

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiffs SAM KEOPHIMANE and LUIS MEDINA
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

SAM KEOPHIMANE and LUIS MEDINA,
individually and on behalf of all other
similarly situated employees,

Plaintiffs,

vs.

TRACY AUTO L.P. (DBA TRACY
TOYOTA), a California Limited Partnership;
LOTT AUTOMOTIVE, INC., a California
Corporation; RONALD M. LOTT, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0001117

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

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

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Robert T. Waters

Filed: February 14, 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 Plaintiffs Sam Keophimane and Luis Medina (“Plaintiffs”)
4 herein. I am making this declaration on behalf of Plaintiffs, and in support of Plaintiffs’ Motion to
5 Approve Private Attorneys General Act Settlement. A true and correct copy of the Private Attorneys
6 General Act Settlement is being filed with this Motion as Exhibit A.

7 2. This case was brought as a Private Attorneys General Act (“PAGA”) lawsuit based on
8 Plaintiffs’ contention that Defendants Tracy Auto L.P. (DBA Tracy Toyota), Lott Automotive, Inc.,
9 Ronald M. Lott (“Defendants”) failed to pay overtime wages, failed to pay minimum wages, failed to
10 provide meal periods or pay premiums in lieu thereof, failed to provide rest periods or pay premium in
11 lieu thereof, failed to provide accurate wage statements, failed to pay final wages, failed to pay
12 reimbursement for expenses, failed to pay contract wages and unlawful deductions, failed to maintain
13 accurate records, failed to provide paid sick leave, untimely paid wages, and violated California Labor
14 Code sections 558, 558.1. These claims primarily stemmed from Plaintiffs’ allegations that Defendants
15 violated California law by 1) failing to incorporate the value of nondiscretionary bonuses into
16 Plaintiffs’ and Aggrieved Employees’ regular rates of pay for the purpose of calculating overtime
17 wages, meal and rest period premiums, and paid sick leave; 2) failing to provide meal periods in
18 compliance with California law; 3) failing to provide rest periods in compliance with California law; 4)
19 failing to provide accurate wage statements; and 5) failing to pay reimbursements for work-related cell
20 phone use.

21 3. Plaintiffs are the only named Plaintiffs in this matter. From our initial investigations of
22 Plaintiffs’ claims and documents, we believed these claims had merit and could be maintained as a
23 PAGA action. Plaintiffs filed the original complaint on February 14, 2022. Plaintiffs exhausted
24 administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to
25 filing the Complaint in order to pursue penalties under the PAGA. Plaintiffs filed a notice with the
26 LWDA on November 23, 2021, setting forth the facts and theories of liability. A true and correct copy
27 of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice
28 was also sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA at

1 that time. There was no response by the LWDA regarding its intent to investigate the claims alleged in
2 Plaintiffs' notice. As such, Plaintiffs became authorized to commence a civil action under the PAGA.
3 A copy of the Complaint was uploaded to the LWDA shortly thereafter on February 16, 2022, after we
4 received a file stamped copy back from Court. A true and correct copy of Plaintiffs' operative
5 Complaint is being filed with this Motion as Exhibit B. Currently, there is no trial date set in this
6 matter. Defendants filed a Petition to Compel Arbitration. On August 3, 2022, the trial court denied
7 Defendants' Petition to Compel Arbitration. Defendants appealed the decision, and the case had been
8 pending, but stayed, while the Parties participated in the Appellate Court's mediation program.
9 Pursuant to the terms of the Agreement, the appeal was abandoned, reinstating the Court's jurisdiction
10 to consider the terms of the settlement and its approval.

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

27 6. Based on the expected testimony from Plaintiffs and Aggrieved Employees, a review of
28 Defendants' policies and procedures and other documents relating to the alleged claims, information on

1 the number of Aggrieved Employees, Aggrieved Employees' pay periods, and payroll data for the
2 Aggrieved Employees, the scope of the potential penalties at issue in light of the claims alleged, the
3 Court's statutorily authorized discretion to reduce any penalties assessed, and the negotiations that have
4 taken place, I am convinced that the proposed settlement is in the best interest of the Aggrieved
5 Employees affected by the Agreement and the LWDA. The length and risks of trial and other normal
6 perils of complex litigation that impact the value of the claims were also considered and weighed in
7 reaching the proposed settlement. These risks were also exacerbated in this case in that it would have
8 been necessary for Plaintiff to litigate the existence of violations for numerous individual Aggrieved
9 Employees in each pay period that they worked. In addition, I carefully considered the difficulties of
10 complex litigation, and the lengthy process of establishing specific damages and various possible delays
11 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
12 PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on
13 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
14 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it
15 is more beneficial to secure a guaranteed benefit to Aggrieved Employees, and the LWDA now rather
16 than to proceed with litigation and potentially obtain zero funds due to legal or factual issues.

17 7. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along
18 with Plaintiffs' assistance, thoroughly investigated the merits of the claims and potential damages for
19 such claims. The parties engaged in informal discovery and exchange of documents, such as timecards,
20 paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the
21 PAGA claims. The discovery covered all aspects of the asserted claims, including merits issues
22 damages, the scope and configuration of Aggrieved Employees, the content and implementation of the
23 wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant
24 areas. From this production we were able to determine information critical to a reliable damages
25 analysis such as total pay periods and number of Aggrieved Employees within the scope of each claim,
26 the average hourly rate, daily hours worked, average number of pay periods that had potential violations
27 based on the asserted claims, and the number of former employees. This information allowed my office
28 to assess both liability and damages and create an accurate damages model. Plaintiffs assisted in all

aspects of this litigation including providing factual information relating to Defendants' employment conditions, potential witness information, and answered questions regarding Defendants' factual contentions in this matter. This was important because it directly related to our ability to maintain this case as a PAGA action under manageability concerns and our ability to obtain a favorable settlement for the PAGA claims.

8. While the appeal was pending, the Parties engaged in mediation. Through informal discovery and Plaintiffs' independent investigations, the applicable payroll and Aggrieved Employee information were reviewed and analyzed in advance of mediation. Throughout this litigation, our office had numerous communications with Defendants' Counsel discussing our respective positions. The parties engaged in mediation on June 1, 2023, using an experienced mediator, Lisa Klerman. On June 1, 2023, the Parties participated in a lengthy mediation with private mediator Lisa Klerman. At the conclusion of the mediation, the Parties were unable to come to a resolution. However, on June 8, 2023, the Parties were able to resolve the asserted claims through the use of a mediator's proposal. It was only after nearly two years of extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred after a mediator's proposal. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length. The negotiations were at all times contentious and adversarial, though still professional in nature.

9. The following represents the potential maximum recovery for Plaintiffs' PAGA claim based on my office's analysis of Defendants' relevant policies and the data produced by Defendants for Aggrieved Employees. There were 3,694 PAGA pay periods. Additionally, based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendants' practices and/or policies were improper. 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. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). Based on Aggrieved Employees' payroll data, the maximum total exposure for this claim is \$2,459,782:

- a. Overtime Wages: This claim is based on Defendants' failure to incorporate earned bonuses into the regular rate of pay when calculating overtime and double time paid

1 in the same pay periods where bonuses were also earned. This claim is also based
2 on Plaintiffs' claims that Defendants did not pay for all overtime hours that Plaintiff
3 was entitled to based on payroll records due to a faulty alternative workweek
4 election. The maximum amount of civil penalties potentially applicable for this
5 claim is \$184,700 (\$50 per violation per pay period x 3,694 pay periods). However,
6 both the percentage of pay periods affected and the types of payments that could be
7 considered non-discretionary bonuses were heavily disputed. Also, to ensure that
8 Plaintiffs were not undercounting the potential damages, Plaintiffs assumed a
9 violation in every pay period for every employee, even though there were several
10 pay periods where no bonuses were paid. As a result, the value of the claim would
11 very likely be lower as it is not likely that a 100% violation rate would hold if the
12 matter went to trial. In addition to some individuals not being paid bonuses, not
13 every Aggrieved Employee worked overtime in every pay period, further reducing
14 the potential applicable pay periods for civil penalty calculations.

- 15 b. Minimum Wages: This claim is based on the claim that Defendant maintain an
16 arrears payment system causing an underpayment of all wages due in the final pay
17 period because of a faulty reconciliation process between accumulated hours worked
18 and accumulated hours paid from pay period to pay period. As this would only
19 affect former employees, this maximum potential damages were severely limited in
20 nature, amounting to only \$8,000 (\$100 per pay period per violation x 80 pay
21 periods). This claim was not a driving factor in the negotiation discussions due to
22 its low value.
- 23 c. Meal and Rest Periods: These claims are based on the allegations that Defendants
24 regularly failed to provide all meal and rest periods owed to Plaintiffs and Aggrieved
25 Employees due to inadequate staffing, high workloads, and explicit instructions to
26 perform certain work tasks during "break" time. It is also based on allegations that
27 Defendants failed to pay meal and rest period premiums at the regular rate of pay
28 instead of the base hourly rate. The maximum potential damages for these claims is

1 \$184,700 for meal period violations (\$50 per violation per pay period x 3,695 pay
2 periods) and \$369,400 for rest period violations (\$100 per violation per pay period x
3 3,695 pay periods). However, the claims were subject to substantial risk of being
4 able to be proven on a PAGA wide basis because of the different employment
5 positions worked by Aggrieved Employees, including different work schedules,
6 staffing, and potential break coverage depending on the department worked in. For
7 example, it is unlikely that Aggrieved Employees who worked in positions that did
8 not have constant customer interactions, would have been regularly interrupted
9 during their meal and rest periods to immediately help customers for each and every
10 pay period. Yet, the damages calculations assume a violation occurred in each and
11 every pay period to avoid potentially undercounting available damages. Also,
12 Defendants had a facially valid meal period policy that was given to Aggrieved
13 Employees at the time of hire and paid a large amount of meal period premiums.
14 Discerning which meal and rest period violations were already paid premiums for
15 and which had not had any paid raised a difficult question of proof and raised
16 substantial risk on these claims.

- 17 d. Reimbursement: This claim is based on the contention that Defendants failed to pay
18 Plaintiffs and Aggrieved Employees for work-related cell phone use even though
19 Plaintiffs and Aggrieved Employees regularly used their personal cellphones for
20 work to speak with and receive calls from prospective customers and management.
21 The maximum amount of potential damages for this claim is \$369,400 (\$100 per pay
22 period per violation x 3,694 pay periods). This amount does not take into account
23 any potential risks associated with this claim. Defendants heavily disputed whether
24 use of personal cell phones were required given the presence of company phones
25 available on premises as well as other alternative communication devices. This
26 raised a substantial risk that the Court would find against Plaintiffs on this claim and
27 I believe it unlikely that any penalties beyond a nominal amount would have been
28 awarded for this claim if the case went to trial.

- 1 e. Wage Statement Violations: This claim is derivative of Plaintiffs' overtime,
2 minimum wage, and meal and rest period claims. The maximum potential value for
3 this claim is \$369,400 (\$100 per violation per pay period x 3,694 pay periods).
4 Because this claim is derivative of Plaintiff's other claims, the same risks identified
5 above for Plaintiff's minimum wages, overtime, meal period, and rest period claims
6 equally apply here, substantially affecting the potential value of this claim.
- 7 f. Waiting Time Penalties: This claim is derivative of the minimum wage, overtime
8 and meal and rest period claims above. The maximum potential value of this claim
9 is \$288,000 (Daily rate of pay of \$120 x 30 days x 80 former employees). Because
10 this claim is derivative, the same risks mentioned above also apply to this claim.
11 Additionally, due to the heavily disputed nature of the claims, there is a substantial
12 risk that the good faith dispute defense to waiting time penalty claims would apply
13 here. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). The
14 good faith dispute defense is not a high bar to reach as Defendants just need an
15 argument in law or fact that has some basis in the evidence or law, even if ultimately
16 unsuccessful, in order to be successful. Thus, I believe it is likely that a Court would
17 find the presence of a good faith dispute, resulting in zero damages being awarded.
- 18 g. Failure to Pay Contract Wages, Failure to Keep Records, and Untimely Wage
19 Payments: These claims are entirely derivative and overlapping with the PAGA
20 claims identified above, *e.g.* the failure to pay overtime wages also meant that wages
21 otherwise due were not paid in a timely manner. Notwithstanding this overlap, the
22 maximum potential damages for these claims are \$245,282 for failure to pay contract
23 wages (95 individuals with a commission agreement and \$100 per violation per pay
24 period x 2,452.82 pay periods), \$71,500 for the failure to maintain adequate records
25 (\$500 per employee x 143 employees), and \$369,400 for the failure to pay timely
26 wages (\$100 per violation per pay period x 3,694 pay periods). Because this claim is
27 derivative it carries all the same risks identified in the claims above. Additionally, it
28

1 is highly unlikely that a Court would award the full value of the potential applicable
2 penalty when the same conduct is being penalized through other statutes.

3 10. In addition to the risks on the merits, I believe the Court may exercise its discretion to
4 reduce PAGA penalties in this case in light of Defendant's showing a good faith attempt at some
5 compliance due to payment of meal and rest period premiums, attempted adherence to an alternative
6 workweek program, and detailed meal and rest period policies. Furthermore, several of the potential
7 penalty amounts are substantially, if not entirely overlapping, giving a strong reason to exercise
8 discretionary reductions to assessed penalties to avoid any finding that they were arbitrary, capricious,
9 and/or unduly excessive. Additionally, some of the violations are due to technical non-compliance with
10 the Labor Code, such as derivative wage statement violations, rather than violations causing substantive
11 wage loss by Aggrieved Employees. The amount of discretionary reductions can vary greatly. See
12 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
13 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). The
14 82% reduction equates to roughly \$9-\$50 worth of civil penalties per pay period per employee
15 depending on the total potential value of the civil penalty (*i.e.* \$50-\$250), which is more in line with
16 actual awards based on my experience and review of awards in other cases. Thus, even if using the
17 maximum values possible and setting aside risks of proving the claims on the merits, the total exposure
18 may be cut to approximately \$442,760.80 (82% reduction) to \$1,721,847 (30%) or lower. Given the
19 substantial risks associated with the claims, we believe the amount that might ultimately be awarded
20 under the PAGA would be significantly lower than our maximum exposure calculation. Using a more
21 realistic range of recovery that accounts for the disputed PAGA penalty values and risks associated
22 with the merits (\$1,116,200, which represents a reduction based on subtracting penalties based on
23 failure to pay final wages, failure to pay reimbursement, failure to pay contract wages, failure to keep
24 accurate records, and failure to timely pay wages due) would lower the potential exposure further to
25 \$200,916 (82% reduction) to \$781,340 (30% reduction). The Gross Settlement Amount represents
26 approximately 9% of the maximum potential value of the claims (\$222,000/\$2,459,782) in this matter
27 and between 28.4% (\$222,000/\$781,340) and 110.5% (\$222,000/\$200,916) of the more realistic range
28 of recovery.

11. I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case, especially in light of amounts that Courts have approved as reasonable valuations in other cases. See *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, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

12. In agreeing to represent Plaintiffs and take on the case for all Aggrieved Employees, our office agreed to take this case on a contingency basis, meaning that we would take a percentage of any settlement or judgment should we recover a monetary amount. We took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary judgment ruling. However, we believe it is important to

1 make sure employees are able to find affordable representation in order to ensure that employers are
2 complying with all their legal obligations towards employees and paying employees all their hard-
3 earned wages.

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

18 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
19 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
20 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
21 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
22 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
23 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
24 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
25 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
26 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
27 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
28 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County

Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

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

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

3 16. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in
4 assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of
5 plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda
6 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a
7 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the
8 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He
9 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and
10 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of
11 employment law articles for journals and our firm regularly publishes articles on our firm's website.
12 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
13 Employment Review seminars from 2014 to the present. His speaking engagements include the
14 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
15 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
16 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
17 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
18 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
19 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
20 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
21 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
22 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
23 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
24 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
25 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
26 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
27 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
28 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -

1 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
2 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
3 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
4 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
5 as a Super Lawyer from 2014 to present.

6 17. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
7 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
8 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
9 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
10 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
11 Federal Courts, including up to certification, settlement, preliminary and final approval, and
12 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
13 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
14 include the following:

- 15 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 16 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 17 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 18 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 19 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 20 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 21 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 22 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 23 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
24 Sup. Ct.);
- 25 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 26 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
27 Ct.);
- 28 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.

- Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
 - *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
 - *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
 - *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
 - *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
 - *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
 - *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);

- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

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

- 8 • *Afoa v. Milestone Retirement Communities, LLC., et al.*, Case No. 34-2020-00282555 (Sac.
9 Sup. Ct.);
- 10 • *Cota v. Milestone Management (CA) – Meadows, LLC.*, Case No. 34-2020-00280648 (Sac.
11 Sup. Ct.);
- 12 • *Coy v. Southern Home Care Services, Inc., et al.*, Case. No. 2:21-CV-00067-JAM-CKD
13 (E.D. Cal.);
- 14 • *Dreyer v. Automation Anywhere, Inc.* Case. No 20CV372730 (Santa Clara Sup. Ct.);
- 15 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
16 (San Joaquin Sup. Ct.);
- 17 • *Fang v. Interpress Technologies, Inc.* Case. No. 34-2021-00292937 (Sac. Sup. Ct.);
- 18 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 19 • *Garcia v. Aquality Water Management, Inc.* Case No. 34-2021-00292794 (Sac. Sup. Ct.);
- 20 • *Hawkins v. Twitch Interactive, Inc.*, Case No. 34-2020-00281761 (Sac. Sup. Ct.);
- 21 • *Hussaini v. Integrated Resources, Inc, et al.*, Case. No. 34-2021-00297152 (Sac. Sup. Ct.);
- 22 • *Leon v Golden Bay Fence Plus Iron Works, Inc., et al.*, Case No. STK-CV-UOE-2021-
23 0000543 (San Joaquin Sup. Ct.);
- 24 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 25 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
26 Sup. Ct);
- 27 • *Madrigal Vargas v. Mary Ann's Baking Co., Inc.*, Case No. 2:21-CV-00320-JAM-JDP
28 (E.D. Cal.);

- *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.);
- *Perez v. Too Infinity Management, LLC, et al.*, Case No. 34-2020-00285276 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Valentin v Sacramento Laundry Company, Inc.* Case.No. 34-2019-00270987 (Sac. Sup. Ct.);
- and
- *Whiteside v. SPSG Partners, et al.*, Case. No. 2:20-cv-01643-TLN-DMC (Sac. Sup. Ct.).

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

21. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on the written and oral discovery, including defending a PAGA representative's deposition, drafting special interrogatories and request for production of documents, calculating class-wide damages, communicating with class representatives, drafting mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's*

1 *Choice Pediatric Dental Care*), et al., Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium*,
2 *Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-
3 00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-
4 OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.),
5 *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*
6 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris*
7 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*
8 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
9 revolves around wage and hour matters, including PAGA claims.

10 22. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
11 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
12 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
13 *Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiffs and our firm have been able to secure an
14 identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost
15 of the representation should be born equally amongst all who are receiving these benefits. The
16 settlement recovery provides an excellent result and is the product of substantial time and effort in
17 analyzing the facts and law applicable to this case. Our firm agreed to take this case on a contingency
18 basis and as a representative action with the possibility that we would not receive any compensation for
19 our time and efforts due to issues regarding the merits and have carried that risk over the course of this
20 case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I
21 believe that the thirty five percent (35%) fee request is within the accepted ranges. In my experience
22 with contingency cases in employment law cases, the typical percentage negotiated between parties
23 ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action and
24 PAGA litigation, my experience in our firm and working with several other firms has been that the
25 typical percentage negotiated between parties and approved by a court ranges from thirty to forty
26 percent (30% to 40%) based on the same factors. I have also reviewed several recent Federal District
27 Court Cases where the Court has approved common fund-based fee requests. These cases include *In re*
28 *Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*,

1 USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern
2 District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern
3 District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-
4 01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et*
5 *al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695, which are cited in
6 Plaintiffs' Memorandum of Points and Authorities. I believe our request of \$77,700 (approximately
7 35%) for attorneys' fees is justified given the results obtained on behalf of Aggrieved Employees and
8 the LWDA. Moreover, at this time, my firm has advanced all costs for Plaintiffs and Aggrieved
9 Employees and has not received any compensation whatsoever for our time expended in this case. The
10 incurred costs to date and the expected costs through overseeing the complete distribution of all
11 settlement proceeds are \$13,128.85. Attached as Exhibit G is a true and correct copy of an itemization
12 of our firm's incurred costs and expected costs through the complete distribution of all settlement
13 proceeds.

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

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

25 25. A true and correct copy of the proposed Notice of Settlement to be distributed to
26 Aggrieved Employees informing them of the settlement and all material terms is being filed with this
27 Motion as Exhibit E.
28

26. The designated *cy pres* beneficiary in this case is Children’s Advocacy Center of California (“CACC”), a charitable member organization dedicated to child advocacy and assistance across Californiachildren’s advocacy centers, which assists local communities respond to allegations of child abuse in effective and efficient ways. CACC provides support and advocacy, as well as training, to local child advocacy centers responding to reports of child abuse and neglect. Only those funds that remain from uncashed settlement checks will be sent to the *cy pres* beneficiary pursuant to section 5.5 of the Agreement.

27. I have spoken with every other attorney at my firm to determine whether they have any relationship with the proposed *cy pres* beneficiary. Brittany V. Berzin has never done any work, volunteer or otherwise, with CACC. Galen T. Shimoda has never done any work, volunteer or otherwise, with CACC. Renald Konini also has never done any work, volunteer or otherwise, with CACC. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor Mr. Shimoda have ever received any compensation, direct or indirect, for designating CACC as *cy pres* beneficiary.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 8, 2023 in Sacramento, California.


Justin P. Rodriguez