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Attorneys for Plaintiff and all aggrieved employees

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JEMALYNE BUNO, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

POPULUS GROUP, LLC; and DOES 1 thru
50, inclusive,

DEFENDANTS.

Case No. CIVSB2133954

[Case Assigned for All Purposes to Hon. David
Cohn in Dept. S-26]

**DECLARATION OF LIANE
KATZENSTEIN LY IN SUPPORT OF
MOTION FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Approval of Representative Action Settlement;
Declaration of Jodey Lawrence of Phoenix
Settlement Administrators In Support of
Plaintiff's Motion for Approval of
Representative Action Settlement; [Proposed]
Order, and [Proposed] Final Judgment]*

Date: May 12, 2023

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: December 21, 2021

Trial Date: None Set

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I, Liane Katzenstein Ly, declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following am an attorney licensed to practice before all of the courts of the State of California.

2. I make this declaration in support of Plaintiff's Motion for Approval of Representative Action in the above-captioned case.

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 PAGA Settlement Agreement (“Agreement”). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “1”.

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5. On October 13, 2021, and in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice to Defendant and the Labor and Workforce Development Agency (“LWDA”) regarding her intent to seek civil penalties under PAGA for violation of Labor Code § 432.5.

6. Pursuant to Labor Code § 2699.3(a)(2)(A), the sixty-five-day waiting period to commence a civil action as though the LWDA has chosen not to investigate lapsed on December 17, 2021, allowing Plaintiff to file her representative action complaint. As such, Plaintiff filed her Complaint on December 21, 2021, seeking penalties pursuant to PAGA for Defendant's alleged violation of Labor Code § 432.5. (Hereafter, the "Action").

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17. Defendant will pay the total sum of \$312,500.00 in full and final settlement of the
PAGA claims.

18. Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount:	\$312,500.00
PAGA Counsel Fees Payment (1/3):	\$104,166.67
PAGA Counsel Litigation Expenses	\$9,000.00
Payment:	
Administrator Expenses Payment:	\$12,500.00
Named Plaintiff Service Payment:	\$5,000.00
PAGA Penalties:	\$181,833.33
	<i>(\$136,374.99 to the LWDA; \$45,458.33 to Aggrieved Employees)</i>

RISKS AND EVALUATION OF THE SETTLEMENT

19. Each aggrieved employee shall receive a pro-rata portion of employees' share of
PAGA penalties based on the number of times the Aggrieved Employees signed the Employment
Agreement and who worked for Defendant during the PAGA Period.

20. The PAGA Period means the period from October 13, 2020 through the Effective
Date.

21. To help the Court evaluate the fairness of the Settlement, a discussion of the risk
evaluation and discount taken follows.

22. .) Plaintiff believed that Defendant may persuasively argue that the Court should
exercise its discretion under PAGA to significantly reduce any penalties.

23. Defendant requires, as a condition of employment, that Plaintiff and other aggrieved
employees sign an "Employment Agreement" which includes numerous terms that are Plaintiff
alleges are prohibited by law.

24. Given that the employees sign this Employment Agreement at the beginning of their
employment, each employee likely only has one pay period with a violation.

25. PAGA Counsel anticipated that, at trial, Counsel for Defendant would argue: 1) that
its agreement was not in fact unlawful and maintained in compliance with California law; 2) until
this Action was filed, no employees had complaint about any alleged unlawful employment
agreements; and 3) none of Defendant's employees suffered any harm from or actual damages as a
result of the conduct that forms for the basis for Plaintiff's allegations.

26. If the Court determined that this was the policy, Defendant could argue that it had adopted legally compliant agreements as a condition of employment in which no employees suffered any harm.

27. While Plaintiff disagrees that this analysis is legally correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court were persuaded by them.

28. The agreement also includes an arbitration provision.

29. Plaintiff believed the arbitration provision was unconscionable, but the existence of the arbitration provision also created a substantial risk that had to be considered.

30. In light of all these significant risks and the fact that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement Amount of \$312,500.00 was fair and reasonable.

ATTORNEY COMPETENCE

31. Kingsley & Kingsley is extremely experienced in prosecuting employment litigation, and since 2000 we have focused our practice on complex wage, hour, and working condition violations. My firm is very well versed in class action litigation and has diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as PAGA Counsel for several dozens of pending class action lawsuits in Northern, Central, Eastern, and Southern California in both State and Federal Court. Below is a small, but representative sampling of wage and hour cases handled by my firm:

- a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006,

- 1 the Honorable Conrad R. Aragon granted final approval of Settlement in the gross
2 amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- 3 d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March
4 2008, the Honorable Mary Thornton House granted final approval of Settlement
5 in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request
6 of 33 1/3%.
- 7 e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September
8 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the
9 gross amount of \$2,000,000.00, and the court granted attorneys' fees request of
10 33.3%.
- 11 f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In
12 March 2012, the Honorable James P. Kleinberg granted final approval of
13 Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys'
14 fees request of 33.3%.
- 15 g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No.
16 BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund
17 granted final approval of Settlement in the gross amount of \$4,700,000.00, and the
18 court granted attorneys' fees request of 38%.
- 19 h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January
20 2014, the Honorable William F. Highberger granted final approval of Settlement
21 in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request
22 of 33.33%.
- 23 i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-
24 00705 AWI/LT). This certified class action was approved for final settlement by
25 the Honorable Anthony W. Ishii in October 2015, in the gross amount of
26 \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.
- 27 j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super.
28 Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement

1 in the gross amount of \$995,000.00, and the court granted attorney's fees request
2 of 33.33%.

3 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March
4 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
5 Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's
6 fees.

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

11 m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter
12 was proposed for final settlement by the Honorable Richard L. Fruin on February
13 19, 2016, in the gross amount of \$5,250,000.

14 n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739).
15 The matter was approved for final settlement by the Honorable Lee Smally
16 Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees
17 request of 38%.

18 o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for
19 the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The
20 matter was approved for final settlement by the Honorable Anthony W. Ishii in
21 November 2017, in the gross amount of \$6,100,000.00, plus interest, with
22 attorney's fees benchmark award of \$1,525,000.

23 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
24 15-101333). The matter was approved for final settlement before the Hon. Stephen
25 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with
26 attorneys' fees request of 33.33%.

27 32. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000
28 and since that time has been appointed PAGA Counsel on dozens of wage and hour class actions

1 that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved
2 for class certification in 17 matters and has successfully obtained class certification in 15 of those
3 cases. A brief sampling of which includes:

- 4 a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927),*
5 *approved for Class Certification in 2011.*
- 6 b. *Melendrez v. JK Communications, No. BC497692, (L.A. Super. Ct., filed*
7 *December 19, 2012) (court granted contested class certification and appointed*
8 *Kingsley & Kingsley as PAGA Counsel).*
- 9 c. *Amaro, et al v. Gerawan Farming, Inc., No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,*
10 *filed February 3, 2014) (court granted contested class certification and appointed*
11 *Kingsley & Kingsley as PAGA Counsel).*
- 12 d. *Suarez v. Mazatlan, Inc., No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,*
13 *filed January 27, 2015) (court granted contested class certification and appointed*
14 *Kingsley & Kingsley as PAGA Counsel).*
- 15 e. *Ruiz v. Daniel C. Salas Harvesting, Inc., Kings County Superior Court (16 C*
16 *0214). contested class certification granted in June 2020.*
- 17 f. *Weldon v. Geo Corrections & Detentions, LLC, Kern County Superior Court*
18 *(BCV-16-102833), contested class certification granted in 2018.*
- 19 g. *Patton v. Skyler Electric, Nevada County Superior Court, (CU17-082544),*
20 *contested class certification granted in June 2020.*
- 21 h. *Hameister v. Jaco Oil Company, Kern County Superior Court (BCV-17-102876),*
22 *contested class certification granted in August 2020*

23 33. After factoring in the risks explained above, I believe that the proposed settlement
24 is fair and reasonable. I am not aware of any other pending matter or action asserting claims that
25 will be extinguished or adversely affected by this Settlement.

26 **REQUESTS FOR ATTORNEYS' FEES AND COSTS**

27 34. As detailed fully in the Agreement, the Settlement provides for Defendant to create
28 a Gross Settlement Amount of \$312,500.00. From that fund, Plaintiff requests an award of

attorneys' fees for PAGA Counsel in the amount of \$104,166.67, or 33.33% of the Gross Settlement Amount, and \$9,000.00 in reimbursement for litigation costs.

35. In addition to the complexity of this case, PAGA Counsel has borne the entire risk and costs of this litigation during the entire time that it has been pending, all on a pure contingency basis. Through the investment of substantial effort and resources, PAGA Counsel has secured an outstanding Settlement of behalf of the Aggrieved Employees. Defendant vigorously contested liability, the amount of claimed damages, and the propriety of class certification. It is this kind of situation, involving complex issues, that has been recognized as justifying a substantial attorney fee award.

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

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

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

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

10 39. When PAGA Counsel's motions for class certification are denied, PAGA 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 PAGA Counsel is unsuccessful (*Prosad v. Del Taco Restaurant*
14 *Services, Inc.*, No. B238605 (CA. Ct. App. 2012)).

15 40. 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 Appeal,
17 the Ninth Circuit, the Seventh Circuit, and the United States Supreme Court. Our firm specifically
18 has taken and lost some issues on appeal that required the write-off of significant legal fees. Also,
19 our firm has been successful on appeal and overturned unfavorable lower court rulings or
20 successfully fought to have successful rulings affirmed. Below is just a sample of some of these
21 appeals:

- 22 a. *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 b. *Budrow v. Dave & Buster's of California, Inc.*, 171 Cal. App. 4th 875 (2009)
25 (lower court ruling in employer's favor that certain employees can share in
26 mandatory tip pool affirmed);
- 27 c. *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 d. *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 e. *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 f. *Schaefer-LaRose v. Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) (lower court
- 8 ruling that pharmaceutical sales representatives are exempt employees affirmed);
- 9 g. *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 h. *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 i. *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 j. *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 k. *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 l. *Kane v. Valley Slurry Seal Company*, Case No. C079558, Cal. Ct. App. May 8,
- 26 2018) (affirming judgement for employees after bench trial);
- 27 m. *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.

41. 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.

42. While plaintiff's 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.

PAGA COUNSEL'S HOURS AND HOURLY RATES ARE REASONABLE

43. Here, a lodestar cross-check confirms that the percentage requested is reasonable. PAGA Counsel's aggregate lodestar amounts to \$60,785.00 (with future hours)¹, which represents about 80 hours of attorney work on this litigation incurred from its inception through the filing of Plaintiffs' Motion for Final Approval.

44. As such, PAGA Counsel is asking for a multiplier of 1.71.

45. The amount of time spent on this case (80 hours), which culminated in a very favorable proposed Settlement for the Aggrieved Employees, 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.

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

¹ Class Counsel will certainly continue to spend time working on this matter for tasks such as preparing for and attending the final approval hearing, overseeing the administration process, and communicating with Class Members. Therefore, Plaintiffs' Counsel are not requesting approval of ten future hours.

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

2 48. PAGA 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 49. Mr. Kingsley is a 24-year attorney with expertise in wage and hour class action
5 lawsuits.

6 50. 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 51. He is also a prolific speaker at various seminars on employment law and has
10 contributed to legal publications on employment topics.

11 52. 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 53. My office billed for the following six attorneys for work performed on this case:
16 Eric Kingsley, Jessica Bulaon, and me.

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

21 55. Jessica Bulaon is an Associate Attorney at Kingsley & Kingsley, APC. She is billed
22 at \$415 per hour. Ms. Bulaon obtained her Bachelor of Arts from UCLA and her juris doctor from
23 UCLA School of Law in 2021.

24 56. An article in the Wall Street Journal on February 9, 2016 titled *Legal Hours Cross*
25 *New Mark: \$1,500 an Hour* states that “a review of filings over the past three months in about two
26 dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an
27 hour, with top rates at several large law firms exceeding \$1,400.” The article also explains that
28 “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.

57. PAGA Counsel’s charged rates are commensurate with the prevailing market rates in Los Angeles County for attorneys of comparable experience and skill handling complex litigation.

58. Furthermore, PAGA 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.²

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

60. Finally, PAGA Counsel’s rates are in line with the 2022-2023 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 \$997, a reasonable rate for an attorney with 12 years of experience, such as myself, is \$829, a reasonable rate for an attorney with 2 or less years of experience, such as Ms. Bulaon is \$413. A true and correct copy of the 2022-2023 Adjusted Laffey Matrix is attached hereto as Exhibit 4.

61. 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	16.20	\$990.00	\$16,038.00
Liane Katzenstein Ly	60.90 ³	\$715.00	\$43,543.50

² 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].)

³ PAGA Counsel’s current hours are 50.90. However, PAGA Counsel also anticipates an additional ten hours of future time through the hearing and the administration process. As such, PAGA Counsel is reporting a total of 60.90 hours.

Jessica Bulaon	2.90	\$415.00	\$1,203.50
KINGSLEY TOTAL ATTORNEYS' FEES	80.0		\$60,785.00

66. Kingsley & Kingsley, APC has spent significant time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. intake and interviewing Plaintiffs 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. drafting pleadings (Complaints, Motion for Preliminary Approval, various documents related to Preliminary Approval, etc.);
- i. researching private right of action and various impact on class actions;
- j. interviewing and obtaining declarations from Aggrieved Employees;
- k. preparing for and attending mediation;
- 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 Agreement;
- p. drafting and editing all documents for Settlement 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.

62. Based on the aggregate lodestar, PAGA Counsel is requesting a multiplier of 1.71

1 **FACTORS THAT SUPPORT THE APPROVAL OF A MULTIPLIER**

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

5 64. As discussed above, PAGA Counsel are skilled wage and hour practitioners with
6 decades of experience who diligently prepared and litigated this matter as discussed.

7 65. To achieve the ultimate result in this case, PAGA Counsel had to incur substantial
8 risk and expense, and were precluded from taking other fee generating employment for about 80
9 hours of attorney time.

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

14 67. PAGA Counsel believe this is an exceptional result that has been well received by
15 Class Members.

16 68. PAGA Counsel also anticipates an additional ten hours of future time through the
17 hearing and the administration process.

18 69. As such, PAGA Counsel is asking for a lodestar multiplier of 1.71.

19 70. This case dealt with difficult legal and factual questions. Significantly, the risk
20 attendant to the underlying claims in this matter was great considering Defendant's defenses as
21 discussed in detail above. Were this case to proceed, Defendant would have a strong incentive to
22 litigate tenaciously. There are genuine issues in dispute.

23 71. Furthermore, PAGA Counsel was able to obtain close to the full value for this case.

24 72. As discussed above and in the Motion, PAGA Counsel are skilled wage and hour
25 practitioners with decades of experience who diligently prepared and litigated this matter.

26 73. To achieve the ultimate result in this case, my firm had to incur substantial risk and
27 expense, and were precluded from taking other fee generating employment for about 80 hours of
28 attorney time.

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

5 75. PAGA Counsel believe this is an exceptional result that has been well received by
6 the Aggrieved Employees.

7 76. In addition to their request for fees, PAGA Counsel further request reimbursement
8 of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this
9 litigation, in the amount of \$7,488.96.

10 77. To date, Kingsley and Kingsley has incurred \$6,888.96 in costs.

11 78. PAGA Counsel anticipates incurring an additional \$600.00 in costs to file and serve
12 this motion.

13 79. As such, counsel is requesting a cost reimbursement of \$7,488.96.

14 80. All of the requested costs are reasonable in amount and were necessarily incurred
15 by PAGA Counsel in prosecuting this litigation.

16 81. Expenses in this matter to date include costs for filing fees, research, mediation, and
17 additional costs for the prosecution of this case evidenced in the costs spreadsheet attached to the
18 Declaration of Liane Katzenstein Ly. All of these costs have been incurred in the course of this
19 litigation, and all costs advanced have already been paid by PAGA Counsel, with the exception of
20 the anticipated cost of filing the present motion.

21 82. Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses
22 advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court
23 should approve the request for reimbursement in the amount of \$7,488.96.

24 **ENHANCEMENT TO PLAINTIFF**

25 83. The Settlement Agreement calls for a service payment of \$5,000.00 to the named
26 Plaintiff, to be paid from the Gross Settlement Amount.

27 84. The time spent by Jemalyne Buno includes identifying competent counsel,
28 providing information to PAGA Counsel regarding their relevant employment experience,

1 compiling documents, conducting several meetings and conferences with PAGA Counsel to discuss
2 the status of the case and the theories of liability, attending an all day mediation, and reviewing
3 settlement documents.

4 85. PAGA Counsel considers this to be a fair and reasonable enhancement.

5 86. The enhancement takes into consideration the time, effort, risks, and expense
6 incurred by Plaintiff in coming forward to litigate this matter on behalf of all Aggrieved Employees.
7 Accordingly, Plaintiff should be awarded the agreed-upon enhancement of \$5,000.00.

8 **EXHIBITS**

9 87. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed
10 PAGA Settlement Agreement.

11 88. Attached hereto as Exhibit "2" is a true and correct copy of Plaintiff's November
12 21, 2014 notice letter to the LWDA giving notice of his intent to pursue penalties pursuant to Labor
13 Code §2699, et seq. for violations of Labor Code §226(a) to the Labor Workforce Development
14 Agency ("LWDA") and Defendant as required by Labor Code §2699.3(a)(1).

15 89. Attached hereto as Exhibit "3" is a true and correct copy of the proof of submission
16 to the LWDA.

17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct.

20 This declaration was executed this 17th day of April, 2023, in Los Angeles, California.

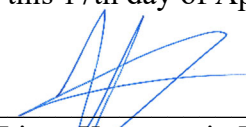
21
22 
23 _____
24 Liane Katzenstein Ly
25
26
27
28

EXHIBIT "1"

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“**Agreement**”) is made by and between plaintiff Jemalyne Buno (“**Plaintiff**”) and defendant Populus Group, LLC, a Michigan limited liability company (“**Populus Group**”). The Agreement refers to Plaintiff and Populus Group collectively as “Parties,” or individually as “Party.” The foregoing Definitions and Recitals below form a material part of the Agreement.

1. DEFINITIONS.

- 1.1. “**Action**” means the Plaintiff’s PAGA lawsuit alleging penalties pursuant to Labor Code § 2699, et seq. for purported violation of Labor Code § 432.5 against Populus Group initiated on December 31, 2021, and pending in Superior Court of the State of California, County of San Bernardino, Case No. CIVSB2133954.
- 1.2. “**Administrator**” means Phoenix Consulting, 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 approval of this Settlement.
- 1.4. “**Aggrieved Employee**” means a person employed by Populus Group in California who signed the Employment Agreement (defined below) and who worked for Populus Group during the PAGA Period.
- 1.5. “**Aggrieved Employee Data**” means Aggrieved Employee identifying information in Populus Group’s possession including the Aggrieved Employee’s name, last-known mailing address, and Social Security number.
- 1.6. “**Aggrieved Employee Address Search**” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “**Approval Order**” means the Court order approving the PAGA Settlement.
- 1.8. “**Court**” means the Superior Court of California, County of San Bernardino.
- 1.9. “**Defense Counsel**” means Denis S. Kenny and John B. Lough, Jr., of Scherer Smith & Kenny LLP.
- 1.10. “**Effective Date**” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Approval Order and (b) the Judgment is final. The

Judgment is final as of the day the Court enters Judgment.

- 1.11. “**Employment Agreement**” means the employment agreement that is the subject of the Action.
- 1.12. “**Enhancement Award**” means payment to Plaintiff for Plaintiff’s service to the Action, which is in addition to whatever payment Plaintiff otherwise is entitled to (1) as an Aggrieved Employee and (2) pursuant to the individual settlement agreement provided for in Section 5.2. The Enhancement Award is subject to approval of the Court.
- 1.13. “**Gross Settlement Amount**” means Three Hundred Twelve Thousand Five Hundred and 00 Cents (\$312,500.00) which is the total amount Populus Group agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.
- 1.14. “**Individual PAGA Payment**” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of times the Aggrieved Employee signed the Employment Agreement and who worked for Populus Group during the PAGA Period; the Parties anticipate the number of times is equal to one (1).
- 1.15. “**Judgment**” means the judgment entered by the Court based upon the Final Approval.
- 1.16. “**LWDA**” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.17. “**LWDA PAGA Payment**” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.18. “**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, Enhancement Award, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.19. “**PAGA Counsel**” means Eric B. Kingsley, Liane Katzenstein Ly, and Jessica Bulan of Kingsley & Kingsley, APC, the attorneys representing the Plaintiff in the Action.
- 1.20. “**PAGA Counsel Fees Payment**” and “**PAGA Counsel Litigation Expenses Payment**” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.21. “**PAGA Period**” means the period from October 13, 2020, through the Effective Date.

- 1.22. “**PAGA**” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.23. “**PAGA Notice**” means Plaintiff’s October 13, 2021 letter to Populus Group and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.24. “**PAGA Penalties**” means the Net Settlement Amount, allocated 25% to the Aggrieved Employees (\$45,458.33) and 75% to LWDA (\$136,374.99) in settlement of PAGA claims.
- 1.25. “**Plaintiff**” means Jemalyne Buno, the named plaintiff in the Action.
- 1.26. “**Populus Group**” means Defendant Populus Group, LLC, a Michigan limited liability company.
- 1.27. “**Released PAGA Claims**” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.28. “**Released Parties**” means: Populus Group and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates, joint employers, joint obligors, and Populus Group’s clients, including without limitation, ConvergeOne.
- 1.29. “**Settlement**” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1. On December 31, 2021, Plaintiff commenced this Action by filing a complaint alleging penalties pursuant to Labor Code § 2699, et seq. for purported violation(s) of Labor Code § 432.5 against Populus Group. (“**Complaint**”). The Complaint is the operative complaint in the Action (“**Operative Complaint**”).
- 2.2. Populus Group denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the cause(s) of action alleged.
- 2.3. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Populus Group and the LWDA by sending the PAGA Notice.
- 2.4. On October 12, 2022, the Parties participated in an all-day mediation presided over by Alan Berkowitz, Esq., of Judicate West. While the Parties did not reach a mediated settlement at the close of the mediation, the Parties continued to engage in settlement efforts, and they reached a settlement, which is memorialized in the Agreement.

2.5. Prior to the mediation, Plaintiff served a Set of Specially Prepared Interrogatories and a Set of Requests for Production of Documents to Defendant on March 8, 2022. This discovery sought the identity of the aggrieved employees, time and pay records for the aggrieved employees (including all applicable wage statements at issue), and the applicable wage and hour policies and procedures. Defendant responded to Plaintiff's First Set of Discovery on May 13, 2022. Defendant served a Set of Specially Prepared Interrogatories to Plaintiff on April 8, 2022. Plaintiff responded to Defendant's First Set of Discovery on May 25, 2022.

2.6. The Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Populus Group promises to pay Three Hundred Twelve Thousand Five Hundred and 00 Cents (\$312,500.00) and no more as the Gross Settlement Amount. Populus Group has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Populus Group.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 1/3 which is currently estimated to be \$104,166.67 and PAGA Counsel Litigation Expenses Payment of not more than \$9,000.00. Populus Group will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Populus Group harmless, and indemnifies Populus Group, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed

\$12,500.00 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 \$12,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$181,833.33 to be paid from the Net Settlement Amount, with 75% (\$136,374.99) allocated to the LWDA PAGA Payment and 25% (\$45,458.33) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$45,458.33) by the total number of Aggrieved Employees. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. 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.

3.2.4. Enhancement Award: PAGA Counsel shall be entitled to apply for an Enhancement Award to Plaintiff in an amount not to exceed \$5,000.00 to be paid to Plaintiff for Plaintiff's time and effort spent pursuing the Action. Defendant and Plaintiff agree not to oppose such an application, so long as it is reasonable and is consistent with the provisions of this Agreement.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee. Based on a review of its records to date, Populus Group estimates there are 3,229 Aggrieved Employees, that is, current or former California employees who signed the Employment Agreement and who worked for Populus Group during the PAGA Period.

4.2. Aggrieved Employee Data. Within thirty (30) days of the Effective Date, Populus Group will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Populus Group has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Populus Group must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use

best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Populus Group shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than one hundred twenty (120) days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Populus Group funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

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

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Populus Group to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Populus Group fully funds the entire Gross Settlement Amount, Plaintiff and the Aggrieved Employees will release claims against all Released Parties as follows:

5.1 Release by Plaintiff and the Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

5.2 Release by Plaintiff of Claims Separate from Claims in paragraph 5.1: Plaintiff has been represented by counsel separate from PAGA Counsel—Benjamin Smith, Esq., of The Smith Law Corporation—relating to Plaintiff's claims separate from the claims in paragraph 5.1 (“**Purported Individual Claims**”). The Parties have resolved the Purported Individual Claims, and such resolution is memorialized in a separate agreement.

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

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Approval Order; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement and this Agreement.

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

Within ten (10) days of the Effective Date, PAGA Counsel is responsible for delivering

the Approval Order to the Administrator, including instructions on how PAGA Counsel Fees Payment shall be paid.

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

7. SETTLEMENT ADMINISTRATION.

- 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Consulting to serve as the Administrator and verified that, as a condition of appointment, Phoenix Consulting agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("**QSF**") under US Treasury Regulation section 468B-1.
- 7.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. 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.

- 8.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties by and through their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment,

motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

9. ADDITIONAL PROVISIONS.

- 9.1. No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Populus Group that any of the allegations in the Operative Complaint have merit or that Populus Group has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Populus Group's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Populus Group reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Populus Group'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).
- 9.2. 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.
- 9.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Populus Group, respectively, to take all appropriate action(s) 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.
- 9.4. 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 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.
- 9.5. 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 any portion of any liability, claim, demand,

action, cause of action, or right released and discharged by the Party in this Settlement.

- 9.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Populus Group, 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.
- 9.7. 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.
- 9.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 9.9. 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.
- 9.10. 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.
- 9.11. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 9.12. 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.
- 9.13. 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.
- 9.14. 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
Jessica Bulan
16133 Ventura Blvd., Suite 1200

Encino, CA 91436
 Phone: (818) 990-8300
 Email: eric@kingsleykingsley.com
 Email: liane@kingsleykingsley.com
 Email: jessi@kingsleykingsley.com

To Populus Group:

SCHERER SMITH & KENNY LLP
 Denis S. Kenny
 John B. Lough, Jr.
 140 Geary Street, Seventh Floor
 San Francisco, CA 94108
 Phone: (415) 433-1099
 Email: denis@sfcounsel.com
 Email: john@sfcounsel.com

9.15. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the parties, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

9.16. 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.

10. ESTIMATED TIMELINE

Event	Timing
Date by when both of the following have occurred: (a) the Court enters a Judgment on its Approval Order and (b) the Judgment is final.	Effective Date
PAGA Counsel to deliver the Approval Order to the Administrator, including instructions on how PAGA Counsel Fees Payment shall be paid.	Within 10 calendar days after the Effective Date (§ 6.2).
Populus Group will deliver the Aggrieved Employee Data to the Administrator.	Within 30 calendar days of the Effective Date (§ 4.2).

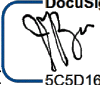
Event	Timing
Populus Group funds the Gross Settlement Amount (" Funded Event ").	No later than 120 calendar days after the Effective Date (§ 4.3).
Administrator will mail checks for (1) all Individual PAGA Payments, (2) the LWDA PAGA Payment, (3) the Administration Expenses Payment, and the PAGA Counsel Expenses Payment (" Mailing ").	Within 14 calendar days after Funded Event (§ 4.4).
Any funds from the uncashed checks after the void date will be transmitted by the Administrator to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.	Within 180 calendar days of the Mailing (see §§ 4.4.1–4.4.3).

Signatures on Next Page

11. EXECUTION BY PARTIES

The Parties and their counsel hereby execute this Agreement.

Dated: March 22, 2023

DocuSigned by:

5C5D16BC6132465...
Plaintiff Jemayne Bruno

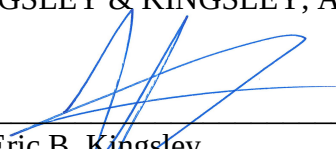
Defendant Populus Group, LLC, a Michigan
limited liability company

Dated: 3/23/2023

DocuSigned by:
Tara O'Connor
3586E4E224DE4E4...
By: _____
Tara O'Connor, General Counsel

KINGSLEY & KINGSLEY, APC

Dated: March 23, 2023

By: 
Eric B. Kingsley
Liane Katzenstein Ly
Attorneys for Plaintiff and the Aggrieved
Employees

SCHERER SMITH & KENNY LLP

Dated: 3/23/2023

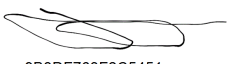
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By: _____
Denis S. Kenny
John B. Lough, Jr.
Attorneys for Defendant Populus Group,
LLC, a Michigan limited liability
company

EXHIBIT "2"

KINGSLEY & KINGSLEY

| L A W Y E R S |

October 13, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Populus Group, LLC
3001 West Big Beaver Road, Suite 400
Troy, MI 48084
Certified Mailing No.: 7018 1130 0001 5815 3554

Populus Group, LLC
c/o Agent for Service of Process
Corporation Service Company Which Will Do
Business in California As CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833
Certified Mailing No.: 7018 1130 0001 5815 3561

Re: Jemalyne Buno v. Populus Group, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Jemalyne Buno (“Plaintiff”) and a proposed group of current and former employees working for POPULUS GROUP, LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All employees who are employed or have been employed by POPULUS GROUP, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

October 13, 2021

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law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has violated Labor Code § 432.5. Labor Code § 432.5 provides that no employer shall require any employee to agree, in writing, to any term or condition which is known by the employer to be prohibited by law. Here, Defendant requires, as a condition of employment, that Plaintiff and other aggrieved employees sign an “Employment Agreement” which includes numerous terms that are prohibited by law, including but not limited to the following:

- a. employees agree to indemnify Populus Group for any and all claims, matters, suit or other liabilities that arise directly or indirectly as a result of an employee’s breach of the *Information Security Matters* section of the addendum.
- b. employees agree to indemnify and save harmless Populus Group from any and all liability, loss, damage, or expense which may be caused by an employee’s negligence or failure to perform duty under the terms of the agreement.
- c. employees agree to provide a minimum fourteen (14) day notice should an employee decide to terminate position with Populus Group.
- d. employees agree that should Populus Group take legal action as a result of non-payment of owed wages, employees are responsible for attorney’s fees and costs that Populus Group may incur in recovering such payment as compensation for Populus Group’s efforts and costs incurred in connection with an employee’s employment.
- e. employees agree to look solely to Populus Group for all employee benefits and worker’s compensation benefits and waive any right to make claims or bring a lawsuit for damages based upon injuries which are covered under such Workers’ Compensation statutes.
- f. employees agree to waive any and all rights to claim or assert a claim, suit, action or demand of any kind, nature or description, including without limitation, claims, suits, actions or demands for personal injury or death whether arising in tort, contract or otherwise.
- g. employees agree to file any discrimination suit within 180 days and agree to waive their right to file a claim if the 180-day time limit is not met. Employees further agree the filing of a charge with an administrative agency or a complaint internally does not toll or extend the 180 day period for filing an action and that the continuing violations doctrine cannot be applied to extend the 180 day filing period.

Provisions of Defendant’s Employment Agreement, as described above, that Plaintiff and all aggrieved employees were required to sign as a condition of employment, explicitly violate several provisions of California law and public policy. As such, Plaintiff is an aggrieved employee and Defendant has violated Labor Code § 432.5 with respect to Plaintiff and all aggrieved employees.

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We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code § 432.5 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

LKL/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Smith Law, 4515 Van Nuys Blvd #302, Sherman Oaks, CA 91403 via Electronic Mail Transmission: benjy@thesmithlawcorp.com; diana@thesmithlawcorp.com

(Proof of Submission to the LWDA)

EXHIBIT "3"

(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 April 17, 2023, I served all interested parties in this action the following documents described as: **DECLARATION OF LIANE KATZENSTEIN LY IN SUPPORT OF MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SCHERER SMITH & KENNY LLP

Denis S. Kenny
denis@sfcounsel.com
Ryan W. Stahl
rws@sfcounsel.com
John B. Lough, Jr.
john@sfcounsel.com
140 Geary Street, Seventh Floor
San Francisco, CA 94108

[] (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 April 17, 2023, at Encino California.



Michelle Tanzer