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 individually and on behalf of similarly situated employees

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

BARBARA LEAR, individually and on behalf
 of all other similarly situated employees,

Plaintiff,

vs.

RAXIUM, INC., a Delaware Corporation; and
 DOES 1 to 100, inclusive,

Defendants.

Case No. 21CV004358

ASSIGNED FOR ALL PURPOSES TO:
 JUDGE EVELIO GRILLO
 DEPARTMENT 21

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

Reservation No. 420139153988

Date: August 17, 2022
 Time: 10:00 a.m.

Filed: December 20, 2021
 FAC Filed: March 15, 2022
 Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

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

7 2. Although originally filed as a class action, the operative complaint was amended to
8 assert a single cause of action under the Private Attorneys General Act (“PAGA”) after Defendant
9 Raxium, Inc. (“Defendant”) presented an arbitration agreement signed by Plaintiff. The PAGA claim
10 asserts Defendant is liable for the following alleged violations: failing to pay overtime, failing to pay
11 minimum wages, failing to provide meal periods or pay premiums in lieu thereof, failing to provide rest
12 periods or pay premiums in lieu thereof, failing to provide accurate wage statements, failing to timely
13 pay all final wages owed, failing to maintain accurate records, failing to provide all required sick pay,
14 and violating California Labor Code sections 558 & 558.1. These claims primarily stemmed from
15 Plaintiff’s allegations that she and other Aggrieved Employees 1) were required to work off the clock in
16 donning and doffing personal protective equipment as well as engaging in information hand-off
17 meetings pre and post shift, 2) were not properly paid overtime and other premium wage rates due to
18 Defendant’s failure to incorporate the value of all non-discretionary remuneration into the regular rate
19 of pay for overtime, meal and rest period premium, and sick leave wage payments, 3) were not
20 authorized and permitted to take meal periods before completion of the fifth hour worked or second
21 meal periods and third rest periods when working longer than ten (10) hours in a day, 4) were not
22 provided accurate wage statements showing the total hours worked and premiums owed, and 5) were
23 not timely paid all final wages, including the unpaid overtime, meal and rest period premiums, and sick
24 leave wages.

25 3. Plaintiff is the only named Plaintiff in this matter. From our initial investigations of
26 Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
27 representative action. Plaintiff filed the original complaint on December 20, 2021. Plaintiff exhausted
28 administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to

1 filing the operative First Amended Complaint in order to pursue penalties under the PAGA. Plaintiff
2 filed a notice with the LWDA on November 24, 2021, setting forth the facts and theories of liability. A
3 true and correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A
4 copy of the notice was also sent to Defendant via certified mail and the \$75.00 filing fee was remitted
5 to the LWDA at that time. There was no response by the LWDA regarding its intent to investigate the
6 claims alleged in Plaintiff's notice. As such, Plaintiff became authorized to commence a civil action
7 under the PAGA. A copy of the Complaint was uploaded to the LWDA shortly thereafter on March 18,
8 2022 after we received a file stamped copy back from Court. A true and correct copy of Plaintiff's
9 operative Complaint is being filed with this Motion as Exhibit B. Currently, there is no trial date set in
10 this matter.

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

16 5. Defendant is represented in this matter by Wilson Sonsini Goodrich & Rosati. From the
17 beginning, Defendant has contested the merits of this case, the manageability of the case at trial, and
18 Plaintiff's ability to prove a violation in each pay period for each employee among other defenses and
19 contentions they made challenging the propriety of this action. Defendant further contended that, even
20 assuming there was a finding supporting the imposition of PAGA penalties, the Court would likely
21 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
22 attempts to comply with Labor Code obligations by Defendant. Notwithstanding its agreement to settle
23 this matter, Defendant believe the practices Plaintiff is contending are unlawful either do not exist or, to
24 the extent they do exist, fully comply with all state and federal employment laws with respect to
25 Plaintiff and Aggrieved Employees.

26 6. Based on the expected testimony from Plaintiff and Aggrieved Employees, a review of
27 Defendant's policies and procedures and other documents relating to the alleged claims, information on
28 the number of Aggrieved Employees, Aggrieved Employees' dates of employment, and payroll data for

all Aggrieved Employees’, the scope of the potential penalties at issue in light of the claims alleged, the Court’s statutorily authorized discretion to reduce any penalties assessed, and the negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of the Plaintiff, Aggrieved Employees affected by the Agreement and the LWDA. The length and risks of trial and other normal perils of complex litigation that impact the value of the claims were also considered and weighed in reaching the proposed settlement. These risks were also exacerbated in this case in that it would have been necessary for Plaintiff to litigate the existence of violations for numerous individual Aggrieved Employees in each pay period that they worked. In addition, I carefully considered the difficulties of complex litigation, and the lengthy process of establishing specific damages and various possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages at separation, which would eliminate the value of the waiting time penalty entirely. During the litigation and negotiation of claims in this case, *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022) was still pending in the United States Supreme Court. Although we had arguments that the arbitration agreement as written expressly carved out PAGA claims from arbitration, this was a textual interpretation issue that could ultimately be resolved against us, which presented an extremely high risk. It was uncertain what the United States Supreme Court would do when addressing the Federal Arbitration Act and the PAGA and there was potential for the PAGA claims to be completely eliminated. As *Viking River Cruises* has now been decided, it is clear that this was an appropriate, substantial risk to have been considered and supports the compromise amounts agreed to in resolving the claims at issue in this litigation. Overall, I believe it is more beneficial to secure a guaranteed benefit to Plaintiff, Aggrieved Employees, and the LWDA now rather than to proceed with litigation and potentially obtain zero funds due to legal or factual issues.

7. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along with Plaintiff’s assistance, thoroughly investigated the merits of the claims and potential damages for such claims. The parties engaged in informal discovery and exchange of documents, including obtaining and reviewing of payroll data such as timecard and payroll reports for all Aggrieved

1 Employees for the entirety of the statute of limitations applicable to the PAGA claims as well as all
2 policy statements and handbooks at issue during this period. The discovery covered all aspects of the
3 asserted claims, including merits issues, damages, the scope and configuration of Aggrieved Employees,
4 the content and implementation of the wage and hour policies at issue, issues relating to manageability
5 concerns at trial, among other relevant areas. From this production we were able to determine
6 information critical to a reliable damages analysis such as the average hourly rate, average daily hours
7 worked, average number of pay periods that had potential violations based on the asserted claims, and
8 the number of former employees, the total pay periods, and total workweeks during the claim period.
9 This information allowed my office to assess both liability and damages and create an accurate damages
10 model. Plaintiff assisted in all aspects of this litigation including providing factual information relating
11 to Defendant's employment conditions, potential witness information, and answered questions regarding
12 Defendant's factual contentions in this matter. This was important because it directly related to our
13 ability to maintain this case as a PAGA action under manageability concerns and our ability to obtain a
14 favorable settlement for the PAGA claims.

15 8. Throughout this litigation, our office had numerous communications with Defendant's
16 Counsel discussing our respective positions. The parties engaged in mediation on May 3, 2022, using an
17 experienced mediator, Timothy J. Long. It was only after approximately six (6) months of extensive,
18 arm's length negotiations that the parties were able to reach a settlement, which only occurred after a
19 full-day mediation. The negotiations were at all times contentious and adversarial, though still
20 professional in nature.

21 9. The parties reviewed and analyzed substantial amounts of data regarding the PAGA
22 claims. Based on our analysis and review of all relevant documents and Aggrieved Employee
23 information, there were approximately 956 pay periods with the PAGA statute of limitations and a
24 \$32.50 average hourly rate of pay. Aggrieved Employees worked an average of 7.12 shifts per pay
25 period and approximately 10.71 hours per shift. Approximately 76% of shifts were longer than ten (10)
26 hours with no second meal period recorded. Approximately 19.9% of shifts had shifts where meal
27 periods were either not started by the completion of the fifth hour, were longer than six (6) hours with
28 no meal period recorded, or had a shift longer than twelve (12) hours with no second meal period

1 recorded. I have determined the maximum likely damages for the asserted PAGA claim ranges from
2 approximately \$550,700.00 to \$643,781.60 based on the counts alleged to the LWDA and the
3 Aggrieved Employee data. Based on our research, we did not find any prior Labor Commissioner or
4 court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent
5 violation" may not be found for penalty calculation purposes and the exposure analysis here is based on
6 an "initial violation" valuation being adopted by any fact finder if this matter went to trial.
7 Additionally, the \$550,700.00 to \$643,781.60 damages number is the recovery that could be had if
8 Plaintiff were successful in establishing the claims were manageable, establishing liability on all
9 claims, successful in establishing damages at the exact rates and number of instances derived from the
10 sample analysis, and Defendant was unsuccessful at proving any affirmative defenses or offsets for the
11 asserted claims. Of course, this is unlikely to happen in any litigation, including this one. A more
12 likely recovery on a claim-by-claim basis is set forth below:

- 13 a) Failure to Pay Overtime Wages: This claim was based on Plaintiff's contention that
14 Plaintiff and Aggrieved Employees were required to work off the clock in donning
15 and doffing personal protective equipment as well as engaging in information hand-
16 off meetings pre and post shift. The total potential penalties were calculated at
17 \$47,800.00, which is based on the \$50.00 per pay period civil penalty set out in
18 California Labor Code section 558.
- 19 b) Failure to Pay Minimum Wages: This claim was also based on Plaintiff's contention
20 that Plaintiff and Aggrieved Employees were required to work off the clock in
21 donning and doffing personal protective equipment as well as engaging in information
22 hand-off meetings pre and post shift. The total potential penalties were calculated at
23 \$95,600.00, which is based on the default \$100.00 per pay period civil penalty set out
24 in the PAGA
- 25 c) Failure to Provide Meal Periods: This claim was based Plaintiff's claims that meal
26 periods were not authorized or permitted to take meal periods before completion of
27 the fifth hour worked and that second meal periods were not authorized or permitted
28 when working longer than ten (10) hours in a day. The total potential penalties were

1 calculated at \$47,800, which is based on the \$50.00 per pay period civil penalty set
2 out in California Labor Code section 558.

3 d) Failure to Provide Rest Periods: This claim was based Plaintiff's claims that third rest
4 periods were not authorized or permitted when working longer than ten (10) hours in
5 a day. The total penalties were calculated at \$95,600.00, which is based on the
6 default \$100.00 per pay period civil penalty set out in the PAGA.

7 e) Failure to Provide Accurate Wage Statements: This claim was derivative of the other
8 asserted claims and, therefore, any risk associated with those claims would apply here
9 as well. The total penalties were calculated at \$239,000.00, which is based on the
10 \$250.00 civil penalty provided for in California Labor Code section 226.3.

11 f) Failure to Pay Final Wages: This claim was derivative of the other asserted claims
12 and, therefore, any risk associated with those claims would apply here as well. The
13 total penalties were calculated at \$93,981.60, which is based on the calculation set
14 forth in California Labor Code section 256 (calculating the civil penalty the same as
15 waiting time penalties under California Labor Code section 203). However, there is
16 substantial risk that the Court might find Labor Code section 203 only applies to
17 agricultural workers, not workers like those at issue in this case. If that were to
18 happen, the total civil penalties available for this claim would be \$900.00, which is
19 based on the default \$100.00 per pay period civil penalty under the PAGA.

20 g) Violation of Labor Code 558 & 558.1: This claim is derivative of the other claims that
21 have already been valued under their direct cause of action. Accordingly, the damages
22 available under this cause of action were not independently valued.

23 h) Failure to Maintain Accurate Records: This claim was based on Plaintiff's claim that
24 Defendant failed to accurately record all hours worked and wages owed to employees.
25 The total penalties were calculated at \$24,000.00, which is based on the \$500.00 per
26 person civil penalty provided for in California Labor Code section 1174.5.

27 i) Failure to Provide Paid Sick Leave: Because the statutes providing for sick leave only
28 allow for restitutionary recovery, not civil penalties, this claim merely provided a

1 basis for Plaintiff's waiting time penalty claims. Thus, they were not independently
2 valued.

3 10. In sum, the total civil penalties allowed if Plaintiff was successful in proving every one
4 of her claims was between \$550,700.00 and \$643,781.60. However, I believe the PAGA penalties in
5 this case may be reduced due to the fact that much of the penalties are based on violations due to
6 technical non-compliance with the Labor Code as opposed to substantive wage loss or other more
7 egregious forms of wage and hour violations such as the wholesale failure of any attempt to comply or
8 intentional non-compliance with Labor Code obligations. The violation rates were low, although
9 generally still occurring at least once per pay period, and/or did not equate to substantial wage loss per
10 occurrence. Furthermore, Defendant produced a substantial number of documents that a Court may
11 find demonstrates a good faith attempt at compliance that merits the reduction of civil penalties. Courts
12 are statutorily authorized to use discretion to reduce penalties and the range of discretion used varies
13 substantially. *See, e.g., Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012)
14 (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011)
15 (82% reduction). Thus, it is more likely that the civil penalties would be cut somewhere in the range of
16 approximately \$115,880.69 (82% reduction) to \$450,647.12 (30% reduction). Taking this into account,
17 Plaintiff's gross recovery of \$135,000 under the PAGA settlement equals approximately 30% to
18 116.5% of likely civil penalties that would be awarded. After reduction of the allocated attorneys' fees
19 and costs, settlement administrator fees, the net recovery of penalties is approximately \$67,624.74,
20 which equals approximately 15% to 58.4% of the total available civil penalties. I believe the
21 Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this
22 case.

23 11. In agreeing to represent Plaintiff and take on the case for all Aggrieved Employees, our
24 office agreed to take this case on a contingency basis, meaning that we would take a percentage of any
25 settlement or judgment should we recover a monetary amount. We took a risk that we would not
26 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
27 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
28 make sure employees are able to find affordable representation in order to ensure that employers are

1 complying with all their legal obligations towards employees and paying employees all their hard-
2 earned wages.

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

17 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
18 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
19 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
20 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
21 been recognized as a Super Lawyer (Rising Star). In September 2018, I was a panel speaker for the
22 Sacramento County Bar Association Labor and Employment Law Section's presentation of "*Epic*
23 *Systems*, PAGA, and the Future of Employment Arbitration in California." In July 2020, I was a panel
24 speaker for the Association of Defense Counsel of Northern California & Nevada presentation of
25 "Class Actions and PAGA Claims." My practice focuses on complex civil litigation, including wage
26 and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively
27 involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have
28

litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
2 00209613 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-
5 2017-00222101 (Sac. Sup. Ct.);
- 6 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 7 • *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.
8 Ct.);
- 9 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 10 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 11 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
12 Ct.);
- 13 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
14 Sup. Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 18 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup.
19 Ct.);
- 20 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 21 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup.
22 Ct.);
- 23 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup.
24 Ct.);
- 25 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 26 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 27 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 28 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);

- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

15. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the

University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association - PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.

1 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
2 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
3 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
4 Federal Courts, including up to certification, settlement, preliminary and final approval, and
5 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
6 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
7 include the following:

- 8 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 9 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 10 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 11 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 12 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 13 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 14 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 15 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 16 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
17 Sup. Ct.);
- 18 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
20 Ct.);
- 21 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
22 Ct.);
- 23 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
24 Sup. Ct.);
- 25 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 26 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
27 Ct.);
- 28 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);

- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

18. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost of the representation should be born equally amongst all who are receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in

analyzing the facts and law applicable to this case. Our firm agreed to take this case on a contingency basis and as a representative action with the possibility that we would not receive any compensation for our time and efforts due to issues regarding the merits and have carried that risk over the course of this case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in employment law cases, the typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action and PAGA litigation, my experience in our firm and working with several other firms has been that the typical percentage negotiated between parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed several recent Federal District Court Cases where the Court has approved common fund-based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities. I believe our request of \$47,250 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of Aggrieved Employees and the LWDA. Moreover, at this time, my firm has advanced all costs for Plaintiff and Aggrieved Employees and has not received any compensation whatsoever for our time expended in this case. The incurred costs to date and the expected costs through overseeing the complete distribution of all settlement proceeds are \$9,625.26. Attached as Exhibit G is a true and correct copy of an itemization of our firm's incurred costs and expected costs through the complete distribution of all settlement proceeds.

19. A lodestar cross check confirms the reasonableness of our fee request. Below, I have reviewed the firm's billing records and created a summary chart showing the task categories and hours worked by each billing attorney in each category. I reviewed the billing entries with Galen T. Shimoda

and believe the hours reported are accurate. I, as well as all other individuals billing their time in the firm, use our firm's billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. Everyone billing time in our firm is given instruction on how to utilize the software and instructed to record their time in a similar manner as described herein. A summary of the entries by timekeeper in each task category is as follows:

<u>TASK CATEGORY</u>	<u>Galen Shimoda</u>	<u>Justin Rodriguez</u>
Initial client meeting and review of claims and documents, communications with client, pre-filing investigation/research	8.2	4.3
Drafting pleadings, notices, administrative filings and court filings and communications with opposing counsel regarding same, communications with client regarding same	1.5	6.6
Case review and strategy meetings, research and analysis regarding claims, arbitration agreements, and manageability, case management hearings and filings, communications with opposing counsel regarding same, communications with client regarding same	6.8	12.7
Pre-mediation discovery, review of hard copy and raw electronic time records, pay stubs, pay period, and general payroll data, review of phone call log, billing, and text records, review handbooks and policy documents, research potential declarations and interviewing declarants, communicate with client regarding same, communicate with opposing counsel regarding same	1.5	12.3
Prepare for and attend mediation, including performing data analysis, performing regular rate of pay audit for overtime, meal and rest period premiums, and sick leave wage payments, prepare exhibits, prepare mediation brief and pocket brief, prepare damages analysis, attend mediation, communications with client and mediator, communications with opposing counsel regarding same, solicit bid from settlement administrator to estimate needed allocations	0	19.1
Preparing long form settlement documents and exhibits, drafting amended settlement agreement and exhibits per the Court's standing orders and guidelines regarding representative action settlements, communicating with client regarding same, communicating with opposing counsel regarding	2.4	13.1

Settlement Approval, including drafting motion for approval of PAGA settlement and supporting declarations and order, communicate with client regarding same	0	8.5
TOTAL PER BILLING ATTORNEY:	20.4	76.6

20. I regularly practice law in the greater Sacramento area, central valley, and Chico/Redding area in California state courts and have practiced law in federal courts, including the Eastern District of California. However, I have never had occasion to file a fee motion in Alameda County, so I do not have a prior order establishing my rate in that area. In July 2020, I was approved by the Solano County Superior Court at a rate of \$525.00 per hour. In this same order Mr. Shimoda was approved at a rate of \$675.00 per hour. *See Valdez v. Karma, Inc., DBA Manteca Care & Rehabilitation Center*, Case No. FCS053239 (Solano Sup. Ct.). Mr. Shimoda and I were also recently awarded attorneys fees at these same rates in Riverside County Superior Court in June 2022. *See Franco v. Rancho Family Medical Group, Inc., et al.*, Case No. CVRI2102264 (Riverside Sup. Ct.). I believe these rates fall within the prevailing rates for complex civil litigation attorneys of similar skill and experience practicing within Alameda County. My understanding is that the rates of attorneys practicing in Riverside County are comparable to those practicing in the Bay Area. Plaintiff's requested rates are well within, even under, prevailing market rates in those communities. *See, e.g., Wynn v. Chanos*, 2015 U.S. Dist. LEXIS 80062 (N.D. Cal. 2015) (the Court approved a billing rate of \$570/640 for an associate with approximately four years of experience and approved a billing rate of \$645/710 for an associate of six years of experience).

21. Based on our prior approved rates and the hours expended in this case, our firm's total lodestar is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	20.4	\$675	\$13,770.00
Justin P. Rodriguez	76.6	\$525	\$40,215.00
Total:	97		\$53,985.00

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2 22. I believe the \$7,500 Service Award is an appropriate payment to Plaintiff for the time and
3 effort she expended on behalf of the Aggrieved Employees and especially because she is subject to a
4 general release of all claims that no other Aggrieved Employee is subject to. Based on the same claims
5 and theories of liability we have asserted under the PAGA, I have calculated Plaintiff's individual wage
6 and hour damages to be approximately \$42,782.96 based on her dates of employment, rate of pay, and
7 frequency of potential violations from the payroll and time records. It is important to note that
8 Plaintiff's individual damages would not be subject to the same discretionary reduction that the Court
9 might apply to PAGA civil penalties. Notwithstanding that, the \$7,500 Service Award represents a
10 percentage of recovery that is similar to the PAGA civil penalty percentage of recovery, *i.e.* 17.5%
11 recovery by Plaintiff and a 15% to 58.4% net recovery for the Aggrieved Employees.

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

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

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

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 21st day of July 2022 in Sacramento, California.

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6 Justin P. Rodriguez
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