);

21 w. *Cortez v. Doty Bros. Equipment Company, Inc.* (2017) 15 Cal.App.5th 1 (reversing
22 in part and affirming in part trial courts order compelling arbitration);

23 x. *Lopez v. Friant & Associates, L.L.C.* (2017) 15 Cal.App.5th 773 (reversing
24 summary judgement in favor of employer on wage statement claim);

25 y. *Kane v. Valley Slurry Seal Company*, Case No. C079558, Cal. Ct. App. May 8,
26 2018) (affirming judgement for employees after bench trial);

27 z. *Kim v. Reins International California*, Case No. S246911. Oral argument was held
28 before the California Supreme Court on January 6, 2020 and a decision was

published in March 2020.

90. Unlike plaintiffs' firms, which bear the risk of loss on contingency cases, defense firms are able to bill their clients for time spent on a case. As verified by a survey conducted by the National Law Journal nearly a decade ago, six California firms provided their hourly billing rates and of the six firms, five regularly charged in excess of \$500 for their partners. In fact, four of these firms charged as high as \$600, \$620, \$650 and up to \$850 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County, and San Diego County. This survey is attached hereto as Exhibit 2.

91. While plaintiffs' firms strive to take on cases that are meritorious (for ethical as well as monetary reasons), as this Court knows, many of these cases hinge on the decision of class certification. Recently, there has been a renewed effort by defense counsel and/or their clients to challenge these cases and to push back, especially on certification motions. In addition, many novel legal issues have gone up on appeal, which has complicated the landscape for settlement.

CLASS COUNSEL'S HOURS AND HOURLY RATES ARE REASONABLE

92. Class Counsel's aggregate lodestar amounts to \$28,045.00 (with future hours), which represents Microsoft Corporation hours of attorney work on this litigation incurred from its inception through the anticipated end of the case.

93. Class Counsel intends to spend ten (10) additional hours bringing this case to a close, including attending the final approval hearing, assisting in the final administration, fielding questions from Class Members, obtaining the final accounting declaration, preparing the documents for the final accounting hearing, and attending the hearing.

94. As such, Class Counsel is asking for a multiplier of 1.78.

95. The amount of time spent on this case (38 hours), which culminated in a very favorable proposed Settlement for the Settlement Class Members, is reasonable given the complexity and novelty of the issues involved, the vigorous defense, the length and intensity of the litigation, and the exceptional results obtained.

96. Class Counsel litigated this action with great efficiency in light of the amount of work required to achieve the Settlement.

1 97. The requested hourly rates in this case range from \$415.00 per hour to \$990.00.

2 98. Class Counsel's hourly rates are fully supported by their experience and reputation
3 in handling complex employment litigation, including wage and hour class actions.

4 99. Mr. Kingsley is a 24-year attorney with expertise in wage and hour class action
5 lawsuits.

6 100. He has litigated several hundred such cases, including at the appellate level at the
7 U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court of
8 Appeal.

9 101. He is also a prolific speaker at various seminars on employment law and has
10 contributed to legal publications on employment topics.

11 102. In light of the impending increase of experienced lawyers in specialized practice, I
12 believe that the hourly rates charged by my firm are fair and reasonable and are comparable to or
13 less than those charged by my colleagues in California and the national market for prosecuting or
14 defending class actions.

15 103. My office billed for the following three attorneys for work performed on this case:
16 Eric Kingsley, Jessica Bulaon, and me.

17 104. I, a partner at Kingsley & Kingsley, APC, has a billing rate of \$715 per hour. I am
18 an honors graduate of Florida State University, and received my JD from University of California
19 Davis School of Law in 2008, where I was an editor of the Environmental Law Journal and a board
20 member of the King Hall Negotiations Team.

21 105. Jessica Bulaon is an Associate Attorney at Kingsley & Kingsley, APC. Ms. Bulaon
22 is a graduate of UCLA where she obtained her Bachelor of Arts in Sociology. In 2021, she earned
23 her J.D. from Southwestern Law School, where she was a member on the Law Review and the
24 Dean's List. While at Southwestern, she was awarded the Exceptional Achievement Award in
25 Employment Law Survey course and Witkin Award in her Labor Law course. Ms. Bulaon also
26 clerked at a plaintiff-side employment law firm for 1.5 years until she was admitted to practice in
27 December of 2021. She is billed at \$415 per hour.

28 106. The qualifications of Co-Counsel William Zev Abramson of Abramson Law Group

are discussed in the concurrently filed Declaration of William Zev Abramson.

107. Kingsley & Kingsley, APC and Abramson Labor Group have entered into a written fee sharing agreement that was also signed by the named Plaintiff.

108. An article in the Wall Street Journal on February 9, 2016 titled *Legal Hours Cross New Mark: \$1,500 an Hour* states that “a review of filings over the past three months in about two dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400.” The article also explains that “despite low inflation and weak demand for legal services, rates at large corporate law firms have risen by 3% to 4% a year since the economic downturn.” Finally, the article notes that “the average highest rate paid for law-firm partners was \$875 an hour in 2015.” This article is attached hereto as Exhibit 3.

109. Class Counsel’s charged rate are commensurate with the prevailing market rates in Contra Costa County for attorneys of comparable experience and skill handling complex litigation.

110. Furthermore, Class Counsel’s rates in calculating the lodestar are the same rates charged to non-contingent hourly clients and thus necessarily reflect the current market value of counsel’s legal services.¹

111. Class Counsel has made all reasonable attempts to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing rates.

112. Finally, Class Counsel’s rates are in line with the 2023-2024 Laffey Matrix, which is a fee scale that courts often consult in determining the reasonableness of hourly rates. Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr. Kingsley, is \$1,057, a reasonable rate for an attorney with 15 years of experience, such as Ms. Ly, is \$878, a reasonable rate for an attorney with 3 or less years of experience, such as Ms. Bulaon is \$437. A true and correct copy of the 2021-2022 Adjusted Laffey Matrix is attached hereto as Exhibit 4.

¹ The Court should also note that other California courts approved many of these same rates over 15 years ago. (See, e.g., *Bihun v. AT&T Info. Sys., Inc.* (1993) 13 Cal.App.4th 976, 997, disapproved on other grounds, 6 Cal.4th 644, 664 [\$450 hourly rate was a reasonable fee based on counsel’s knowledge, skill, experience and reputation].)

113. Kingsley & Kingsley's attorneys' fees in the present case are broken down as follows:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTALS</u>
Eric B. Kingsley	14.20	\$990.00	\$14,058.00
Liane Katzenstein Ly	13.70 ²	\$715.00	\$9,795.50
Jessica Bulaon	10.10	\$415.00	\$4,191.50
KINGSLEY TOTAL			
ATTORNEYS' FEES	38.00		\$28,045.00

114. Class Counsel has spent significant time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. intake and interviewing Plaintiff and witnesses and flushing out facts and issues;
- b. researching employer and related causes of action;
- c. researching other pending and former matters against Defendant;
- d. fact development and investigating Defendant's ownership structure
- e. researching and analyzing relevant claims under B&P 17200;
- f. investigation and discussion regarding job functions, duties, compensation, policies, and procedures, etc.;
- g. regular meetings and or communicating with the named Plaintiff;
- h. regular meetings and or communicating with Co-Counsel;
- i. drafting pleadings (Complaints, Motion for Preliminary Approval, various documents related to Preliminary Approval, Motion for Final Approval, various documents related to Final approval, etc.);
- j. researching private right of action and various impact on class actions;
- k. preparing for and attending mediation;

² Class Counsel has currently performed 12.70 hours of performed worked on this case, but anticipates 10 hours of future time to handle the final approval hearing and to oversee the administration process. As such, Class Counsel is requesting a total of 13.70 hours of performed work.

- l. discussing issues related to damage model calculations;
- m. preparing and analyzing damage models;
- n. negotiating the terms of the settlement;
- o. reviewing and making changes to the Settlement;
- p. drafting and editing all documents for Preliminary and Final Approval;
- q. monitoring Notice and settlement administration procedures;
- r. coordinating and overseeing all aspects of the administration of the Settlement (review documentation, approve form and content, etc.); and multiple communications with defense counsel.

115. Based on the aggregate lodestar, Class Counsel is requesting a multiplier of 1.78.

FACTORS THAT SUPPORT THE APPROVAL OF A MULTIPLIER

116. As discussed in detail in the extensive risk analysis section in Plaintiff's Motion for Preliminary Approval of Settlement, were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. There are genuine issues in dispute.

117. As discussed above and in the concurrently filed Abramson Declaration, Class Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter as discussed.

118. To achieve the ultimate result in this case, Co-lead Class Counsel had to incur substantial risk and expense, and were precluded from taking other fee generating employment for over 45 hours of attorney time.

119. This matter had been handled purely on a contingency fee basis and Class Counsel have advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting significant firm resources to prosecution of this matter.

120. Class Counsel believe this is an exceptional result that has been well received by Settlement Class Members.

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1 **ATTORNEY COSTS**

2 121. In addition to their request for fees, Class Counsel further request reimbursement
3 of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with
4 this litigation, in the amount of \$15,000.00.

5 122. To date, Kingsley and Kingsley has incurred \$18,561.63 in costs.

6 123. Class Counsel anticipates incurring an additional \$600.00 in costs to file, serve, and
7 copy this motion; to prepare for and attend the hearing; and for future copy charges, however,
8 pursuant to the Settlement, Class Counsel shall not seek an amount in excess of \$15,000.00 for
9 litigation costs.

10 124. As such, Class Counsel is requesting a cost reimbursement of \$15,000.00.

11 125. All of the requested costs are reasonable in amount and were necessarily incurred
12 by Class Counsel in prosecuting this litigation. A true and correct copy of Kingsley's cost ledger
13 is attached hereto as Exhibit 5.

14 126. All of these costs have been incurred in the course of this litigation, and all costs
15 advanced have already been paid by Class Counsel.

16 **THE NAMED PLAINTIFF'S ENHANCEMENT SHOULD BE APPROVED**

17 127. Plaintiff's Counsel request an enhancement of \$5,000.00 to the Class
18 Representative GILDARDO MOTA STEVENS for his work on behalf of the Settlement Class.

19 128. The time spent by Mr. Stevens includes researching and retaining competent
20 counsel; providing information to Class Counsel regarding the nature of the work at Defendant;
21 compiling relevant documents; working closely with Class Counsel to develop the theories of
22 liability and martial relevant evidence; regularly discussing the status of the case with Class
23 Counsel; discussing the case via telephone with many Settlement Class Members; making himself
24 available for a full-day mediation as necessary; and responding promptly to Class Counsel's
25 communications regarding settlement.

26 129. As set forth in the Agreement, Plaintiff will also be entering into a general release
27 of liability pursuant to Civil Code Section 1542.

28 130. Class Counsel considers this to be a fair and reasonable enhancement.

131. The enhancement takes into consideration the time, effort, and expense incurred by Mr. Stevens in coming forward to litigate this matter on behalf of all Settlement Class Members.

132. Additionally, the Class Representative was at risk for paying for Defendant's legal fees and costs in the event that Defendant prevailed at trial.

133. The Class has benefited from Mr. Stevens's action in stepping forward on their behalf to bring this lawsuit.

134. Further, The Class Notice disclosed the enhancement award.

135. As of today, no Settlement Class Member has objected to the proposed enhancement.

136. Under the circumstances, a representative payment of \$5,000.00 is justified and the Court should award this payment to Gildardo Mota Stevens from the Gross Settlement Amount as provided in the Settlement.

PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT

AGENCY

137. As indicated on the Proof of Service, Plaintiff's accompanying Motion for Final Approval of Class Action Settlement and Motion for Final Approval of Attorneys' Fees and Costs ("Motions") were uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date the Motions were filed. Proof of submission of Plaintiff's Motions, all related documents, and copy of the email from the LWDA confirming receipt is attached hereto as Exhibit "7".

EXHIBITS

138. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed joint Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement") that was preliminary approved by this Court on July 6, 2023.

139. Attached hereto as Exhibit "2" is a true and correct copy of the ALM Research 2007 NLJ Billing Survey.

140. Attached hereto as Exhibit "3" is a true and correct copy of Wall Street Journal on February 9, 2016 titled *Legal Hours Cross New Mark: \$1,500 an Hour*.

EXHIBIT "1"

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Gildardo Mota Stevens (“Plaintiff”) and defendant Purple Eagle LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *GILDARDO MOTA STEVENS, an individual, on behalf of himself and others similarly situated, PLAINTIFF v. PURPLE EAGLE LLC; and DOES 1 thru 50, inclusive, DEFENDANTS*, Case No. CIVMSC21-02204 initiated on October 26, 2021 and pending in Superior Court of the State of California, County of Contra Costa.
- 1.2. “Settlement Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” or “PAGA Settlement Class” means all individuals who are or were employed by Defendant as non-exempt employees in California during the PAGA Period.
- 1.5. “Class” or “Settlement Class” means all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period.
- 1.6. “Class Counsel” means Kingsley & Kingsley, APC and Abramson Labor Group.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Settlement Class Member or Non-Participating Settlement Class Member (including a Non-Participating Settlement Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member 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 Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from October 26, 2017, to either March 25, 2023 or the date the total number of workweeks totals 9,025, whichever is first.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Contra Costa
- 1.16. “Defendant” means named Defendant Purple Eagle LLC.
- 1.17. “Defense Counsel” means Atkinson, Andelson, Loya, Ruud & Romo.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Settlement Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Settlement Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.22. “Gross Settlement Amount” means \$150,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 10 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Settlement Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “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, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Settlement Class Members as Individual Class Payments.
- 1.29. “Non-Participating Settlement Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Purple Eagle for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from October 26, 2020, to either March 25, 2023 or the date the total number of workweeks totals 9,025, whichever is first.
“PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.32. “PAGA Notice” means Plaintiff’s October 25, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$2,500.00) and the 75% to LWDA (\$7,500.00) in settlement of PAGA claims.
- 1.34. "Participating Settlement Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.35. "Plaintiff" means Gildardo Mota Stevens, the named plaintiff in the Action.
- 1.36. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.37. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.38. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.40. "Released Parties" means: Defendant and all of Defendant's subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, assigns, current and former owners, officers, directors, managers, employees, representatives, subsidiaries, parents, affiliates, joint venturers, co-owners, co-employers, joint employers, payroll providers, attorneys, insurers, and reinsurers.
- 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.44. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On October 26, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1199, and 2802. On January 3, 2022, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for penalties pursuant to Labor Code § 2699, et seq. for violations previously alleged. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint 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 Purple Eagle and the LWDA by sending the PAGA Notice.
- 2.3. On January 25, 2023, the Parties participated in an all-day mediation presided over by Todd A. Smith, which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, time and pay data and relevant policy documents for the certified Class and the aggrieved employees. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class 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. Except as otherwise provided by Paragraph 10 below, Defendant promises to pay \$150,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 1.18 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Settlement Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 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 Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class

Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Settlement Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$50,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class 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 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Settlement Class Member : An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Settlement Class Members during the Class Period and (b) multiplying the result by each Participating Settlement Class Member 's Workweeks.
- 3.2.4.1. Tax Allocation of Individual Class Payments. Twenty Percent (20%) of each Participating Settlement Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an

IRS W-2 Form. Seventy Nine Percent (79%) of each Participating Settlement Class Member's Individual Class Payment will be allocated to settlement of claims for non-statutory damages and interest, and One percent (1%) penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Settlement Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

- 3.2.4.2. Effect of Non-Participating Settlement Class Members on Calculation of Individual Class Payments. Non-Participating Settlement Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Settlement Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$10,000.00 to be paid from the Gross Settlement Amount, with 75% (\$7,500.00) allocated to the LWDA PAGA Payment and 25% (\$2,500.00) allocated to the Individual PAGA Payments.
 - 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$2,500 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.
 - 3.2.5.2. 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.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 351 Class Members who collectively worked a total of 8,595 Workweeks, and 351 of Aggrieved Employees who worked a total 4,297 of PAGA Pay Periods.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Purple Eagle will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data

to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class 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 Class Data.

- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes 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 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members 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. The Administrator will send checks for Individual Settlement Payments to all Participating Settlement Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Settlement Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Settlement Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members 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 Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement

check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or 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 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, 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 (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below. ("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 Class 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.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.
For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2 Release by Participating Settlement Class Members: All Participating Settlement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims arising out of or reasonably related to the allegations set forth in the Operative Complaint and/or PAGA notice to the LWDA that arose during the Class Period including, e.g., (a) any and all claims involving any alleged failure to pay wages; (b) failure to provide rest periods; (c) failure to reimburse expenses; (d) failure to provide accurate itemized wage statements; (e) failure to pay all wages due at termination; (f) unfair business practices; and all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

6.3 Release by Aggrieved Employees: All Non-Participating Settlement Class Members who are 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 Period facts stated in the Operative Complaint and the PAGA Notice including any and all claims involving any alleged failure to (a) pay overtime and wages, (b) provide proper rest periods, (c) reimburse business expenses, (d) provide proper wage statements, (e) pay all wages due upon termination, and (e) engage in unfair business practices.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

7.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; 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. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient.

7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval

no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class 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 Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class 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.

8. SETTLEMENT ADMINISTRATION.

- 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators 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.
- 8.2 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.
- 8.3 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.
- 8.4 Notice to Class Members.
- 8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit [REDACTED]. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual

PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator

can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Settlement Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Settlement Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Settlement Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Settlement Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Settlement Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Settlement Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel

Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

- 8.7.2 Participating Settlement Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Settlement Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Settlement Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- 8.7.3 Non-Participating Settlement Class Members have no right to object to any of the class action components of the Settlement.
- 8.8 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.
- 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA

Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
- 9. CLASS SIZE ESTIMATES** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 351 Class Members and 8,595 Total Workweeks during the Class period and (2) there were 351 Aggrieved Employees who worked 4,297 Pay Periods during the PAGA Period. The work weeks will not exceed 9,025.
- 10. DEFENDANT’S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the

Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect. As an option, held exclusively by Defendant, in the event the total number of workweeks worked during the period of October 26, 2017 through March 25, 2023 increases by more than 5% (i.e. more than 9,025) by the time Defendant provides class data to the settlement administrator for dissemination of settlement notices, Defendant may elect to increase the GSA on a proportional basis equal to the percentage increase in the workweeks above the 8,595 (i.e., if there is a 6% increase in the number of workweeks during the period of October 26, 2017 through March 25, 2023, Defendant shall increase the GSA by 6% to cover the period of October 26, 2017 through March 25, 2023).

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”).

- 11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Settlement Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3 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.
- 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Settlement Class Members who did not object to the Settlement as provided in this Agreement, 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 an objector 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.

- 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. **FINAL JUDGMENT AND AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. **ADDITIONAL PROVISIONS.**

- 13.1 No Admission of Liability, Class Certification 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant'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).
- 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income

to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 13.4 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.
- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, 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.
- 13.6 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.
- 13.7 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.
- 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant 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.

- 13.9 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.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 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.
- 13.12 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.
- 13.13 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.
- 13.14 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.
- 13.15 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.
- 13.16 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:

Kingsley & Kingsley, APC
Eric B. Kingsley
Liane Katzenstein Ly
16133 Ventura Blvd., Suite 1200
Encino, CA 91436

To Defendant:

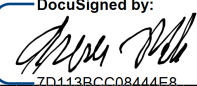
Atkinson, Andelson, Loya, Ruud & Romo
Ann K. Smith
Sarkis A. Atoyan
12800 Center Court Drive South, Suite 300
Cerritos, CA 90703-9364

13.17 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.

13.18 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.

Plaintiff

Dated: March 17, 2023

DocuSigned by:

7D113BCC08444E8...
Gildardo Mota Stevens

Dated: March 17, 2023

KINGSLEY & KINGSLEY, APC

By: 
Eric B. Kingsley
Liane Katzenstein Ly
Attorneys for Plaintiff, the Proposed Class, and all
aggrieved employees

Defendant

Dated: _____

Purple Eagle LLC

Dated: _____

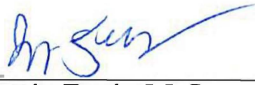
KINGSLEY & KINGSLEY, APC

By: _____

Eric B. Kingsley
Liane Katzenstein Ly
Attorneys for Plaintiff, the Proposed Class, and all
aggrieved employees

Defendant

Dated: 3/20/23



Purple Eagle LLC

Dated: March 20, 2023

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By:  _____

Ann K. Smith
Sarkis A. Atoyan
Attorneys for Defendant Purple Eagle LLC.

EXHIBIT "A"

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

*GILDARDO MOTA STEVENS, an individual, on behalf of himself and other similarly situated,
PLAINTIFF v PURPLE EAGLE LLC; and DOES 1 thru 50, inclusive, DEFENDANTS, Contra*
Costa County Superior Court Case No. MSC21-02204

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Purple Eagle LLC (“Defendant” or “Purple Eagle” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a former Purple Eagle employee Gildardo Mota Stevens (“Plaintiff”) and seeks payment of (1) unpaid wages including minimum wages and overtime wages; (2) rest period penalties; (3) penalties for failure to provide accurate itemized wage statements; (4) unreimbursed expenses; (5) waiting time penalties; and other relief for a class of hourly employees (“Class Members”) who worked for Purple Eagle during the Class Period (October 26, 2017, to [REDACTED]); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for Purple Eagle during the PAGA Period (October 26, 2020, to [REDACTED]) (“Aggrieved Employees”).

The proposed Settlement resolves a highly contested lawsuit. Defendant believes they have complied with the law in all respects and deny any liability for the claims asserted by Plaintiff. Defendant is not admitting liability of any of the factual and legal allegations asserted in the lawsuit, and denies that the lawsuit should proceed as a class action for any purpose other than this Settlement. After investigating the claims at issue, and the possible defenses to those claims, the Parties have agreed to settle this case in order to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiff and his counsel believe the Settlement is in the best interests of all non-exempt hourly employees who worked for Defendant in California during the Class Period and the PAGA Period. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and, in exchange, releases Defendant from liability from the claims asserted in this lawsuit.

The Court has not made a ruling on the merits of the case.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant's records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Purple Eagle during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Settlement Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Purple Eagle.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Purple Eagle, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Purple Eagle will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Settlement Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Purple Eagle that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded,

Settlement The Opt-out Deadline is [date]	you will be a Non-Participating Settlement Class Member and no longer eligible for an Individual Class Payment. Non-Participating Settlement Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Settlement Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [date]	All Class Members who do not opt-out (“Participating Settlement Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Settlement Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [date] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [date]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Settlement Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Purple Eagle’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Purple Eagle employee. The Action accuses Purple Eagle of violating California labor laws by failing to pay overtime wages, wages due upon termination and reimbursable expenses and failing to provide rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Kingsley & Kingsley, APC (“Class Counsel.”).

Purple Eagle strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Purple Eagle or Plaintiff is correct on the merits. In the meantime, Plaintiff and Purple Eagle hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Purple has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Purple Eagle Will Pay \$150,000.00 as the Gross Settlement Amount (Gross Settlement). Purple Eagle has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Purple Eagle will fund the Gross Settlement not more than **[14]** days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Settlement Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$50,000.00 (33.33% of the Gross Settlement] to Class Counsel for attorneys’ fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$5,000.00 a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$10,000.00 to the Administrator for services administering the Settlement.
- D. Up to \$10,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Settlement Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Settlement Class Members based on their Class Period Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of each Individual Class Payment to taxable wages ("Wage Portion") and two thirds to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
- 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Settlement Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for

Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Settlement Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Purple Eagle.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Settlement Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Purple Eagle based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Purple Eagle will not pay any money and Class Members will not release any claims against Purple Eagle.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Settlement Class Members' Release. After the Judgment is final and Purple Eagle has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Settlement Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Purple Eagle or related entities for those claims arising out of or reasonably related to the allegations set forth in the operative complaint and/or PAGA notice to the California Labor and Workforce Development Agency that arose during the Class Period and/or PAGA Period.

The Participating Settlement Class Members will be bound by the following release:

All Participating Settlement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims arising out of or reasonably related to the allegations set forth in the Operative Complaint and/or PAGA notice to the LWDA that arose during the Class Period including, e.g., "(a) any and all claims involving any alleged failure to pay wages; (b) failure to provide rest periods; (c) failure to reimburse expenses; (d) failure to

provide accurate itemized wage statements; (e) failure to pay all wages due at termination; and (f) unfair business practices.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Purple Eagle has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Purple Eagle, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Settlement Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Purple Eagle or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Settlement Class Members are as follows:

All Participating and Non-Participating Settlement Class Members who are 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 Period facts stated in the Operative Complaint and the PAGA Notice including any and all claims involving any alleged failure to (a) pay overtime and wages, (b) provide proper rest periods, (c) reimburse business expenses, (d) provide proper wage statements, (e) pay all wages due upon termination, and (e) engage in unfair business practices.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Settlement Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Settlement Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Purple Eagle's records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Purple Eagle's calculation of Workweeks and/or Pay Periods based on Purple Eagle's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Settlement Class Members) and Purple Eagle's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Settlement Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Settlement Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Settlement Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Settlement Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *GILDARDO MOTA STEVENS, an individual, on behalf of himself and others similarly situated, PLAINTIFF v. PURPLE EAGLE LLC; and DOES 1 thru 50, inclusive, DEFENDANTS, Case No. CIVMSC21-02204*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Settlement Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that

includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website <https://www.phoenixclassaction.com/> or the Court's website <https://www.cc-courts.org/>.

A Participating Settlement Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *GILDARDO MOTA STEVENS, an individual, on behalf of himself and others similarly situated, PLAINTIFF v. PURPLE EAGLE LLC; and DOES 1 thru 50, inclusive, DEFENDANTS*, Case No. CIVMSC21-02204 and include your name, current address, telephone number, and approximate dates of employment for Purple Eagle and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Settlement Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 39 of the Contra Costa Superior Court, located at 725 Court Street, Martinez, CA 94553. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Zoom (<https://www.cc-courts.org/calendars/court-calendars.aspx/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <https://www.phoenixclassaction.com/> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [specify whose] website at [URL of website]. You can also

telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://www.cc-courts.org/default.aspx> and entering the Case Number for the Action, Case No. CIVMSC21-02204. You can also make an appointment to personally review court documents in the Clerk's Office at the Contra Costa Courthouse by calling (925)608-1000.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Eric Kingsley
Liane Katzenstein Ly
eric@kingsleykingsley.com
liane@kingsleykingsley.com
Kingsley & Kingsley, APC
16133 Ventura Blvd, Suite 1200,
Encino, CA 91436 (818) 990-8300

Settlement Administrator:

Phoenix Settlement Administrators
[Email Address]
1411 N. Batavia, Suite 105
Orange, CA 92867
800-523-5773
[Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT "2"

	A	C	D	E	F	G	H	I	J	K	L
1											
2											
3											
4											
5											
6	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
7	Adams and Reese	\$500	\$225	\$255	\$165	\$198	\$305	\$278	\$197	\$300	\$275
8	Andrews Kurth	\$795	\$400	\$460	\$210						
9	Arent Fox	\$675	\$395	\$440	\$240						
10	Armstrong Teasdale	\$450	\$295	\$295	\$165						
11	Baker, Donelson, Bearman, Caldwell & Berkowitz	\$525	\$230	\$315	\$160	\$205	\$325	\$280	\$200	\$320	\$270
12	Barnes & Thornburg	\$485	\$265	\$295	\$180	\$225	\$350	\$302	\$220	\$355	\$310
13	Bass, Berry & Sims PLC	\$575	\$300	\$285	\$180						
14	Best Best & Krieger	\$495	\$290	\$350	\$160	\$203	\$275	\$212	\$235	\$390	\$265
15	Bond, Schoeneck & King	\$435	\$200	\$250	\$140	\$179	\$294	\$253	\$175	\$295	\$300
16	Bradley Arant Rose & White	\$520	\$240	\$280	\$180	\$211	\$335	\$258	\$205	\$330	\$260
17	Briggs and Morgan	\$500	\$250	\$325	\$195	\$233	\$391	\$344	\$230	\$395	\$350
18	Brinks Hofer Gilson & Lione	\$650	\$300	\$410	\$180	\$273	\$479	\$365	\$250	\$485	\$350
19	Broad and Cassel	\$450	\$250	\$310	\$165	\$232	\$361	\$294	\$225	\$360	\$275
20	Brownstein Hyatt Farber Schreck	\$675	\$260	\$270	\$170	\$219	\$373	\$308	\$218	\$390	\$325
21	Bryan Cave	\$695	\$320	\$495	\$165	\$295	\$493	\$394	\$295	\$490	\$375
22	Buchanan Ingersoll & Rooney	\$750	\$320	\$460	\$150						
23	Bullivant Houser Bailey	\$500	\$225	\$350	\$150	\$240	\$285	\$260	\$220	\$275	\$250
24	Burr & Forman	\$470	\$250	\$305	\$175	\$235	\$340				
25	Butzel Long	\$575	\$210	\$350	\$155						
26	Carlton Fields	\$600	\$280	\$375	\$190	\$243	\$406	\$312	\$245	\$405	\$300
27	Cooley Godward Kronish	\$875	\$470	\$555	\$250						
28	Covington & Burling	\$800	\$510	\$525	\$240						
29	Cozen O'Connor	\$750	\$230	\$530	\$155	\$283	\$420	\$350	\$280	\$425	\$340
30	Curtis, Mallet-Prevost, Colt & Mosle	\$735	\$635	\$560	\$280	\$361	\$666	\$396	\$360	\$685	\$480
31	Davis Wright Tremaine	\$695	\$300	\$390	\$170	\$257	\$430	\$375	\$250	\$423	\$375
32	Day Pitney	\$650	\$350	\$525	\$210	\$306	\$472	\$374	\$310	\$465	\$375
33	Dickinson Wright	\$530	\$260	\$275	\$170						
34	Dickstein Shapiro Morin & Oshinsky	\$825	\$425	\$440	\$225	\$336	\$552	\$438	\$360	\$550	\$425
35	Dinsmore & Shohl	\$475	\$235	\$285	\$155	\$199	\$342	\$275	\$190	\$340	\$250
36	Dorsey & Whitney	\$750	\$220	\$470	\$145	\$274	\$463	\$375	\$260	\$463	\$365
37	Duane Morris	\$705	\$315	\$465	\$150	\$310	\$475	\$416	\$305	\$470	\$415
38	Dykema Gossett	\$625	\$245	\$390	\$185	\$272	\$403				
39	Edwards Angell Palmer & Dodge	\$700	\$350	\$450	\$170	\$293	\$515	\$407	\$280	\$513	\$400
40	Epstein Becker & Green	\$675	\$280	\$440	\$155	\$290	\$471	\$380	\$280	\$475	\$395
41	Fenwick & West	\$775	\$500	\$500	\$245	\$360	\$590	\$395	\$370	\$600	\$410
42	Foley & Lardner	\$855			\$185	\$387	\$550	\$476	\$375	\$550	\$475
43	Ford & Harrison	\$560	\$325	\$395	\$210						
44	Fowler White Boggs Banker	\$500	\$230	\$325	\$150	\$217	\$345	\$303	\$210	\$340	\$300
45	Fox Rothschild	\$595	\$240	\$440	\$190						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
46											
47	Frost Brown Todd	\$455	\$225	\$255	\$145	\$180	\$303	\$256	\$170	\$295	\$255
48	Gardere Wynne Sewell	\$715	\$350	\$425	\$220	\$292	\$472	\$405	\$265	\$475	\$405
49	GrayRobinson, PA	\$500	\$175	\$250	\$250	\$198	\$319	\$224			
50	Greenberg Traurig, PA	\$850	\$300	\$505	\$175	\$311	\$490	\$407	\$310	\$500	\$415
51	Harris Beach	\$475	\$250	\$275	\$140						
52	Hiscock & Barclay LLP	\$375	\$220	\$250	\$160	\$185	\$278	\$245	\$180	\$280	\$250
53	Hodgson Russ	\$645	\$215	\$395	\$155	\$219	\$337	\$254	\$205	\$350	\$250
54	Hogan & Hartson	\$850	\$300	\$525	\$150	\$385	\$600	\$490	\$370	\$590	
55	Holland & Hart	\$585	\$275	\$345	\$165	\$269	\$388	\$335	\$275	\$385	\$335
56	Holme Roberts & Owen	\$635	\$285	\$420	\$195	\$284	\$412	\$353	\$265	\$410	\$345
57	Howard, Rice, Nemerovski, Canady, Falk & Rabkin	\$775	\$495	\$485	\$275						
58	Hughes Hubbard & Reed	\$825	\$595	\$560	\$240						
59	Husch & Eppenberger	\$425	\$190	\$260	\$130	\$179	\$297	\$248	\$175	\$295	\$245
60	Jackson Lewis	\$575	\$235	\$450	\$210						
61	Jenner & Block LLP	\$900	\$450	\$425	\$275	\$327	\$562		\$325	\$525	
62	Jones, Walker, Waechter, Poitevent, Carrere & Denegre	\$600	\$210	\$225	\$150						
63	Kelley Drye & Warren	\$800	\$400	\$500	\$255						
64	Knobbe, Martens, Olson & Bear	\$645	\$340	\$420	\$215						
65	Lane Powell Moss & Miller	\$515	\$300	\$300	\$205	\$255	\$370	\$345	\$255	\$370	\$345
66	Lathrop & Gage	\$450	\$225	\$300	\$140	\$185	\$300	\$215	\$185	\$300	\$260
67	Leonard, Street and Deinard	\$500	\$300	\$300	\$185						
68	Lewis, Rice & Fingersh	\$425	\$240	\$295	\$130						
69	Lindquist & Vennum	\$500	\$260	\$260	\$165						
70	Locke, Lord, Bissell & Liddell	\$900	\$375	\$390	\$190	\$281	\$488	\$399	\$280	\$490	\$425
71	Loeb & Loeb	\$875	\$425	\$500	\$240	\$384	\$606	\$505	\$400	\$600	\$500
72	Lord, Bissell & Brook	\$690	\$335	\$410	\$200	\$299	\$473	\$410	\$300	\$475	\$415
73	Lowenstein Sandler	\$725	\$380	\$395	\$205						
74	Luce, Forward, Hamilton & Scripps	\$725	\$325	\$450	\$220	\$281	\$465	\$381	\$280	\$475	\$395
75	Manatt, Phelps & Phillips	\$785	\$520	\$480	\$265	\$395	\$600	\$518	\$415	\$590	\$550
76	Marshall, Dennehey, Warner, Coleman & Goggin	\$400	\$135	\$300	\$120						
77	McCarter & English LLP	\$650	\$325	\$395	\$205						
78	McElroy Deutsch, Mulvaney & Carpenter	\$450	\$295	\$225	\$135	\$180	\$250	\$195	\$165	\$235	\$215
79	McKee Nelson	\$920	\$635	\$595	\$375	\$446	\$760	\$489	\$455	\$755	\$475
80	Michael Best & Friedrich	\$550	\$225	\$300	\$185	\$234	\$363	\$321	\$235	\$350	\$325
81	Miles & Stockbridge	\$535	\$315	\$405	\$205	\$260	\$397				
82	Miller & Martin	\$580	\$230	\$295	\$160	\$201	\$338	\$306	\$195	\$340	\$320
83	Miller, Canfield, Paddock and Stone, PLC	\$595	\$265	\$340	\$160	\$225	\$400	\$285	\$220	\$400	\$335
84	Montgomery, McCracken, Walker & Rhoads	\$575	\$320	\$320	\$195	\$260	\$419	\$360			
85	Moore & Van Allen	\$765	\$265	\$330	\$175						
86	Morgan, Lewis & Bockius	\$850	\$375	\$575	\$200						
87	Morris, Manning & Martin	\$625	\$350	\$400	\$180	\$285	\$436	\$380	\$310	\$395	\$440
88	Nexsen Pruet Jacobs & Pollard	\$420	\$220	\$250	\$150						
89	Ogletree, Deakins, Nash, Smoak & Stewart	\$575	\$270	\$360	\$200	\$256	\$348	\$312			
90	Patton Boggs	\$920	\$320	\$520	\$205	\$375	\$536	\$456	\$385	\$525	\$455
91	Pepper Hamilton	\$750	\$335	\$425	\$200						
92	Perkins Coie	\$805	\$205	\$500	\$145						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
93											
94	Phelps Dunbar	\$450	\$170	\$205	\$130	\$174	\$243	\$184	\$175		
95	Phillips Lytle	\$435	\$245	\$300	\$140	\$205	\$309	\$223	\$205	\$300	\$215
96	Polsinelli Shalton Welte Suelthaus	\$600	\$250	\$250	\$175						
97	Quarles & Brady	\$575	\$260	\$335	\$185	\$233	\$377	\$319	\$235	\$375	\$325
98	Reed Smith	\$825	\$350	\$510	\$200	\$374	\$558	\$395	\$350	\$525	\$385
99	Robinson & Cole	\$575	\$340	\$325	\$200	\$295	\$424	\$328	\$280	\$420	\$330
100	Roetzel & Andress	\$460	\$210	\$275	\$110	\$198	\$302	\$264	\$200	\$300	\$260
101	Rutan & Tucker	\$600	\$335	\$350	\$210						
102	Saul Ewing	\$750	\$315	\$485	\$180	\$273	\$426	\$357	\$255	\$415	\$365
103	Schnader Harrison Segal & Lewis	\$750	\$240	\$385	\$175						
104	Schulte Roth & Zabel	\$850	\$650	\$585	\$235	\$435	\$724		\$440	\$745	
105	Sheppard, Mullin, Richter & Hampton	\$795	\$425	\$550	\$260						
106	Shughart Thomson & Kilroy	\$475	\$235	\$225	\$160						
107	Shumaker, Loop & Kendrick	\$465	\$200	\$360	\$180	\$221	\$311	\$289	\$220	\$305	\$300
108	Sills Cummis Epstein & Gross	\$650	\$350	\$375	\$195						
109	Smith, Gambrell & Russell	\$575	\$250	\$345	\$175						
110	Snell & Wilmer	\$675	\$275	\$390	\$170	\$248	\$390				
111	Steptoe & Johnson PLLC	\$325	\$200	\$250	\$170						
112	Stinson Morrison Hecker	\$600	\$230	\$250	\$175	\$207	\$333	\$295	\$225	\$365	\$285
113	Stoel Rives	\$500	\$275	\$350	\$160	\$231	\$379	\$324	\$230	\$375	\$330
114	Strasburger & Price	\$560	\$225	\$395	\$200	\$234	\$367	\$326	\$223	\$363	\$322
115	Sullivan & Worcester	\$700	\$415	\$420	\$245	\$309	\$550	\$438	\$290	\$540	\$440
116	Sutherland Asbill & Brennan	\$715	\$375	\$415	\$215	\$292	\$511	\$335	\$280	\$500	\$305
117	Thacher Proffitt & Wood	\$785	\$525	\$495	\$275	\$353	\$674	\$428	\$365	\$700	\$395
118	Thompson & Knight	\$730	\$370	\$370	\$205	\$295	\$496	\$415	\$310	\$485	\$400
119	Thompson Coburn	\$580	\$265	\$370	\$170						
120	Ulmer & Berne	\$470	\$240	\$290	\$165	\$212	\$343	\$280			
121	Vedder, Price, Kaufman & Kammholz	\$650	\$335	\$410	\$205	\$281	\$430	\$372	\$370	\$425	\$365
122	Wiggin and Dana	\$590	\$295	\$350	\$195						
123	Williams Mullen	\$600	\$300	\$425	\$205						
124	Wilmer Cutler Pickering Hale and Dorr	\$1,000	\$475	\$495	\$215						
125	Winstead Sechrest & Minick	\$620	\$345	\$360	\$180						
126	Winston & Strawn	\$845	\$400	\$590	\$200	\$365	\$608	\$455	\$395	\$640	\$523
127	Womble Carlyle Sandridge & Rice	\$575	\$290	\$370	\$195	\$268	\$426	\$355	\$265	\$425	\$360

EXHIBIT "3"

THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>

BUSINESS | LAW

Legal Fees Cross New Mark: \$1,500 an Hour

Billing rates for partners at elite corporate law firms keep rising, despite low inflation, weak demand



Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at the mounting hourly fees of law partners at elite corporate law firms. Above, the U.S. Bankruptcy Court in New York. *PHOTO: BRENDAN MCDERMID/REUTERS*

By **SARA RANDAZZO** and **JACQUELINE PALANK**

Updated Feb. 9, 2016 10:11 a.m. ET

The day of the \$1,500-an-hour lawyer has arrived.

Partners at some of the nation's top law firms are approaching—and, in a few cases, surpassing—that watershed billing rate, making the \$1,000-an-hour legal fees that once seemed so steep look quaint by comparison.

Despite low inflation and weak demand for legal services, rates at large corporate law firms have risen by 3% to 4% a year since the economic downturn, according to Citi Private Bank's Law Firm Group.

“We just raise them every year,” said John Altorelli, a finance lawyer at DLA Piper LLP in New York, who says the firm has set his rate at more than \$1,500 an hour. Mr. Altorelli, who filed for personal bankruptcy in 2014 to halt a legal battle with the estate of his former law firm, Dewey & LeBoeuf LLP, cracked the \$1,000-an-hour mark a decade ago. His fees have risen steadily ever since.

To soften the blow to clients, Mr. Altorelli does more than half his work on some kind of fixed-fee basis. “Using hourly rates is really anachronistic, but we still do it,” he said.

Raising rates ensures that law firms keep up with the competition and helps them wrest more money from clients, who routinely demand discounts for all but the most sensitive work.

“If you think of the rules of supply and demand, how in the world can they keep raising their rates?” said Jeff Carr, a former general counsel of oil-and-gas services and equipment company FMC Technologies who for years has been an outspoken opponent of hourly legal rates.

The rate creep has boosted law firms’ revenue at a time when many of them are under pressure from lower-cost legal-service providers and corporate clients that are keeping more legal work in-house. Revenue at law firms rose 4% last year, according to Wells Fargo Private Bank’s Legal Specialty Group, though demand rose just 0.5%.

“Lots of law firms will charge whatever the market can bear,” said the head of one of the nation’s 200 largest law firms.

Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at mounting fees. These court filings show the rates of partners specializing in corporate restructuring, as well as those with specialties like tax, litigation and corporate law.

A review of filings over the past three months in about two dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400.

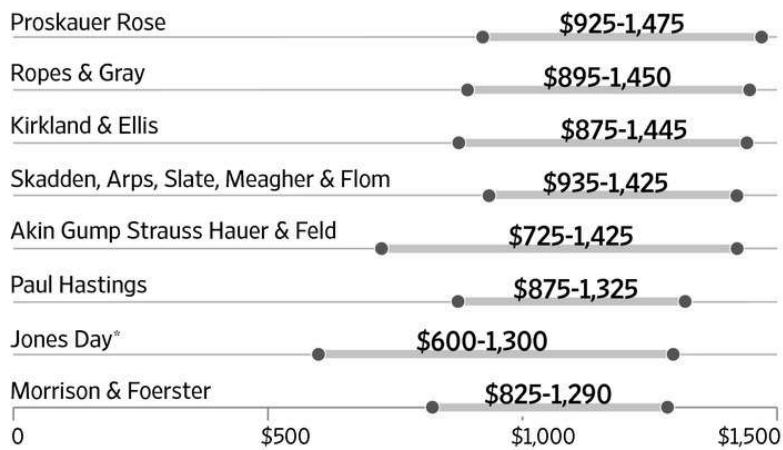
Proskauer Rose LLP’s hourly partner billing rate has climbed as high as \$1,475, while Ropes & Gray LLP’s tops out at \$1,450, court papers show.

Kirkland & Ellis LLP’s top hourly billing rate is now \$1,445. And rates at two firms—Akin Gump Strauss Hauer & Feld LLP and Skadden, Arps, Slate, Meagher & Flom LLP—peak at \$1,425 an hour.

Representatives of the law firms declined to comment.

Top Billers

Hourly rates of partners at top U.S. law firms now approach \$1,500.



*Includes partners and of counsel

Source: Bankruptcy court filings

THE WALL STREET JOURNAL.

Martin Bienenstock, who leads Proskauer's restructuring practice, called the \$1,225 an hour he billed clients last year "a market rate similar to my peers at other firms," and said he charges the same rate for nonbankruptcy work.

"The clients have kept coming back and growing during my 38-year career," he

said in an email, adding that clients generally prefer dealing directly with senior lawyers versus younger associates with lower rates.

In disclosing their firmwide rate increases, many firms tell the courts it is a standard way of keeping pace with "economic and other conditions." These include rising fixed costs, such as real estate and salaries.

In theory, a law-firm partner's pay rises and falls with the success of the firm. But, as competition for top talent increases, many firms feel the need to guarantee salaries or ensure a partner's pay doesn't fall, even in down years.

Still, only elite lawyers can charge \$1,400 an hour or more. Such rates are found almost exclusively in New York and other major markets, and only in the least price-sensitive fields like mergers and acquisitions, restructuring, tax, antitrust and high-stakes litigation and appeals.

For lawyers at the very top of those fields, hourly rates can hit \$1,800 or even \$1,950.

"You have a very few people at the very top where price is almost no object," said legal consultant Bruce MacEwen, who likens it to the way celebrities, sports stars and best-selling authors are paid. "It is a talent market."

Most lawyers in the U.S. fall well below those high marks. In a survey of in-house legal departments by BTI Consulting Group, the average highest rate paid for

law-firm partners was \$875 an hour in 2015, up more than 27% from three years earlier. Of the respondents, 38% had paid more than \$1,000 an hour for a lawyer, and the highest rate those in the survey paid was \$1,600 an hour.

For many firms, the stated rate is simply a starting point in discussions with corporate law departments. As a result, said legal consultant Ward Bower of Altman Weil, “sophisticated” law firms tend to implement annual rate increases to offset clients’ requests for discounts.

Such discounts are becoming more commonplace. A decade ago, law firms could typically get clients to pay around 92% of their stated rates, according to Thomson Reuters Peer Monitor. Last year, that fell to less than 83%.

Smaller companies can get squeezed the most on fees, because they don’t send enough work to any one law firm to get the best deals.

Companies with \$4 billion or more in annual revenue were twice as likely as those with less than \$100 million in revenue to use some form of alternative fee, according to a survey from industry trade group the Association of Corporate Counsel.

Some industry watchers view the raise-and-discount approach with skepticism.

“If clients are pushing back on rates, the answer isn’t to raise them” and then ask for a discount, Mr. MacEwen said. “The answer is to provide better total value.”

Write to Sara Randazzo at sara.randazzo@wsj.com and Jacqueline Palank at jacqueline.palank@wsj.com

EXHIBIT "4"

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $i_{\frac{1}{2}}$ Years Out of Law School $i_{\frac{1}{2}}$ is calculated from June 1 of each year, when most law students graduate. $i_{\frac{1}{2}}1-3$ " includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $i_{\frac{1}{2}}4-7$ " applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $i_{\frac{1}{2}}1-3$ " from June 1, 1996 until May 31, 1999, would move into tier $i_{\frac{1}{2}}4-7$ " on June 1, 1999, and tier $i_{\frac{1}{2}}8-10$ " on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT "5"



Purple Eagle Spas LLC adv. Mota Stevens, Gildardo

Gildardo Mota Stevens • [REDACTED] • [REDACTED]

Historic Cost

			\$18,570.13
Filing Fee			\$75.00
Created: 10/25/2021 at 3:31 PM			
Trialworks TaskCode filing fee	Date Incurred 10/25/2021	Payee LWDA	
Postage Cost			\$21.99
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Created: 10/25/2021 at 4:08 PM			\$1.20
Trialworks TaskCode Copies	Date Incurred 10/25/2021	Payee Papercut	
Filing Fee			\$1,567.41
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Trialworks TaskCode Filing Fee	Payee One Legal	Docs OLINV#03624619 PE 10.26.21.pdf ▼	
Date Incurred 10/26/2021	Description OLINV#03624619 PE 10.26.21		
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Trialworks TaskCode Copies	Date Incurred 10/27/2021	Payee Paper Cut	
Created: 10/29/2021 at 9:49 AM			\$1.50
Trialworks TaskCode Copies	Date Incurred 10/29/2021	Payee Paper Cut	

Postage Cost		\$1.59
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Date Incurred 10/29/2021	Description OLINV#03633778 PE 10.29.21	

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Date Incurred 1/3/2022	Description OLINV#03760335 PE 1.3.22	

Filing Fee		\$142.33
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Date Incurred 3/1/2022	Description OLINV#03893024 PE 3.1.22	

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Date Incurred 3/8/2022	Description Courtcall	

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Trialworks TaskCode filing fee	Payee One Legal	Docs  OLINV#03952944 PE 3.24.22.pdf ▾
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Filing Fee

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Created: 5/5/2022 at 7:56 AM

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Date Incurred 5/5/2022	Description F&SX INV#0695742401 Purple E paid 5.5.22	

Court Cost

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Created: 6/17/2022 at 9:55 AM

Trialworks TaskCode cost	Payee Courtcall	Notes HD: 6/13/22
Date Incurred 6/2/2022	Description Courtcall	

Filing Fee

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Created: 7/6/2022 at 12:31 PM

Trialworks TaskCode filing fee	Payee File & ServeXpress	Docs  F&SX INV#2022050695742401 Purple E... ▾
Date Incurred 6/2/2022	Description F&SX INV#2022050695742401 Purple Eagle paid 6.2.22	

Postage Cost

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Created: 7/6/2022 at 2:08 PM

Trialworks TaskCode Postage Cost	Date Incurred 7/6/2022	Payee DocuSign
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Mediation Cost

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Created: 11/7/2022 at 3:02 PM

Trialworks TaskCode costs	Payee Todd Smith, Esq.	Docs  Gilardo Mota Stevens et al. v. Purple Eagl... ▾
Date Incurred 11/7/2022	Description Gilardo Mota Stevens et al. v. Purple Eagle LLC. INVOICE paid 11.7.22	

Postage Cost

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Created: 1/4/2023 at 8:50 AM

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Research Cost

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Created: 1/27/2023 at 10:02 AM

Trialworks TaskCode
costs

Payee
Berger Consulting

Docs
 Stevens v Purple Eagle _ Berger Invoice 1... 

Date Incurred
1/26/2023

Description
Stevens v Purple Eagle _ Berger Invoice 1-25-2023 paid

Filing Fee

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Created: 2/23/2023 at 1:13 PM

Trialworks TaskCode
filing fee

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Date Incurred
2/9/2023

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Date Incurred
2/9/2023

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Research Cost

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costs

Payee
Desmond, Marcello & Amster, LLC

Docs
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Date Incurred
2/10/2023

Description
DM&A INV309117 1312023 Purple Eagle (Stevens v.) paid 2.10.23

Court Cost

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Created: 3/1/2023 at 1:11 PM

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Payee
File & ServeXpress

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Date Incurred
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Description
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filing fee

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One Legal

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Date Incurred
5/8/2023

Description
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Date Incurred

5/8/2023

Payee

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Description

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Filing Fee

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Trialworks TaskCode

filing fee

Date Incurred

6/9/2023

Payee

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Date Incurred

6/12/2023

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Trialworks TaskCode

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Date Incurred

6/22/2023

Payee

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Trialworks TaskCode

filing fee

Date Incurred

6/27/2023

Payee

One Legal

Description

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Docs

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Process Server Fee

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Created: 9/15/2023 at 1:42 PM

Trialworks TaskCode

Postage Cost

Date Incurred

9/15/2023

Payee

DocuSign

Notes

client dec ISO MFA

EXHIBIT "6"



**STATEMENT AND DISCLOSURE OF AGREEMENT FOR COST-SHARING
AND DIVISION OF ATTORNEYS' FEES**

This written Statement and Disclosure of Agreement for Cost-Sharing and Division of Attorneys' Fees ("Agreement") is by and between Kingsley & Kingsley, APC ("K&K") on the one hand and Abramson Labor Group ("Abramson"), on the other hand. It is made pursuant to California Rules of Professional Conduct, rule 1.5.1 (formerly rule 2-200), in the matter Gildardo Mota Stevens v. D. Beser Venture Capital LLC and/or related entities (the "Action"), to designate cost expenditure obligations and any attorneys' fees recovered from the settlement or trial or other disposition.

A. Costs

1. K&K will advance all costs of this Action.
2. If any money is recovered in the Action, such funds shall first be applied to repay K&K for all of costs advanced.

B. Attorneys' Fees

3. After full repayment to K&K for costs incurred, the remaining amount of money generated shall be divided as follows:
 - a. K&K is to receive 66 2/3% of the fee; and
 - b. Abramson is to receive 33 1/3% of the fee.

C. Miscellaneous

4. The total amount of attorneys' fees recovered, if any, shall not be increased by reason of this Agreement.
5. In the event of a dispute between the law firms to this Agreement, the Parties agree to first mediate their differences with the assistance of a neutral mediator, and if unsuccessful, submit the dispute to a mutually agreeable arbitrator in binding arbitration.
6. Any modifications to this Agreement shall be in writing.
7. A signature by facsimile, email, and/or a copy of a signature is deemed valid, binding, and enforceable. This Agreement may be executed in counterparts, and when each party

Statement and Disclosure of Agreement for
Cost-Sharing and Division of Attorneys’ Fees
October 13, 2021
Page 2 of 2

has signed and delivered at least one such counterpart, each counterpart shall be deemed as an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

ACCEPTED AND AGREED

DATED: October 13, 2021

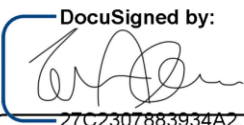
KINGSLEY & KINGSLEY, APC

By: 
ERIC B. KINGSLEY

ACCEPTED AND AGREED

DATED: October 13, 2021

ABRAMSON LABOR GROUP

By: 
ZEV ABRAMSON

CLIENT CONSENT

DATED: October 13, 2021

CLIENT: GILDARDO MOTA STEVENS

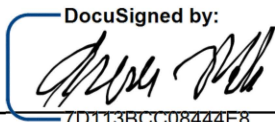

Signature

EXHIBIT "7"

(Proof of Submission to LWDA)

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On September 27, 2023, I served all interested parties in this action the following documents described as: **DECLARATION OF LIANE KATZENSTEIN LY IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT and MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ann K. Smith
Sarkis A. Atoyan
**ATKINSON, ANDELSON,
LOYA, RUUD & ROMO**
12800 Center Court Driver South, Suite 300
Cerritos, CA 90703-9364
Sarkis.atoyan@aalrr.com
asmith@aalrr.com

ABRAMSON LABOR GROUP
William Zev Abramson
wza@abramsonlabor.com
11846 Ventura Blvd., Suite 100
Studio City, CA 91604

[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 27, 2023, at Encino, California.



Michelle Tanzer