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individually and on behalf of similarly situated employees

[additional parties continued on next page]

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ELIZABET SANCHEZ and GRISELDA
RAMIREZ, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

PACIFIC COAST PRODUCERS, a California
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No. STK-CV-UOE-2021-11106

*Assigned for All Purposes to Hon. Robert T.
Waters, Department 11B*

CLASS ACTION

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: _____

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Robert T. Waters

Filed: December 7, 2021

FAC Filed: February 14, 2022

SAC Filed: March 29, 2023

TAC Filed: September 19, 2023

Trial Date: None Set

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16 individually and on behalf of similarly situated employees

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 Elizabet Sanchez. I am making this declaration on
4 behalf of the named Plaintiffs Elizabet Sanchez and Griselda Ramirez, the Settlement Class Members,
5 and in support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement
6 ("Motion"). A true and correct copy of the Joint Stipulation Regarding Class Action and PAGA
7 Settlement and Release ("Agreement") in this matter is filed with this Motion as Exhibit A.

8 2. The Agreement before the Court is the result of extensive litigation across two (2)
9 different cases. The cases include the present action, *Sanchez, et al. v. Pacific Coast Producers*, San
10 Joaquin County Superior Court, Case No. STK-CV-UOE-2021-11106, filed December 7, 2021,
11 ("*Sanchez Action*"); and *Ramirez v. Pacific Coast Producers*, San Joaquin County Superior Court, Case
12 No. STK-CV-UOE-2022-0010664, filed November 18, 2022, ("*Ramirez Action*"). The named
13 plaintiffs in each of these actions, Elizabet Sanchez, and Griselda Ramirez, (collectively referred to
14 "Plaintiffs" or "Class Representatives"), and Pacific Coast Producers ("Defendant") agreed to
15 consolidate the claims into one operative pleading in this case to ensure an efficient settlement review
16 process that would minimize potential confusion by Settlement Class Members from multiple approval
17 motions, each with their own response deadlines and response procedures. Accordingly, Plaintiffs filed
18 a Third Amended Complaint on September 19, 2023. This case is a wage and hour class action based
19 on Plaintiffs' contentions that Defendant Pacific Coast Producers violated California law by 1) failing
20 to properly incorporate the value of nondiscretionary bonuses into Plaintiff's and Settlement Class
21 Members' regular rates of pay for the purpose of calculating overtime wages, meal and rest period
22 premiums, and paid sick time, 2) failing to provide meal periods in compliance with California law due
23 to rounding and/or failing to relieve employees of all duties, 3) failing to provide rest periods in
24 compliance with California law, 4) failing to pay employees for all hours worked due to rounding and
25 clock in procedures, 5) failing to maintain accurate records of Plaintiff and Settlement Class
26 Members' hours worked, 6) failing to pay reimbursements for work-related cell phone use, 7) imposing
27 systematic quota and production demands on Plaintiffs and Settlement Class Members which violated
28 the rights of employees pursuant to Labor Code sections 2100 *et seq.*, such as Plaintiffs' and Settlement

1 Class Members' rights to lawful meal periods, rest periods, bathroom breaks, and exposing them to
2 safety hazards, 8) failing to pay putative Settlement Class Members for the time waiting before being
3 able to clock in for their shifts, 9) unlawfully deducting wages from Plaintiffs and Settlement Class
4 Members by regularly directing them to return to work during their meal periods while clocked out for
5 their meal periods, and 10) failing to accurately itemize the hours and wages earned on paystubs issued
6 to Settlement Class Members. Plaintiffs also alleged liability for civil penalties under the Private
7 Attorneys General Act ("PAGA"). The PAGA, waiting time penalty, wage statement violation, and
8 unfair competition claims were derivative of these violations.

9 3. Plaintiffs are the only named representatives in this matter. From our initial
10 investigations of Plaintiff's Elizabet Sanchez claims and documents, we believed these claims had
11 merit and could be maintained as a class action. Plaintiffs exhausted administrative remedies through
12 the Labor and Workforce Development Agency ("LWDA") prior to amending the Complaint to add a
13 PAGA claim. Plaintiff Elizabet Sanchez sent notice on November 24, 2021, and further amended
14 notices on March 20, 2023, and June 29, 2023. Plaintiff Griselda Ramirez sent notice on November 10,
15 2022, and a further amended notice on April 13, 2023. True and correct copies of the operative notices
16 filed with the LWDA are being filed with this Motion as Exhibit C. Plaintiffs provided facts and the
17 legal bases for their claims within the notices to the LWDA on all violations asserted under the PAGA
18 cause of action. A copy of the notices were also sent to Defendant via certified mail and the \$75.00
19 filing fee was remitted to the LWDA at that time. There was no response by the LWDA regarding its
20 intent to investigate the claims alleged in Plaintiffs' notices for more than 65 days. As such, Plaintiffs
21 became authorized to commence a civil action under the PAGA. Copies of the complaints containing
22 the PAGA claims in each of the two (2) cases were uploaded to the LWDA, including the operative
23 Complaint in this case on September 20, 2023. A true and correct copy of Plaintiffs' operative
24 Complaint is filed with this Motion as Exhibit B.

25 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

26 5. Defendant is represented in this matter by Elizabeth Staggs-Wilson, and John H. Adams.
27 Jr. of Littler Mendelson, P.C. From the beginning, Defendant has contested the merits of this case, the
28 suitability of the case for class action or representative treatment, the manageability of the case at trial,

1 and Plaintiffs' ability to prove a violation in each pay period for each employee among other defenses
2 and contentions they made challenging the propriety of this action. Defendant further contended, even
3 assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely
4 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
5 attempts to comply with California Labor Code obligations by Defendant. Notwithstanding its
6 agreement to settle this matter, Defendant believe the practices Plaintiffs are contending are unlawful
7 either do not exist or, to the extent they do exist, fully comply with all state and federal employment
8 laws with respect to Plaintiffs and Settlement Class Members. Also, Defendant has contended that this
9 matter is not appropriate for class certification outside of this proposed class settlement.

10 6. Based on the expected testimony from Plaintiffs, Settlement Class Members, and
11 Defendant's former managerial employees, a review of Defendant's policies and procedures and other
12 documents relating to the alleged claims, information on the number of Settlement Class Members,
13 Settlement Class Members' dates of employment, and all available payroll data for every Settlement
14 Class Members, the scope of the potential damages to Plaintiffs and Settlement Class Members in light
15 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
16 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
17 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
18 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
19 potential class certification issues as well as the uncertainty of class certification, the difficulties of
20 complex litigation, and the lengthy process of establishing specific damages and various possible delays
21 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
22 PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on
23 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
24 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I
25 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
26 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

27 7. My office, including my partner, Galen T. Shimoda, my former associate Jessica L. Hart,
28 my associate, Renald Konini, our paralegal, and myself, along with Plaintiffs' assistance, thoroughly

1 investigated the merits of the claims and potential damages for such claims. The parties engaged in
2 informal discovery and exchange of documents, including employee data, such as timecards, paystubs,
3 payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged
4 claims. We also performed investigations independent of the discovery exchange, including several
5 public records requests to the California Labor Commissioner and Department of Labor, reviewing
6 collective bargaining agreements related to potential exemptions to the claims at issues, interviewing
7 class members and former managerial employees of Defendants. The discovery covered all aspects of
8 the asserted claims, including certification issues, merits issues, damages, the scope and configuration of
9 Settlement Class Members, the content and implementation of the wage and hour policies at issue,
10 issues relating to manageability concerns at trial, among other relevant areas. My office received payroll
11 history and timekeeping data for all 5,658 Settlement Class Members. This included approximately 26
12 excel files, each of which contained anywhere from 500,000 to just over 1 million rows and 12 to 26
13 columns of data per excel sheet tab within each file. Within each file there were also multiple
14 tabs/sheets. In performing the calculations and analysis, these spreadsheets had to be cross-referenced
15 multiple times to distill the necessary information relating to each of Plaintiffs causes of action. This
16 was an incredibly difficult and time consuming process. From this production we were able to
17 determine information critical to a reliable damages analysis such as the average hourly rate, average
18 daily hours worked, average number of workweeks and pay periods that had potential violations based
19 on the asserted claims, the frequency with which violations occurred in a given week and/or pay period,
20 differences between recorded actual hours worked and hours actually paid based on rounding, and the
21 number of former employees. This information allowed my office to assess both liability and damages
22 and create an accurate damages model. Plaintiffs assisted in all aspects of this litigation including
23 providing factual information relating to Plaintiffs' and Settlement Class Members' employment
24 conditions, providing a substantial number of documents, and answering questions regarding
25 Defendant's factual contentions in this matter. This was important because it directly related to our
26 ability to maintain this case as a class action and our ability to obtain a favorable settlement for the class.

27 8. Throughout this litigation our office had numerous communications with Defendant's
28 Counsel discussing our respective positions. The parties engaged in mediation on June 26, 2023, using

an experienced mediator, Hon. Ann I. Jones (Ret). It was only after more than two (2) years of extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred after a full-day mediation and months of post-mediation negotiations working out the additional details of the settlement. The negotiations were at all times contentious and adversarial, though still professional in nature.

9. The following represents the potential maximum recovery for each of Plaintiffs' claims based on my office's analysis of Defendant's relevant policies and the data produced by Defendant, including the Settlement Class Members' time and payroll records. There were 342,079 workweeks in the Class Period, 134,887 PAGA pay periods, an average base hourly rate of \$22.43 and an average overtime rate of \$33.65:

- a) Unpaid Minimum Wages: This claim is based on allegations that Defendant did not pay Plaintiffs and Settlement Class Members for all hours worked due to rounding practices, off-the-clock work, including time spent waiting to clock in before the start of the shift due to temperature checks and/or performing pre-shift work, and/or work during meal periods. The maximum damages for this claim, based on the average unpaid hours worked per week (0.65) and the \$13.00 weighted average minimum wage for the claim period, is \$2,890,567.55, which is comprised entirely of liquidated damages.¹ This amount does not take into account any potential risks with respect to Plaintiffs proving the merits or damages, which was heavily disputed by Defendant. Defendant contended that only 0.44% of shifts were affected by rounding, resulting in minimal, if any exposure on the claim assuming rounding was unlawful, which was also heavily disputed. Defendant also maintained policies requiring employees to record all hours worked accurately and prohibiting any off-the-clock work. Defendant required employees and supervisors to verify the accuracy of time records if corrections or modifications were made to the time records. While we believed the percentage of affected shifts was much higher, there was a very small, net amount of unpaid time per

¹ Because Plaintiffs' calculations have assumed that all unpaid hours worked are also overtime hours, only liquidated damages are considered for the value of this claim to avoid duplication of remedies. All unpaid wages due to unpaid hours worked are accounted for in the overtime calculation.

time punch based on all available time records for all the Settlement Class Members. After comparing actual time punches versus the rounded time, the average amount of net unpaid time was approximately 1 minute and twenty seconds per time punch. Based on an average of 4 time punches a day (start of workday, out for lunch, in from lunch, and end of workday), this equated to an average of 4.8 minutes per day based on rounding recorded hours worked. Upon further review of the meal period time records, it did not appear that meal periods clock-in and clock-out times were rounded in any respect, eliminating that category of time. With respect to the time spent during temperature checks and other pre-shift work, this added an average of approximately 10-15 minutes per week. The amount of time spent waiting to clock in and/or performing work before clocking in varied substantially and typically ranged from 2-3 minutes per shift depending on the shift and staggering of employees in response to COVID 19 protocols. In total, we calculated the net amount of unpaid time per week at approximately 0.65 hours. However, because just under half of this category of time was due to COVID 19 protocols, this is likely an overestimation of the unpaid hours worked per week as COVID 19 was not present for the entire claim period. Thus, the total amount of unpaid time would likely be much lower. Finally, there is a split of authority regarding whether or not rounding is permissible, and the issue is currently pending before the California Supreme Court. *Compare See's Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 907 (2012) (holding California law allows rounding of employee work time if the policy is neutral on its face and as applied, even if some employees ultimately are not paid for all time they have actually worked) with *Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022) (finding rounding disallowed where employer was able to easily track the actual hours worked) *review granted*. Because a good faith dispute would eliminate liability for liquidated damages for unpaid minimum wages, it is unlikely that any liquidated damages would be awarded based on the factual and legal disputes identified above. See Cal. Lab. Code § 1194.2(b). Thus, I believe the more likely recovery for this claim is **\$0.00**.

1 b) Overtime Wages: This claim was based, in part, on the same legal and factual bases as
2 the minimum wage claim, *i.e.* failure to pay for all hours worked due to rounding
3 practices, off-the-clock work, including time spent waiting to clock in before the start of
4 the shift due to temperature checks and/or performing pre-shift work, and/or work
5 during meal periods. The maximum damages for this claim, based on the average
6 unpaid overtime hours worked per week (0.65) and the \$33.65 average overtime rate of
7 pay, is \$7,481,011.17. However, because it is based on the same legal and factual bases
8 as the minimum wage claim, it is also subject to all the same factual and legal risks as
9 the minimum wage claims. Thus, putting aside the legal risks associated with the claim,
10 the more likely maximum damages for this theory of liability is approximately
11 \$5,035,360.12, which accounts for the more limited time frame in which unpaid hours
12 worked occurred due to COVID 19 protocols. Again, there is a split of authority on the
13 legality of rounding, which could result in zero liability if the California Supreme Court
14 finds rounding is lawful under California law.

15 The second basis for liability under the overtime claim is Plaintiffs' contention that
16 Defendant failed to incorporate the value of non-discretionary remuneration paid in
17 addition to the base hourly rate (*i.e.* annual production bonuses, pack bonuses, referral
18 bonuses, shift differentials, and other similar payments) into the regular rate of pay for
19 overtime and other premium payment purposes. Based on the Settlement Class
20 Members' time and payroll data, the annual production bonus was paid approximately
21 704 times, resulting in an average of \$48.31 in unpaid overtime per year, per instance.
22 The remaining pack bonuses, referral bonuses, and shift differentials that were earned in
23 pay periods that also included overtime affected approximately 5.4% of all pay periods.
24 The average unpaid overtime differential due to the regular rate of pay was
25 approximately \$0.85 per hour. The average unpaid double time differential due to the
26 regular rate of pay issue was approximately \$1.70 per hour. There was an average of
27 5.03 overtime hours and 0.1 double time hours worked per pay period. In total, this
28 resulted in approximately \$114,075.75 in unpaid overtime and double time premiums

1 under this theory of liability. Combined, and accounting for the legal and factual risks
2 associated with the claim, I believe the more realistic range of recovery for the overtime
3 claim is between **\$114,075.75** and **\$5,149,435.86**;

- 4 c) Meal Periods: This claim was primarily based on allegations that Defendant's time
5 records demonstrated the failure to provide compliant meal periods, including that
6 Defendant rounded employees' clock-in and clock-out records for meal periods.
7 However, it was also based on allegations that Defendant did not authorize and permit
8 Plaintiff and Settlement Class Members to take all meal periods owed to them due to
9 work demand and production quotas. The total maximum exposure for this claim is
10 approximately \$7,672,831.97 based on the average rate of pay and assuming Settlement
11 Class Members suffered at least 1 meal period violation per week. However, this
12 amount does not take into account the legal and factual risks associated with the claim.
13 As noted above, review of the time records did not show that meal period clock-in and
14 clock-outs were being rounded, eliminating that basis of liability for this claim.
15 Additionally, the time records showed just under 1% of all shifts having a unique meal
16 period violation, whether based on the failure to receive a meal period when working
17 more than 5 hours, the failure to receive a first meal period before the end of the fifth
18 hour worked, or the failure to receive a second meal period if working more than 12
19 hours. Defendant also paid meal period premiums on numerous occasions, further
20 reducing the number of meal period violations at issue. Based on 1% violation rate and
21 extent of meal period premiums already paid by Defendant, a more realistic range of
22 recovery for this claim is between **\$287,000** and **\$390,000**. Even this number does not
23 account for the legal risks associated with certifying a meal period claim and
24 establishing liability, especially where, as here, Defendant's meal period policy is
25 facially valid;
- 26 d) Rest Breaks: This claim was based on similar allegations to the meal period claim
27 except that Plaintiff also asserted that Defendant's rest period policy was faulty because
28 it did not include "*major fraction thereof*" in the rest period policy authorizing language.

1 Because the underlying facts and legal basis supporting this claim are similar to those
2 for the meal periods, it is subject to many of the same risks. The total maximum
3 exposure for this claim is approximately \$7,672,831.97, based on the average rate of pay
4 and assuming Settlement Class Members suffered at least 1 rest period violation per
5 week. Unlike the meal period claim, Plaintiffs are not able to benefit from the
6 presumption no lawful rest periods were taken because there is no legal requirement for
7 an employer to document rest periods in an employee's time records. Although the
8 "major fraction thereof" language was missing from the rest period policy, this basis for
9 liability affected a relatively small number of shifts. Less than 0.5% of all shifts were
10 between 3.5 and 4 hours, between 6 and 8 hours, and/or between 10 and 12 hours
11 worked, and it was only those shifts that would have served the basis for damages on a
12 *major fraction thereof* theory of liability. Outside of a defective policy, it is very
13 difficult to certify a rest period claim for liability and a substantial risk for being able to
14 prove liability. Based on the 0.5% violation rate in the time records, a more realistic
15 recovery for this claim is approximately **\$191,820.80**;

- 16 e) Reimbursement: This claim is based on the contention that Defendant failed to pay
17 Plaintiffs and Settlement Class Members for work-related cell phone use even though
18 Plaintiffs and Settlement Class Members regularly used their personal cellphones for
19 work to speak with and receive calls from management. Based on the number of
20 workweeks, an average of 25% work use of the personal cell phone, and assuming an
21 average cost of \$100 per month, the maximum amount of potential damages for this
22 claim is \$1,973,532.69. This amount does not take into account any potential risks
23 associated with this claim. Defendants heavily disputed whether use of personal cell
24 phones were required given the presence of company phones available on premises as
25 well as other alternative communication devices. Furthermore, although the calculation
26 assumed each and every person maintained an independent plan at a base rate of \$100
27 per month, it is likely that a substantial number of Settlement Class Members maintained
28 additional lines on an existing plan, which is more typically \$30-\$60 per months rather

1 than \$100 per month. Taking these factors into account, a more realistic range of
2 recovery for this part of the claim is between **\$0** and **\$1,282,664.68**;

3 f) Sick Time: This claim is based on the same factual and legal bases as Plaintiffs'
4 overtime regular rate claims, *i.e.* that Defendant failed to incorporate the value of non-
5 discretionary remuneration paid in addition to the base hourly rate (*i.e.* annual
6 production bonuses, pack bonuses, referral bonuses, shift differentials, and other similar
7 payments) into the regular rate of pay for sick leave wage payment purposes. The
8 maximum exposure for this claim is approximately \$22,471.68. This amount does not
9 take into account the potential risks associated with this claim on the merits and in
10 proving damages. Defendants contested whether all the payments Plaintiffs utilized in
11 their calculations were non-discretionary, which had a substantial impact on the
12 potential value of this claim. For example, the annual production bonus covered a large
13 period of time and, as a result, had the widest impact in triggering regular rate of pay
14 adjustments for any and all premium pay within the year. Sick leave wage payments
15 were almost exclusively affected by the annual production bonuses rather than the other
16 types of payments we contended also affected the regular rate of pay. As a result, if the
17 Court found the annual production bonus payments were discretionary, this would
18 nearly eliminate this category of damages. Taking these factors into account, a more
19 realistic range of recovery for this part of the claim is between **\$500** to **\$22,471.68**;

20 g) Wage Statement Violations: This claim is derivative of Plaintiffs' overtime, minimum
21 wage, and meal and rest period claims. Based on the number of pay periods at issue and
22 the statutorily set \$50 for initial violations, the maximum exposure for this claim is
23 \$6,744,350. Based on our research, we did not find any prior Labor Commissioner or
24 court decisions that stated Defendant's practices and/or policies were improper. As
25 such, a "subsequent violation" may not be found for penalty calculation purposes and
26 the exposure analysis here is based on an "initial violation" valuation being adopted by
27 any fact finder if this matter went to trial. This amount does not take into account the
28 potential risks associated with this claim and assumes a violation in every pay period for

every Settlement Class Member. However, because this claim is derivative of the other claims, it will be subject to the same factual and legal risks, including those that lower the frequency of any violations, potentially eliminating the existence of violations in a particular pay period. This creates a substantial risk for the claims as each of the risks identified above are combined to affect this particular claim. Taking these factors into account, a more realistic range of recovery for this claim is between **\$364,194.90** and **\$3,372,175;**

h) Waiting Time Penalties: This claim is derivative of the minimum wage, overtime and meal and rest period claims above. Based on the total number of former employees (1,998), the average rate of pay and a base 8-hour workday, the maximum exposure for this claim is \$10,755,633.60. However, this amount does not take into account the potential risks associated with this claim. Because this claim is derivative, all the legal and factual disputes and risks for each claim asserted above also apply to this claim. Similar to the liquidated damages for minimum wage violations, there is a good faith dispute defense to waiting time penalty claims. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). The employer does not need to be successful in the dispute, it only needs to show there is a good faith basis in law or fact to dispute that any wages are due. In my experience, this is a very low bar for employers to meet in order to avoid waiting time penalties. Each of the claims outlined above had substantial disputes associated with them. Thus, I believe the more likely recovery for this claim is **\$0.00;**

i) Unlawful Deductions: This claim was based on Plaintiffs contention that Defendants unlawfully deducted wages by deducting time for meal periods not taken and time shaving due to rounding. Because the value of unpaid wages associated with these theories of liability is already accounted for under the minimum wage, overtime, and meal period claims identified above, there is no separate additional value associated with this claim;

- 1 j) Violation of Quota Laws: This claim was based on Plaintiffs' contention that
2 Defendants unlawfully imposed quotas on Settlement Class Members that infringed on
3 their rights and ability to take lawful meal and rest periods. Because the damages
4 associated with the failure to provide meal and rest periods is already accounted for
5 above and this claim does not provide for and independent monetary recovery outside of
6 potential civil penalties under the PAGA, there is no separate value associated with this
7 claim outside of the PAGA. However, with respect to its application based on the facts
8 of this case, Defendants heavily disputed whether the statutes even applied to their
9 business operations. The statute expressly states that it applies to only to an employer
10 who qualifies as a "warehouse distribution center." See Cal. Lab. Code 2100(f). A
11 "warehouse distribution center" is specifically defined by the statute to only include
12 operations identified by the North American Industry Classification System ("NAICS")
13 under certain codes, which also expressly exclude Farm Product Warehousing and
14 Storage operations. See *id.* at § i(1)-(2). We also investigated any official governmental
15 designations or submissions by Defendant to any governmental entities specifically
16 addressing what NAICS code it was given, if different that the one for Farm Product
17 Warehousing and Storage that may also be covered. However, the applicable NAICS
18 code we found through NAICS's own database for Defendant was 311421 (Fruit and
19 Vegetable Caning). This NAICS code is not within the enumerated NAICS codes
20 triggering coverage under the statutes. Based on these facts, I do not believe there is any
21 value associated with this claim;
- 22 k) PAGA: The applicable civil penalties for PAGA claims varies depending on whether
23 the statute already has an associated civil penalty or whether the default penalty structure
24 of \$100 for "initial violations" and \$200 for "subsequent violations" of the PAGA is
25 used. See Cal. Lab. Code § 2699(f). Regardless of whether a specified or default
26 penalty structure is used, an employer may only be liable utilizing "initial violation"
27 valuations unless there is prior notice, through Court or administrative decision, that its
28 practices are unlawful. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-

1209 (2008). As noted above, based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies at issue were improper or unlawful. As such, a "subsequent violation" may not be found for penalty calculation purposes, and the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. Additionally, this claim is derivative of the Labor Code violations identified above and would be subject to all the same risks as the underlying claims it is based on. Based on Settlement Class Members' payroll data, applicable civil penalty amounts for an initial violation of each statute, and accounting for the risks each claim has as stated above, the range of recovery for the PAGA claims is between \$1,420,720.33 and \$21,198,996.52. In addition to the risks on the merits, I believe the Court may exercise its discretion to reduce PAGA penalties in this case. Courts are statutorily authorized to use their discretion to reduce penalties and the range of discretion used varies substantially. See *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien Inc.*, 2011 WL 7563047, at *3-*4 (C.D. Cal. 2011) (82% reduction). In this case, Defendant maintained numerous policies and employee handbooks that a Court may consider demonstrates a good faith attempt to comply with the law. Additionally, the substantive loss incurred by employees is relatively small compared to the base civil penalties associated with each claim. For example, the amount of unpaid cell phone expenses per pay period for Plaintiffs' reimbursement claims ranges from approximately \$1.73 to \$5.77 depending on the cost of the line and a 25% work usage rate. Yet, the base civil penalty for the reimbursement claim is \$100 per pay period. The lack of, and/or substantially lower, substantive loss suffered by employees based on an alleged violation of the Labor Code is a basis used by Courts to reduce the civil penalties, so that they bear some proportion to the actual loss. See *Fleming*, 2011 WL 7563047, at *4. After accounting for the potential discretionary reduction to applicable civil penalties, the more realistic range of recovery for the PAGA claims is between **\$255,729.66** and **\$3,815,819.37**, which accounts for an 82%

discretionary Court reduction to the outer ranges of recovery for this claim. Allocating \$100,000 to the PAGA claim in this case is appropriate, especially in light of amounts that Courts have approved as reasonable valuations in other cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments*,

1 *LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of
2 \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

3 10. In summary, Plaintiffs' gross recovery of \$2,053,000.00 under the Agreement
4 approximately equals between 14% and 169% of the more realistic range of recovery. The variance
5 between the percentages is evidence of how risky these claims are and absolutely support the value in
6 compromising the claims to secure a guaranteed, beneficial outcome for Settlement Class Members.
7 After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and
8 costs, any Enhancement Payments to the Class Representatives, Settlement Administrator Costs, and
9 the PAGA Payment to the LWDA, the net recovery under the Agreement, \$1,149,450, represents
10 approximately 8% to 93% of the realistic range of recovery in this matter. The average net award is
11 approximately \$203.16. I believe the Agreement represents a reasonable compromise of claims based
12 on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and
13 ensure Settlement Class Members receive some compensation, rather than proceed to further litigation
14 and potentially recover nothing, was a motivating factor in reaching this Agreement.

15 11. In agreeing to represent Plaintiffs and take on the case for all Settlement Class Members,
16 our office agreed to take this case on a contingency basis, meaning that we would take a percentage of
17 any settlement or judgment should we recover a monetary amount. We took a risk that we would not
18 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
19 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
20 make sure employees are able to find affordable representation in order to ensure that employers are
21 complying with all their legal obligations towards employees and paying employees all their hard-
22 earned wages.

23 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
24 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
25 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
26 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
27 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
28 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris

1 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
2 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
3 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
4 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
5 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
6 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
7 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
8 and an officer for the Latino Law Students Association from 2009 to 2010.

9 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
10 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
11 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
12 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
13 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
14 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
15 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
16 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
17 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
18 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
19 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County
20 Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a
21 Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the
22 Sacramento County Bar Association Labor and Employment Law Section's executive committee in
23 2019 and was the Chair of the executive committee for 2022. I have also been a member of the
24 Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August
25 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA
26 claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the
27 complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently
28 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-Angway 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.);
- *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.);

- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (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);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);

- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovations 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

1 Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017);
2 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment
3 Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in
4 Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the
5 Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento
6 Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion
7 (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825
8 Training: Updates on California’s New Wage Laws and Manager Compliance Training (Apr. 25,
9 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA
10 Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business
11 Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther
12 California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in
13 Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association - PAGA
14 Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15)
15 California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
16 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
17 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
18 as a Super Lawyer from 2014 to present.

19 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
20 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
21 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
22 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
23 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
24 Federal Courts, including up to certification, settlement, preliminary and final approval, and
25 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
26 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
27 include the following:

- 28 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);

- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. 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.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);

- 1 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
2 Sup. Ct.);
- 3 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 4 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 5 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac.
6 Sup. Ct.);
- 7 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 8 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 9 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 10 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 11 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 12 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 13 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 14 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 15 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 16 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 17 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 18 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 19 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
20 Sup. Ct.);
- 21 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 22 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 23 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 24 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 25 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 26 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
27 00082201 (Sac Sup. Ct.);
- 28 • *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. My former associate, Jessica L. Hart, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Ms. Hart graduated from the University of California Davis School of Law. Prior to joining Shimoda & Rodriguez Law, PC, Ms. Hart worked alongside a number of attorneys in the Sacramento area focusing almost exclusively on plaintiff's side litigation and employment law for several years prior to becoming licensed in 2020. While with my firm, Ms. Hart worked on a variety of individual, class action, and Private Attorneys General Act cases involving wage and hour claims. As an associate, some of the class action and/or PAGA cases Ms. Hart litigated include the following:

- *Afoa v. Milestone Retirement Communities, LLC., et al.*, Case No. 34-2020-00282555 (Sac. Sup. Ct.);
- *Cota v. Milestone Management (CA) – Meadows, LLC.*, Case No. 34-2020-00280648 (Sac. Sup. Ct.);
- *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD (E.D. Cal.);
- *Dreyer v. Automation Anywhere, Inc.* Case. No 20CV372730 (Santa Clara Sup. Ct.);

- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. Aquality Water Management, Inc.* Case No. 34-2021-00292794 (Sac. Sup. Ct.);
- *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- *Hussaini v. Integrated Resources, Inc, et al.*, Case. No. 34-2021-00297152 (Sac. Sup. Ct.);
- *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-0000543 (San Joaquin Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct);
- *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP (E.D. Cal.);
- *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.);
- *Perez v. Too Infinity Management, LLC, et al.*, Case No. 34-2020-00285276 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Valentin v Sacramento Laundry Company, Inc.* Case.No. 34-2019-00270987 (Sac. Sup. Ct.);
- and
- *Whiteside v. SPSG Partners, et al.*, Case. No. 2:20-cv-01643-TLN-DMC (Sac. Sup. Ct.).

19. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in

1 September 2022. Mr. Konini has worked written discovery and depositions, calculating class-wide
2 damages, drafting pleadings, motions, and negotiation and case correspondence, and more. Mr. Konini
3 worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v.*
4 *Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-*
5 *Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander*
6 *Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly*
7 *Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et
8 al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental*
9 *Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072
10 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool*
11 *Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case
12 No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No.
13 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.
14 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
15 Sup. Ct), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
16 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.). Mr.
17 Konini's practice largely revolves around wage and hour matters, including PAGA claims.

18 20. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
19 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
20 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
21 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiffs and Settlement Class Counsel have been able to
22 secure an identifiable benefit on behalf of the settlement class and equity counsels that the cost of the
23 representation should be borne equally amongst all class members receiving these benefits. The
24 settlement recovery provides an excellent result and is the product of substantial time and effort in
25 analyzing the facts and law applicable to this case. Settlement Class Counsel agreed to take the case on
26 a contingency basis and as a class action with the possibility that we would not receive any
27 compensation for my time and efforts due to issues regarding the merits and/or certification and have
28 carried that risk over the course of the case. I have reviewed fee arrangements and Court ordered fee

1 awards in similar class cases and I believe that the thirty-five percent (35%) fee request is within the
2 accepted ranges. In my experience with contingency cases in employment law cases, the typical
3 percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in
4 individual litigation. In class action litigation, my experience in my own firm and working with several
5 other firms has been that the typical percentage negotiated between parties and approved by a Court
6 ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed
7 several recent Federal District Court Cases where the Court has approved common fund-based fee
8 requests. These cases include *Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23
9 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No.
10 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement);
11 *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a
12 40% fee on a \$3.75 million wage and hour class action settlement), which are cited in Plaintiffs'
13 Memorandum of Points and Authorities. I believe the request of \$718,550 (approximately 35%) for
14 attorneys' fees is justified given the results obtained on behalf of the class. Moreover, at this time, all
15 costs have been advanced by Settlement Class Counsel, who have not received any compensation
16 whatsoever for our time expended in this case. The expected total costs through final approval by are
17 not expected to exceed \$30,000. Filed with this Motion as Exhibit E is a true and correct copy of the
18 costs incurred to date and expected to be incurred through the completion of this case by Settlement
19 Class Counsel. Any difference in the actual costs and the maximum amount allocated under the
20 Agreement will be added to the Net Settlement Amount.

21 21. Settlement Class Counsel have entered into a Joint Prosecution and Fee Sharing
22 Agreement wherein any awarded attorney's fees will be allocated as follows: 90% of any fee award to
23 Shimoda & Rodriguez Law, PC, and 10% of any fee award to the Law Office of Daniel J. Hyun and
24 Jose Garay, APLC. Settlement Class Counsel have disclosed the Joint Prosecution and Fee Sharing
25 Agreement to Plaintiffs and have obtained written consent pursuant to the California Rules of
26 Professional Conduct, Rule 1.5.1(A).

27 22. I have used several class action administrator companies in the wage and hour class
28 actions I have resolved in the past and believe Apex Class Action, LLC. will provide the best service to

1 administer the proposed class settlement. Apex Class Action, LLC. has provided a quote for the
2 estimated maximum cost of administering the class settlement of approximately \$43,500. A true and
3 correct copy of a cost estimate provided by Apex Class Action, LLC. is filed with this Motion as Exhibit
4 D. This is only an estimate, and final pricing may vary depending on the issues, if any, that arise during
5 the administration of the settlement. However, the difference between the actual, lesser costs and
6 \$50,000, if any, will be paid to the Participating Settlement Class Members on a pro rata basis.

7 23. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
8 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
9 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
10 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
11 Exhibit G.

12 24. A true and correct copy of the proposed Notice of Settlement is being filed with this
13 Motion as Exhibit F.

14 25. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and
15 The Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement
16 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

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

26 27. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
27 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
28 their current or former employment. This assistance regularly includes, but is not limited to, free legal

1 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
2 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
3 forms, and direct representation in administrative hearings, including administrative hearings in front of
4 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
5 who provide assistance, along with experienced employment law attorney volunteers. These services
6 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
7 and continuing through today under CPB.

8 28. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
9 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
10 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
11 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
12 workers and advises them as to the available legal remedies. In addition to individual counseling on
13 employment issues, the CFWR educates workers, unions, and community members about workplace
14 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

15 29. The CFWR provides limited representation for low-wage workers in wage claims before
16 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
17 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
18 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
19 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
20 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
21 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
22 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
23 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
24 respect to those wage claims.

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

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

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

9 33. Brittany V. Berzin has never done any work, volunteer or otherwise, with CPB. During
10 law school, Ms. Berzin was a student volunteer for the CFWR for two summers. Since graduating law
11 school, she has volunteered for the CFWR approximately one to two times per year, assisting in the
12 advice clinic. Recently, Ms. Berzin volunteered to be on the Board of Directors and is currently the
13 Chair, which is an unpaid position. As Chair, Ms. Berzin is one of seven Board Members, who are all
14 from different law firms and/or local public and private organizations. No compensation or benefits,
15 monetary or otherwise, are provided to any Board Member or organization a Board Member is
16 associated with. The Executive Director of the CFWR supervises, directs, and controls the day-to-day
17 operations of the CFWR, not Ms. Berzin or the Board of Directors. As Chair, Ms. Berzin's additional
18 duties include scheduling meetings, drafting meeting agendas and presiding over meetings.
19 Furthermore, CFWR has not, and does not, provide any referrals to Shimoda & Rodriguez Law, P.C.

20 34. Galen T. Shimoda has volunteered for both organizations on and off over the past several
21 years through either presenting wage and hour seminars to law students who staff the free advice clinics
22 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
23 work with either organization since approximately March 2020. Mr. Shimoda has never received
24 payment or compensation of any kind in connection with any work he's done with either of the proposed
25 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
26 Bono, Inc. or the Center For Workers' Rights.

35. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor Mr. Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection with any of the volunteer work we have done with the organizations.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 23, 2024, in Elk Grove, California.


Justin P. Rodriguez