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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

GZIM KOVACEVIC, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PURE WAFER, INC, a Delaware corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV401779

**DECLARATION OF KRISTEN M. AGNEW
IN SUPPORT OF PLAINTIFF'S MOTION
TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT**

Date: October 9, 2024
Time: 1:30 p.m.
Dept.: 19

Complaint Filed: August 4, 2022
Trial Date: None

1 I, Kristen M. Agnew, hereby declare as follows:

2 1. I am an attorney at law duly licensed to practice before all courts in the State of
3 California. I am an attorney with Diversity Law Group, P.C., counsel of record for Plaintiff Gzim
4 Kovacevic. Based on my personal knowledge, I assert the facts set forth herein and, if called as a
5 witness, I could and would competently testify thereto.

6 **PROCEDURAL HISTORY**

7 2. From the inception of the case, Plaintiff's Counsel has zealously represented the
8 interests of the aggrieved employees. Before initiating the Action, I investigated and researched the
9 facts and circumstances underlying the pertinent factual and legal issues and applicable law. This
10 required thorough discussions and interviews between counsel and Plaintiff, and research into the
11 various legal issues involved in the case, namely, the current state of the law as it applied to
12 certification, off-the-clock theory, meal and rest periods, and potential defenses.

13 3. On April 29, 2022, Plaintiff submitted written notice under Labor Code section 2699.3
14 to the California Labor and Workforce Development Agency ("LWDA") and Defendant Pure Wafer,
15 Inc. ("Defendant"), alleging that Defendant violated Labor Code sections 201, 202, 203, 204, 226,
16 226.2, 226.7, 510, 512, 558, 1194, 1197, and 1197.1 (the "PAGA Notice"). Attached hereto as **Exhibit**
17 **2** is a true and correct copy of the PAGA Notice.

18 4. As set forth in the PAGA Notice, Plaintiff contends that, as matter of policy and
19 practice, Defendant: (1) failed to properly pay minimum, regular, and overtime wages for all hours
20 worked, in violation of Labor Code sections 510, 1194, 1197, and 1197.1; (2) failed to provide duty
21 free meal and rest periods and/or pay premium compensation in lieu thereof at the regular rate of pay,
22 in violation of Labor Code sections 226.7 and 512; and (3) failed to provide accurate itemized wage
23 statements, in violation of Labor Code section 226.

24 5. On June 1, 2022, Plaintiff filed a separate putative class action against Defendant in the
25 matter of *Gzim Kovacevic v. Pure Wafer, Inc.*, Santa Clara County Superior Court Case No.
26 22CV398811 ("Class Action"). In the Class Action, Plaintiff alleged class claims predicated on the
27 alleged Labor Code violations identified in the PAGA Notice.

1 6. On August 4, 2022, Plaintiff filed the instant representative PAGA action against
2 Defendant (the “Action”). As set forth in the Complaint, Plaintiff asserts a single cause of action for
3 violation of PAGA predicated on the alleged Labor Code violations set forth in the PAGA Notice
4 Plaintiff seeks civil penalties under PAGA, as well as attorneys’ fees, and costs.

5 7. Plaintiff pursues three primary theories of liability. First, Plaintiff alleges that, as a
6 pattern and practice, Defendant failed to pay wages for all hours worked due to mandatory COVID-
7 19 screen protocols. Defendant required Plaintiff and other non-exempt employees to submit to
8 COVID-19 screenings, such as temperature checks and questionnaires, prior to the start of each shift.
9 Employees did not receive the payment of wages for time spent completing such activities.

10 8. Second, Plaintiff further alleges that Defendant failed in its affirmative obligation to
11 ensure that Plaintiff and other non-exempt employees had the opportunity to take and were provided
12 with off-duty 10-minute rest periods and off-duty 30-minute meal periods in accordance with the
13 mandates of the California Labor Code. In this respect, Plaintiff alleges that, as a pattern and practice,
14 Defendant routinely required employees to work through their meal and/or rest periods or their meal
15 and/or rest periods were frequently interrupted and shortened. Defendant failed to pay employees
16 premium compensation for such missed or shortened breaks, as mandated by Labor Code section
17 226.7.

18 9. Third, due to the alleged non-payment of wages and meal/rest period premiums,
19 Plaintiff alleges that the wage statements provided to non-exempt employees failed to identify all
20 applicable hourly rates in effect during the pay period, the corresponding number of hours worked at
21 each hourly rate, the total hours worked, and the gross and net wages earned.

22 10. Defendant disputes and denies Plaintiff’s allegations and claims asserted in the
23 operative Complaint.

24 11. On April 14, 2023, the Court granted in part and denied in part Defendant’s Motions to
25 Compel Arbitration, and to Stay or Dismiss Action Pending the Outcome of Arbitration. In the Class
26 Action, the putative class claims were dismissed, and Plaintiff’s individual claims were compelled to
27 arbitration. In the instant Action, Plaintiff’s individual PAGA claim was compelled to arbitration while
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1 the representative PAGA claim was stayed pending the California Supreme Court’s decision in *Adolph*
2 *v. Uber Technologies, Inc.* (June 16, 2022, No. S274671).

3 12. Consistent with the order, on May 1, 2023, Plaintiff submitted a demand for arbitration
4 with the American Arbitration Association (“AAA”).

5 **INFORMED SETTLEMENT NEGOTIATIONS**

6 13. Shortly after commencing arbitration, the Parties agreed to redirect their efforts towards
7 an early resolution of the Action. Over the course of several months, Plaintiff and Defendant (the
8 “Parties”) were able to negotiate a settlement through direct negotiation between their respective
9 counsel.

10 14. In connection with the Parties’ negotiations, Defendant produced data points relating
11 to:(1) the number of pay periods in which non-exempt employees were subject to temperature checks
12 during the liability period; (2) the number of pay periods in which non-exempt employees worked at
13 least one workweek in which the employee worked at least one shift lasting 3.5 hours or more during
14 the liability period; and (3) the number of pay periods in which non-exempt employees worked at least
15 one workweek in which the employee worked at least one shift lasting more than 5 hours during the
16 liability period. Using the data provided by Defendant, I conducted a full penalties analysis as to the
17 value of the PAGA claims.

18 15. Defendant also provided its written wage and hour policies, as well as other relevant
19 information.

20 16. The Parties also extensively discussed the factual basis and merits of Plaintiff’s claims
21 and Defendant’s anticipated defenses, the risks and delays of further litigation, the risks to the parties
22 of proceeding with arbitration and trial, the law relating to off-the-clock theory, meal and rest periods,
23 and wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of appeals,
24 among other things.

25 17. **Unpaid Minimum and Overtime Wages.** Plaintiff maintains that the time spent
26 submitting to COVID-19 screenings constitutes compensable hours worked. Defendant, however,
27 argues that the time spent in COVID-19 screenings does not constitute hours worked under California
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1 law. Defendant maintains that the screening is not primarily for its benefit, but instead was
2 implemented to comply with state and local policies directed at advancing public health objectives.
3 Furthermore, Defendant maintains that employees are not under its control until after they pass through
4 the screening – they are not confined to the worksite and can engage in non-work related tasks, such
5 as talking on the phone or texting.

6 18. **Failure to Provide Meal and Rest Periods.** Plaintiff contends that Defendant failed
7 to provide proper duty-free meal and rest periods. In response, Defendant maintains that it complied
8 with the law, had lawful and compliant practices, and provided employees with duty-free meal and
9 rest periods. As articulated in the employee handbook, Defendant’s written policy strictly require that
10 employees take uninterrupted meal and rest periods. Defendant contends that during the on-boarding
11 process, employees are provided with a copy of the employee handbook and sign an acknowledgement
12 that they have read and understood the handbook. Defendant further argues that, an adjudication of
13 the alleged meal and rest period violation would require individualized assessments as to the
14 circumstances of each missed, delayed or interrupted break. Defendant argues that, even if Plaintiff
15 was able to establish that some employees experienced a meal and/or rest period violation, such a
16 claim would not be manageable.

17 19. **Derivative Wage Statement Violation.** Plaintiff alleges a derivative wage statement
18 violation. As a result of the alleged underpayment and/or non-payment of wages to employees,
19 Plaintiff contends that the wage statements omit information required by Labor Code 226, including
20 all applicable hourly rates and the total hours worked. As argued by Defendant, Plaintiff’s derivative
21 wage statement violation is vulnerable to a motion for summary judgment based on the weaknesses of
22 the underlying primary claims.

23 20. During all settlement discussions, the parties conducted their negotiations at arm’s
24 length in an adversarial position. Arriving at a settlement that was acceptable to the Parties was not
25 easy. The risks of further litigation include, and are not limited to, allowing a jury to decide the claims
26 asserted in the case, and the real possibility of no recovery after years of litigation.

27 21. To memorialize the settlement brokered by the parties, Defendant prepared a
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1 Memorandum of Understanding (“MOU”) that contained the material terms of the settlement which
2 was later circulated for comment and revisions. By October 2023, the Parties finalized the terms of
3 the MOU. On October 6, 2023, Plaintiff signed and accepted the terms of the MOU and the MOU was
4 countersigned by Defendant’s representative on October 16, 2023.

5 22. A long-form settlement agreement was subsequently circulated by Defendant and the
6 Parties worked together to finalize its terms. After several revisions proposed by the Parties, the final
7 version of the long-form settlement agreement was circulated for execution. Attached hereto as
8 **Exhibit 1** is a true and correct copy of the PAGA Settlement Agreement and Release (“Settlement
9 Agreement” or “Agreement”).

10 **MONETARY TERMS OF SETTLEMENT**

11 23. The current Action is being settled on behalf of the following employees: Defendant’s
12 current and former non-exempt employees in the State of California from June 1, 2021, through
13 November 30, 2023 (“PAGA Settlement Members” or “aggrieved employees”). *See* Settlement
14 Agreement (“SA”) § I-h.

15 24. The Settlement Agreement requires Defendant to pay the gross amount of Two
16 Hundred Twenty-Five Thousand Five Hundred Eighty-Five Dollars (\$225,585.00) (the “Gross
17 Settlement Amount”). *See* SA § II-C(a). The Gross Settlement Amount was calculated with, and is
18 premised on, Defendant’s representation that there are approximately 201 PAGA Settlement Members
19 who worked approximately 5,013 pay periods between June 1, 2021 and July 31, 2023. *See id.* at § II-
20 C-(c). Thus, the approximate dollar value for each pay period being released by the Settlement is
21 roughly \$45. In the event the number of pay periods at issue exceeds 5,013 by more than fifteen
22 percent, Defendant will increase the Gross Settlement Amount on a proportional basis (i.e., if there
23 was twenty percent increase in pay periods, Defendant would increase the Settlement Amount by an
24 additional five percent). *See id.*

25 25. As part of the Settlement, Defendant does not object to Plaintiff’s Counsel’s request
26 for attorneys’ fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Seventy-Five
27 Thousand One Hundred Ninety-Five Thousand Dollars (\$75,195.00) (“Fee Amount”), and
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1 reimbursement for litigation costs in an amount up to Fifteen Thousand Dollars (\$15,000.00), subject
2 to the Court finally approving this Settlement. *See* SA §II-C-(a)-(1). Plaintiff's Counsel requests
3 reimbursement of \$3,319.98 for litigation related expenses ("Actual Costs"). Any portion of the
4 requested attorneys' fees and/or costs not approved by the Court shall be added to the Net Settlement
5 Amount.

6 26. Defendant also does not object to Plaintiff's request for an enhancement payment of
7 Seven Thousand Dollars Five Hundred Dollars and Zero Cents (\$7,500.00) in recognition for the work
8 Plaintiff has done on behalf of the State of California and the PAGA Settlement Members. *See* SA §II-
9 C-(a)-(3). Any portion of the requested enhancement payment not approved by the Court shall be
10 added to the Net Settlement Amount.

11 27. The Settlement provides for the payment of the fees and expenses reasonably incurred
12 by the Settlement Administrator. *See* SA § II-C-(a)-(2). The Parties have agreed to utilize Phoenix
13 Settlement Administrators to administer the settlement, with the administration costs estimated to be
14 Three Thousand One Hundred Ninety-Five Dollars (\$3,195.00). *See id.*

15 28. The balance of the Gross Settlement Amount remaining after deduction of the approved
16 attorneys' fees (\$75,195.00) and actual litigation costs (\$3,319.98), settlement administration fees
17 (\$3,195.00), and Plaintiff's enhancement payment (\$7,500.00) is the Net Settlement Amount. *See* SA
18 §II-C-(a)-(4). I estimate that the Net Settlement Amount total approximately \$136,375.02. Seventy-
19 five percent (75%) of the Net Settlement Amount, or approximately \$102,281.27, will be paid to the
20 LWDA for PAGA penalties ("LWDA Payment"). *See* SA §II-C-(a)-(4). The remaining twenty-five
21 percent (25%), or approximately \$34,093.75, will be distributed to PAGA Settlement Members
22 ("PAGA Settlement Member Payment"). *See id.*

23 29. Based on the number of PAGA Settlement Members, employees will be entitled to
24 recover, on average, up to \$169.90 each. However, the amount that any particular PAGA Settlement
25 Member will be entitled to recover will be greater or lower than this average depending on the number
26 of pay period in which the individual was employed as a non-exempt employee by Defendant during
27 the PAGA Claim Period. *See* SA §II-C-(a)-(4)-(i). This is fair, as it directly allocates greater penalties
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to PAGA Settlement Members who have allegedly suffered greater harm.

30. Any uncashed checks will be paid out pursuant to California Code of Civil Procedure section 384 to the *cy pres* recipient, East Bay Community Law Center. *See* SA § II-C-(b). East Bay Community Law Center, is a 501(c)(3) non-profit organization that provides legal services to low-income families. *See id.* I do not have a relationship, financial or otherwise, with the *cy pres* recipient.

POTENTIAL CIVIL PENALTIES

31. Due to the discretionary nature of PAGA penalties, PAGA civil penalties are difficult to evaluate. Defendant has indicated that there were approximately 5,013 pay periods during the period of June 1, 2021 and July 31, 2023. Assuming that Plaintiff was to prevail on the merits, applying the standard penalty of \$100 per pay period yields approximately \$501,300 in potential liability.

32. In the alternative, if the Court were to “stack” penalties, (*ie*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA penalties could total as high as \$2,005,200:

Lab. Code Section	Violation	Pay Periods	PAGA Penalties
Lab. Code §§ 510, 558, 1194, 1197 and 1197.1	Unpaid Minimum and Overtime Wages	5,013	\$501,300
Lab. Code § 226.7	Failure to Provide Rest Periods	5,013	\$501,300
Lab. Code §§ 226.7 and 512	Failure to Provide Meal Periods	5,013	\$501,300
Lab. Code § 226(a)	Derivative Wage Statement Violations	5,013	\$501,300
TOTAL			\$2,005,200

33. However, in light of Defendant’s articulated defenses to liability, I believe that is unrealistic to assume that the Court would permit the “stacking” of PAGA penalties in this manner.

1 34. The above penalty calculations further assume that Plaintiff will prevail on the merits.
2 Plaintiff would be required at trial to prove each aggrieved employee experienced a violation(s) of the
3 Labor Code during every pay period in the PAGA Period. Furthermore, the penalty calculation also
4 assumes that the Court would award full PAGA penalties for each pay period during the PAGA Period.
5 However, the PAGA penalties are subject to reduction.

6 35. In negotiating the amount of the settlement, I took into account the strengths and
7 weaknesses of each alleged violation and the inherent uncertainty in the potential recovery in a PAGA
8 action. By statute, the Court can decline to award the full amount of PAGA penalties where "...if,
9 based on the facts and circumstances of the particular case, to do otherwise, would result in an award
10 that is unjust, arbitrary and oppressive, or confiscatory." *See* Cal. Labor Code § 2699(e)(2). Assuming
11 that Plaintiff prevailed on liability, under the facts of this case, I appreciate the substantial risk that
12 Defendant could present a persuasive argument to reduce the amount of PAGA penalties at trial.

13 36. In this case, Defendant asserted that a substantial reduction in potential PAGA penalties
14 was warranted because: (1) even assuming that Plaintiff could establish the predicate violations, the
15 alleged violations were inadvertent; and (2) aggrieved employees did not suffer substantial economic
16 harm as a result of the alleged violations of Labor Code. Thus, Defendant contends that no PAGA
17 penalties were needed to punish or deter Defendant for its inadvertent behavior, much less to deter it
18 from committing any future violations that were completely foreclosed by its new payroll practices.

19 37. I am also aware that Courts routinely award far less than the statutory maximum
20 amount of civil penalties, even where an underlying violation of the Labor Code is found. As shown
21 in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on
22 his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
23 the employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon
24 review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see O'Connor v. Uber*
25 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal., 2016).

26 38. Assuming that the Court uses *Carrington* as a benchmark and assesses PAGA penalties
27 of approximately 10% of the total maximum, a more realistic estimate of the maximum PAGA
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1 penalties at issue—even with “stacking”—is \$200,520.

2 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

3 39. Upon the deposit of the Gross Settlement Amount, Plaintiff and PAGA Settlement
4 Members will release Defendant and Released Parties from the PAGA Claims. *See* SA § IV-A. As
5 defined in the Agreement, the term “PAGA Claims” means:

6 All claims, demands, liabilities, damages, attorney's fees, costs, and
7 penalties against the Released Parties, that could have been recovered
8 under the PAGA based on the facts asserted in the PAGA Action for
9 alleged: (1) unpaid wages, minimum wages, regular wages, overtime
10 and double time wages, in violation of Labor Code sections 510, 558,
11 1194, 1197 and 1197.1; (2) meal and rest period violations, in violation
12 of Labor Code sections 226.7 and 512; (3) untimely payment of wages,
in violation of Labor Code section 204; (4) wage statement violations,
in violation of Labor Code section 226(a); and (5) separation pay
violations in violation of Labor Code sections 201, 202 and 203, and
corresponding Wage Orders during the PAGA Claim Period.

13 *See id.* at § I-q. The Settlement is not intended to release does not extend to violations of any predicate
14 statutes other than PAGA. *See id.* at § IV-A. The Settlement also does not affect a waiver of claims
15 by PAGA Settlement Members against the Released Parties for any individual wage and hour claims.
16 *See id.*

17 40. Even though I strongly believe that Plaintiff can prevail at arbitration and trial, given
18 Defendant’s potential defenses to the alleged violations at issue, the risks and costs of continued
19 litigation, I believe that the Settlement is fair and reasonable. Moreover, as Defendant adamantly
20 denies that it should be liable for the full extent of the alleged penalties, there is a possibility that
21 Plaintiff and the aggrieved employees would be awarded less or recover nothing at trial. Thus, after
22 taking into account sharply disputed legal issues involved in this litigation, the risks associated with
23 further prosecution, delays caused by potential appeals, and the substantial benefits to be received
24 pursuant to the Settlement, I believe that the proposed settlement is fair, reasonable, and adequate and
25 is in the best interests of Plaintiff and the aggrieved employees.

26 **ATTORNEY EXPERIENCE**

27 41. Diversity Law Group has a great deal of experience in wage and hour class action
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1 litigation and has been approved as class counsel in a number of class actions.

2 42. My qualifications are as follows: I was the 2003 recipient of the Spelman Presidential
3 Scholarship to Emory University School of Law. During law school, I was a summer associate at the
4 law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta office of the Equal
5 Employment Opportunity Commission. I received my J.D. from Emory University in 2006 and was
6 admitted to the California Bar in December 2006. Following law school, I was an associate at
7 Sonnenschein from September 2006 to May 2009.

8 43. Since 2009, my primary area of practice has been employment litigation. I have
9 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was an
10 associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then senior
11 associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June 2011 to May
12 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500 companies in
13 employment litigation in both state and federal courts, as well as before government agencies,
14 including the California Department of Labor. My practice included the defense of single plaintiff and
15 multi-plaintiff lawsuits involving claims under the California Fair Employment and Housing Act, the
16 California Labor Code and the Fair Labor Standards Act. I also handled a number of wage and hour
17 class actions.

18 44. While at Ogletree and Seyfarth, I served as the lead associate on a number of wage and
19 hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court
20 Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County
21 Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles
22 County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court
23 Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case No.
24 BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara County
25 Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing*
26 *Pagoda*, San Bernardino Superior Court Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal.
27 Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and
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1 *Benjamin Burgess et al v. Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-
2 cv-05870.

3 45. I also second chaired two jury trials where I represented the prevailing defendant. Both
4 cases involved employees who brought claims against their former employers pursuant to the Fair
5 Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*, Los Angeles
6 County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt & Whitney Rocketdyne Inc.*
7 *et al.*, Los Angeles County Superior Court Case No. BC468909.

8 46. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
9 handling employment cases. I primarily represent employees.

10 47. I have been approved as class counsel in numerous wage/hour class actions that have
11 been granted class certification and final approval, including: *Antonio Becerra-Mata v. PSC Industrial*
12 *Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal So v. Owens-*
13 *Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No. BC608609; *Sarah*
14 *Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-16-CV-294904;
15 *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara County Superior Court
16 Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No.
17 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No.
18 BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*, Santa Cruz Superior Court
19 Case No. 18CV00191; *Michael Randolph v. Pacific Racing Association*, Alameda County Superior
20 Court Case No. RG18908139; *Cody Wirbick v. Sundt Construction, Inc.*, U.S. District Court for the
21 Eastern District of California Case No. 2:19-cv-02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue*
22 *Foods, LLC*, Sonoma County Superior Court Case No. SCV 264649; *Delmer Wood III v. Reeve*
23 *Trucking Company Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric*
24 *Chavez v. Converse, Inc.*, U.S. District Court for the Northern District of California Case No. 15-cv-
25 03746-NC; *Jharett Siron v. Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-
26 00527959-CU-OE-VTA; *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa
27 Clara Superior Court Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara
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1 Superior Court Case No. 19CV341582.

2 48. More recently, I have served as lead trial counsel on a PAGA bench trial, in which the
3 plaintiff was the prevailing party.

4 **ATTORNEYS' FEES AND LITIGATION COSTS**

5 49. To date, I have incurred approximately 71.80 hours in connection with the litigation
6 of this lawsuit. Attached hereto as **Exhibit 3** is a summary of the hours I have incurred to date.
7 Counsel anticipates spending an additional three hours on this matter through its final resolution,
8 including preparing for the approval hearing, conferring with Settlement Administrator regarding
9 distribution of payment to Aggrieved Employees, and fielding phone calls regarding inquiries about
10 the Settlement.

11 50. As of January 1, 2024, my hourly rate in class and representative actions increased to
12 \$800. Accordingly, the total lodestar for my hours will be approximately \$59,840 (74.80 hours x
13 \$800). I was recently approved at an hourly rate of \$800 in the matters of *Robert Jordan v. Mondelez*
14 *Global, LLC*, San Bernardino County Superior Court Case No. CIVSB2202758; and *Alexis Tristan v.*
15 *American Homes 4 Rent, L.P.*, Los Angeles County Superior Court Case No. 23STCV17006. I was
16 also previously approved at an hourly rate of \$700.00 in a number of matters, including: *Foaad Hanna*
17 *v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven*
18 *LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville*
19 *Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific*
20 *Racing Association*, Alameda County Superior Court Case No. RG18908139; *Gutierrez v. Spa*
21 *Havens, LP*, San Diego Superior Court Case No. 37-2019-00057065-CU-OE-NC; *Cruzado v. Ontario*
22 *T, Inc.*, San Bernardino Superior Court Case No. CIVSB2027249; *Ray v. C&W Facility Services, Inc.*,
23 San Bernardino Superior Court Case No. CIVSB2101321; *Alvarez v. Forterra Building Products*, San
24 Diego Superior Court Case No. 37-2020-00018179-CU-OE-CTL; *Dunn v. Universal Plant Services*
25 *of California, Inc.*, Solano County Superior Court Case No. FCS056134, *Pulido v. Georgia-Pacific*
26 *Corrugated III LLC*, Fresno Superior Court Case No. 18CECG00265; *In re: FPI Management Wage*
27 *and Hour Cases*, Los Angeles Superior Court Case No. JCCP5050; *Delgado v. Kloeckner Metals*
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1 *Corporation*, Los Angeles Superior Court Case No. 20STCV22503; *Jackson v. Samuel, Son & Co.*
2 *(USA) Inc.*, Riverside County Superior Court Case No. CVRI2101679, *Blanton v. Communications*
3 *Test Design, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2021-0005136; *Diaz v. Acuity*
4 *Brands Lighting, Inc.*, San Bernardino Superior Court Case No. CIVDS2015583; *Flournoy v. Partners*
5 *Personnel – Management Services, LLC*, Riverside County Superior Court Case No. CVRI2102372;
6 *Idian v. VHSD ES INC.*, San Diego Superior Court Case No. 37-2019-00018927-CU-OE-CTL; *Miller*
7 *v. Stanbridge University*, Orange County Superior Court Case No. 30-2021-01206298-CU-OE-CXC;
8 *Romano v. SSA Terminals, LLC*, Los Angeles Superior Court Case No. 20STCV29048; *Wise v. Le*
9 *Petite Academy, Inc.*, San Joaquin Superior Court Case No., STK-CV-UOE-2021-10561; *Chambers*
10 *v. SOMACIS, Inc.*, San Diego Superior Court Case No. 37-2021-00033445-CU-OE-CTL; *Johnson v.*
11 *FS Palo Alto Employment, Inc.*, Santa Clara Superior Court Case No. 21CV389927; *Rodriguez v. U.S.*
12 *Bank National Association*, Los Angeles Superior Court Case No. BC617356; *Moss v. Sares Regis*
13 *Operating Company, L.P.*, Orange County Superior Court Case No. 30-2021-01201041-CU-OE-
14 CXC; and *Rodriguez v. City National Bank*, Los Angeles Superior Court Case No. 20STCV29761.

15 51. At the time the Parties negotiated the Settlement Agreement, I did not have a final tally
16 of the litigation costs incurred to date. As such, the Parties included a maximum amount that could be
17 attributed to costs under the settlement. To date, Diversity Law Group has incurred costs in the amount
18 of \$3,319.98 for litigation related expenses. Attached hereto as **Exhibit 4** is a true and correct copy of
19 the cost report.

20 **NOTICE TO LWDA**

21 52. On June 16, 2023, my office submitted a copy of the Court's Order approving the
22 PAGA Settlement to the LWDA. Attached hereto as **Exhibit 5** is a true and correct copy of the
23 submission confirmation.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct. Executed September 13, 2024 at Los Angeles, California.

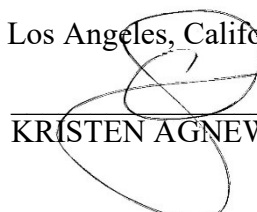
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27
28

KRISTEN AGNEW

EXHIBIT 1

PAGA SETTLEMENT AGREEMENT AND RELEASE

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Gzim Kovacevic (“Plaintiff”), for himself and on behalf of the State of California and all Private Attorneys General Act (“PAGA”) Settlement Members, on the one hand, and Defendant Pure Wafer, Inc. (“Defendant”), on the other (collectively, the “Parties”), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), that the Settlement of these Actions shall be effectuated upon and subject to the following terms and conditions.

The Parties agree that the Actions (as defined in Section I below) shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Agreement and for the consideration set forth herein, including but not limited to a release of claims by Plaintiff and the PAGA Settlement Members as set forth herein.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Actions” means the PAGA Action and American Arbitration Association, Case No. 01-23-0001-9774.
- (b) “Agreement” means this PAGA Settlement Agreement and Release.
- (c) “Approval Date” means the date the Court grants approval of this Agreement by signing and filing the Final Order.
- (d) “Complaint” means the operative Complaint, which was filed on or about August 8, 2022, for Violation of The California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.).
- (e) “Court” means the Superior Court for the State of California, County of Santa Clara.
- (f) “Defendant” means the Defendant in these Actions, Pure Wafer, Inc.
- (g) “Defense Counsel” or “Counsel for Defendant” means:

Anthony M. Isola
aisola@fisherphillips.com
Nathan K. Low
nlow@fisherphillips.com
Vincent J. Adams
vadams@fisherphillips.com
FISHER & PHILLIPS, LLP
One Montgomery Street, Suite 3400
San Francisco, California 94104
Telephone: (415) 490-9000

Facsimile: (415) 490-9001

- (h) “PAGA Settlement Members” or “aggrieved employees” means Defendant’s current and former non-exempt employees in the State of California from June 1, 2021, through November 30, 2023.
- (i) “PAGA Settlement Member Payment” means the portion of the Gross Settlement Amount that shall be paid to each PAGA Settlement Member per the terms and conditions of this Agreement.
- (j) “Effective Date” means the date by which all of the following have occurred:
 - (1) The Court has approved the Agreement;
 - (2) The Court has entered the Final Order;
 - (3) The Court has dismissed *with prejudice* the individual claims alleged in the related matter of *Gzim Kovacevic v. Pure Wafer, Inc.*, Santa Clara County Superior Court Case No. 22CV398811;
 - (4) Plaintiff has submitted a request for dismissal with prejudice of AAA Case No. 01-23-0001-9774 to American Arbitration Association; and,
 - (5) The later of the following
 - i. if no timely objections are filed or if all objections are withdrawn, the date on which the Court or any party hereto serves notice of entry of the Final Order;
 - ii. if an objection is filed and not withdrawn, the seventh (7th) calendar day after the date for filing an appeal and no such appeal being filed; or
 - iii. if any timely appeals are filed, the seventh (7th) calendar date after the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement. Should any appeal not result in approval of the Parties’ Agreement as described herein, the Agreement shall be void *ab initio* and of no further force or effect, and the Parties shall be returned in all respects to their respective positions as of November 30, 2023.
- (k) “Final Order” means the final Court order entered in the PAGA Action in accordance with the terms herein, the Court adopting and approving this Agreement (and the terms of Settlement described herein) under the specific terms requested, and the Court retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.

- (l) “Gross Settlement Amount” means the total gross settlement amount of Two Hundred Twenty-Five Thousand Five Hundred Eighty-Five Dollars and Zero Cents (\$225,585.00) to be paid by Defendant, subject to pro rata increase, as provided by this Agreement to fully and finally settle, resolve and conclude these Actions as provided under this Agreement, without any admission of fault or liability.
- (m) “LWDA” means the State of California Labor and Workforce Development Agency.
- (n) “Named Plaintiff” or “Plaintiff” means Gzim Kovacevic, individually and in his capacity as a representative of the State of California on behalf of other aggrieved employees.
- (o) “PAGA” means the California Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 et seq.
- (p) “PAGA Action” means the matter of *Gzim Kovacevic v. Pure Wafer, Inc.*, filed in the Superior Court of California, County of Santa Clara, Case Nos. 22CV401779.
- (q) “PAGA Claims” means all claims, demands, liabilities, damages, attorney's fees, costs, and penalties against the Released Parties, that could have been recovered under the PAGA based on the facts asserted in the PAGA Action for alleged: (1) unpaid wages, minimum wages, regular wages, overtime and double time wages, in violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1; (2) meal and rest period violations, in violation of Labor Code sections 226.7 and 512; (3) untimely payment of wages, in violation of Labor Code section 204; (4) wage statement violations, in violation of Labor Code section 226(a); and (5) separation pay violations in violation of Labor Code sections 201, 202 and 203, and corresponding Wage Orders during the PAGA Claim Period.
- (r)
- (s) “PAGA Claim Period” means any time during the period of June 1, 2021 through November 30, 2023.
- (t) “Plaintiff’s Counsel” means:
 - Larry W. Lee
 - lwlee@diversitylaw.com;
 - Kristen M Agnew
 - kagnew@diversitylaw.com
 - Nicholas Rosenthal
 - nrosenthal@diversitylaw.com
 - DIVERSITY LAW GROUP, P.C.
 - 515 S. Figueroa Street, Suite 1250
 - Los Angeles, CA 90071
 - El Segundo, California 90245
 - Telephone: (213) 488-6555
 - Facsimile: (213) 488-6554

(u) “Released Parties” means Defendant, its third-party staffing agencies, its parents, subsidiaries, affiliates (including Pure Wafer Solutions, LLC and Semi Automation & Technologies, LLC), insurers, related entities and divisions, and its and their respective: (1) predecessors, successors, and assigns, and (2) current and former agents, heirs, executors, administrators, principals, officers, directors, shareholders, employees, founders, members, assigns, insurers, attorneys, and all others claiming through or by any of them.

(v) “Settlement Administrator” means Phoenix Settlement Administrators.

II. APPROVAL AND IMPLEMENTATION OF SETTLEMENT

A. Cooperation

The Parties will cooperate in seeking approval of the Settlement described in this Agreement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Agreement.

B. Court Approval

Because these Actions include PAGA claims, this Agreement requires review and approval by the Court. *See* Cal. Lab. Code § 2699(1)(2). This Agreement is expressly contingent upon the Court’s approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of the Final Order in a form agreed to by the Parties and entry of the Final Order in accordance therewith). The Court’s failure to approve this Settlement shall render the entire Agreement voidable and unenforceable as to the Parties, at the option of either Plaintiff or Defendant. Each party may exercise its option to void this Agreement as provided above by giving notice, in writing, to the other party, and to the Court within fifteen (15) days after the Final Order denying approval of the Settlement has been received by the party seeking to void the Agreement.

Plaintiff will file a Motion for Approval of PAGA Settlement and for an Order approving this Agreement. If the Court does not grant the request for approval and issue the Final Order, under the specific terms requested, the Parties agree to meet and confer to address the Court’s concerns and determine whether resolution of the Actions can be obtained in a manner consistent with the Court’s concerns.

Plaintiff shall submit a copy of the Final Order in these Actions and a copy of any other order providing for or denying an award of civil penalties to the LWDA within ten (10) days after entry of the Final Order, in compliance with section 2699(1)(3) of the California Labor Code.

C. Gross Settlement Amount Payment Procedures

(a) Gross Settlement Amount

In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), Defendant agrees to pay the Gross Settlement Amount of \$225,585.00, which is the total and all-inclusive amount Defendant will be obligated to pay under the Settlement embodied by this Agreement (subject only to a pro-rata increase described in Section II(C)(c) below). The Gross Settlement Amount shall be allocated as follows:

- (1) **Attorneys' Fees and Costs:** Plaintiff's Counsel may apply to the Court for up to one-third of the total Gross Settlement Amount (currently estimated at \$75,195.00) ("Fee Amount") as attorneys' fees and will request up to \$15,000.00 in actual costs ("Actual Costs") pursuant to PAGA, which provides for the recovery of attorneys' fees and costs. Any modification of such application by the Court shall not (i) affect the enforceability of the Agreement, (ii) provide any of the Parties with the right to terminate the Agreement, or (iii) impose any obligation on Defendant to increase the consideration paid in connection with the Settlement. Plaintiff's Counsel's entitlement to fees and costs is a material condition of this Settlement, but the Fee Amount awarded is not.
- (2) **Settlement Administration Fees:** All Settlement Administration expenses shall be paid from the Gross Settlement Amount and shall not exceed Three Thousand One Hundred Ninety-Five Dollars (\$3,195.00) ("Settlement Administration Fees"). Settlement Administration expenses paid to an outside Settlement Administration service must come out of the Gross Settlement Amount. The Parties agree to retain Phoenix Settlement Administrators to serve as the Settlement Administrator in this matter. If the Settlement Administration Fees are less than the estimated amount of \$3,195.00, the remainder will be distributed amongst the PAGA Settlement Members pursuant to the allocation formula set forth in Section II(C)(a)(4).
- (3) **Plaintiff's Enhancement Payment:** Defendant agrees not to oppose Plaintiff Gzim Kovacevic's request for an enhancement payment of Seven Thousand Dollars Five Hundred Dollars and Zero Cents (\$7,500.00) in recognition for the work Plaintiff has done on behalf of the State of California and the aggrieved employees. If Plaintiff's request for an enhancement payment is not approved and/or reduced by the Court, any amount not approved and/or reduced by the Court will be distributed amongst the PAGA Settlement Members pursuant to the allocation formula set forth in Section II(C)(a)(4).
- (4) **Payment of PAGA Penalties:** The total sum available for payment of PAGA penalties shall be calculated by deducting the Fee Amount, Actual Costs, Settlement Administration Fees, and Plaintiff's Enhancement Payment from the Gross Settlement Amount (this will yield the "Net Settlement Amount"). Thereafter, seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment") and the remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Members ("PAGA Settlement Member Payment").

- i. The “PAGA Settlement Member Payment” for each PAGA Settlement Member shall be determined based on a formula taking into account the number of each PAGA Settlement Member’s “Qualifying Pay Periods.” A “Qualifying Pay Period” shall be defined as any pay period in which a PAGA Settlement Member was employed as a non-exempt employee by Defendant between June 1, 2021, and November 30, 2023, as determined by Defendant’s records.
- ii. The amount paid to each PAGA Settlement Member will be determined as follows: The 25% amount to be distributed to PAGA Settlement Members will be divided by the total number of Qualifying Pay Periods for all PAGA Settlement Members during the relevant time period (June 1, 2021 up through and including November 30, 2023) (“Qualifying Pay Period Amount”). Each PAGA Settlement Member will then be paid an amount equal to the Qualifying Pay Period Amount multiplied by that PAGA Settlement Member’s total number of Qualifying Pay Periods.

(b) Funding and Distribution Process

Within thirty (30) calendar days after the Court enters its Final Order, Defendant shall transmit to the Settlement Administrator the Gross Settlement Amount to be held by the Settlement Administrator in a low-risk interest bearing account, until distribution following the Effective Date.

Within ten (10) business days after the Court enters the Final Order, Defendant shall also provide the Settlement Administrator with a PAGA Employees List which shall state each PAGA Settlement Members’ (1) full name, (2) last known address, (3) social security number, (4) dates of employment, and (5) the numbers of Qualifying Pay Periods he or she worked. This information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator’s duties as specified in this Agreement.

Defendant will have five (5) business days from the date upon which the Settlement Administrator sends any requests for approvals regarding forms, calculations and timing to review and respond to any such inquiries. Failure to respond within the five (5) business days will constitute an approval of the issue. Within ten (10) business days of receiving the final PAGA Employees List, the Settlement Administrator will disburse PAGA Settlement Member Payments to each PAGA Settlement Member, will disburse the Attorneys Fees to Plaintiff’s Counsel, will disburse the Attorneys’ Costs to Plaintiff’s Counsel, will send a check to Plaintiff for the Enhancement Payment, and will send a check to the LWDA for the LWDA Payment, in the amount calculated pursuant to the terms of this Agreement.

Prior to the disbursement to PAGA Settlement Members, the Settlement Administrator shall run a skip trace to obtain updated address information for every PAGA Settlement Member. PAGA Settlement Members who receive their PAGA Settlement Member Payments via U.S. Mail will receive a letter along with their PAGA Settlement Member Payment explaining the reason for the payment, substantially in the form attached hereto as **Exhibit A**, the content of which will be submitted to the Court for approval. Such mailing as described in this paragraph shall be conclusive evidence of payment of the PAGA Settlement Member Payments, and shall satisfy any and all due process requirements. All funds not claimed within 180 days of mailing of payment shall be t paid out pursuant to California Code of Civil Procedure section 384 to the following *cy pres* recipient: East Bay Community Law Center, 2001 Center Street, Berkeley, California 9470. East Bay Community Law Center is a 501(c)(3) nonprofit organization providing free legal services for under-resourced residents of Northern California. The Parties represent that they do not have an interest, financial or otherwise, in the East Bay Community Law Center.

(c) Pro Rata Increase

Defendant has represented that there are approximately 201 aggrieved employees who worked approximately 5,013 pay periods between June 1, 2021 and July 31, 2023. This estimate serves as the basis for Plaintiff's accepting the Settlement. In the event the actual number of pay periods during this period from (June 1, 2021 and July 31, 2023) exceeds 5,013 by more than 15%, Defendant will increase the Gross Settlement Amount on a proportional basis (i.e., if there was 20% increase in pay periods, Defendant would increase the Settlement Amount by an additional 5%). Defendant shall also be responsible for any settlement administration costs of this additional payment, which will not be taken out of the additional payment but will be separately paid for by Defendant, should this escalator clause be triggered.

(d) No Additional Contribution by Defendant

Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount (subject only to a pro-rata increase described in Section II(C)(c) above). Defendant shall not be required to pay more than the Gross Settlement Amount to obtain the relief (including, but not limited to, the Settlement, releases of claims, issuance of the Final Order, dismissal of all claims in the Actions with prejudice) provided in this Agreement or to fully and finally settle and resolve the claims alleged in the PAGA Action.

Notwithstanding the above, in the event that this Agreement is voided or nullified, in whole or in part, however that may occur, or the Settlement of the Actions are barred by operation of law, or invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

(e) Tax Indemnity

The PAGA Settlement Member Payments are penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. Each PAGA Settlement Member will be responsible for paying all applicable state,

local and federal income taxes on all amounts received pursuant to this Settlement, and the Released Parties shall not be held liable for any failure to do so.

III. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendant disputes that Plaintiff or any PAGA Settlement Member are entitled to any additional wages other than those already paid and/or any penalties, dispute the allegations and each and every cause of action in the Actions, and dispute that the Actions may be maintained on a class or representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the payment of the Gross Settlement Amount and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended as or may be construed as an admission of liability, unlawful conduct, or wrongdoing by Defendant (and/or any of the Released Parties) in any way, shape or form, and Defendant and the Released Parties deny any such liability or wrongdoing.

B. Non-Evidentiary Use

Except for purposes of effectuating the Settlement pursuant to this Agreement and/or for Defendant (and/or a Released Party) to establish that a PAGA Settlement Member has resolved any of his/her claims released through this Agreement, and regardless of whether the Final Order occurs, neither this Agreement nor any of its terms (including, but not limited to, the payment of the Gross Settlement Amount) nor the Settlement itself will be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence, in any further proceeding in the PAGA Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendant or any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage.

C. Nullification

If (a) the Court should for any reason fail to approve this Settlement consistent with the specific terms agreed to by the Parties and set forth herein, (b) the Court should for any reason fail to enter the Final Order, or (c) the Final Order is reversed, modified, or declared or rendered void, then this Agreement shall be deemed voidable and unenforceable as to Plaintiff and Defendant, at the option of either party. Each party may exercise its option to void this Settlement as provided above by giving notice, in writing, to the other, and to the Court within fifteen (15) days after the Final Order granting approval of the Settlement or a Final Order denying approval of the Settlement has been received by the party seeking to void the Settlement.

Where either party has exercised its option to void this Settlement, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in these Actions shall stand in the same position they were the day prior to the November 30, 2023 in this Action, without prejudice to either Party; and (iii) Defendant will not have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

IV. RELEASE AND WAIVER OF CLAIMS

A. Claims Released By Plaintiff, the LWDA, and All PAGA Settlement Members

Upon the date that Defendant deposits the entire Gross Settlement with the Settlement Administrator, Plaintiff, the LWDA, all PAGA Settlement Members, and the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from the PAGA Claims, including, demands, liabilities, damages, attorney's fees, costs and penalties that could have been recovered. PAGA Settlement Members will not be provided the opportunity to opt out of this release. It is understood and agreed that this Agreement neither releases the Released Parties from liability, if any, to PAGA Settlement Members for violations of any predicate statutes other than PAGA, nor constitutes a waiver of claims by PAGA Settlement Members against the Released Parties for any individual non-PAGA wage and hour claims.

B. No Additional Attorneys' Fees or Costs

The Parties agree to bear its/their own attorneys' fees and costs related to these Actions and *Gzim Kovacevic v. Pure Wafer, Inc.*, Santa Clara County Superior Court Case No. 22CV398811, except as specifically provided above with respect to the Fee Amount, Actual Costs and Enforcement Action.

V. MISCELLANEOUS PROVISIONS

A. LWDA Notice

The LWDA will be given notice of this Settlement pursuant to the 2016 amendments to the PAGA. Cal. Lab. Code § 2699(1)(2). Plaintiff will serve a copy of the Settlement to the LWDA on the same day the Settlement is filed with the Court.

Additionally, a copy of the Court's Final Order will be submitted to the LWDA within ten (10) days after entry of the Final Order, pursuant to California Labor Code § 2699(1)(3).

B. Voluntariness

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

C. Amendments

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by the Plaintiff and an authorized representative of Defendant.

D. Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Settlement Member, the State of California, Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party. Plaintiff individually and

expressly warrants that he has not transferred to any person or entity, any right or cause of action, or claim released by this Agreement.

E. Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

F. Entire Agreement

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof, including, without limitation, the Memorandum of Understanding executed by the Parties.

G. Waiver of Compliance

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

H. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or its/their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature.

I. Meet and Confer Regarding Dispute(s)

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

J. Agreement Binding on Successors

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

K. Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

L. Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Actions and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

M. Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

N. Continuing Jurisdiction

The Parties agree that upon the occurrence of the Final Order pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of these Actions over all Parties and the PAGA Settlement Members to the fullest extent to interpret, enforce and effectuate the terms, conditions, intents and obligations of the Agreement.

O. No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

P. Enforcement Action

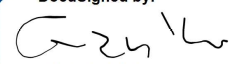
In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: 06102024, 2023

DocuSigned by:

E4E0D8E85D284EA

GZIM KOVACEVIC
Plaintiff and PAGA Representative

Dated: Dec 4, 2023, 2023

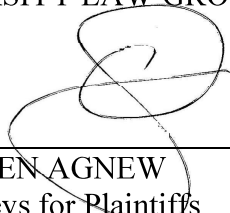
PURE WAFER, INC.

By: Scott Murcay
Scott Murcay (Dec 4, 2023 16:09 MST)

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: June 11, 2024, 2023

DIVERSITY LAW GROUP, P.C.

By: 
KRISTEN AGNEW
Attorneys for Plaintiffs

Dated: June 11, 2024, 2023

FISHER & PHILLIPS LLP

By: 
NATHAN K. LOW
Attorneys for Defendant

EXHIBIT A

<<DATE>>

<<FIRST NAME>> <<LAST NAME>>

<<ADDRESS>>

Re: *Gzim Kovacevic v. Pure Wafer, Inc.* Santa Clara Superior Court Case No. 22CV401779

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Gzim Kovacevic v. Pure Wafer, Inc.* Santa Clara Superior Court Case No. 22CV401779 (the “PAGA Action”).

Gzim Kovacevic (“Named Plaintiff”) filed the PAGA Action against Pure Wafer, Inc (“Pure Wafer”) pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”). Named Plaintiff brought the PAGA Action on behalf of the State of California and all current and former California non-exempt employees who worked at least one pay period for Pure Wafer in California at any time during the period of June 1, 2021 onward. You have been identified as one of the individuals on whose behalf the case was brought.

The Named Plaintiff in the PAGA Action claimed that Pure Wafer owed penalties under PAGA for alleged violations of the California Labor Code. More specifically, the Named Plaintiff alleged that Pure Wafer: (1) failed to pay minimum wages, regular wages, overtime and double time wages, in violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1; (2) failed to provide meal and rest periods, in violation of Labor Code sections 226.7 and 512; (3) failed to make the timely payment of wages, in violation of Labor Code section 204; (4) failed to provide accurate itemized wage statements, in violation of Labor Code section 226(a); and (5) failed to pay all wages owed upon separation of employment, in violation of Labor Code sections 201, 202 and 203.

Pure Wafer denies and disputes all allegations made by Plaintiff, and Pure Wafer maintains that it complied with the requirements of the California Labor Code and denies that it owes any penalties. In agreeing to this settlement, Pure Wafer does not admit that it is liable in any way to current or former employees.

The Court has not ruled on the merits of the PAGA Action, but it has approved the settlement amount the parties agreed to. The settlement provides for a cash payment by Pure Wafer in the amount of \$225,585.00 (“Gross Settlement Amount”). After deducting the service award to Plaintiff (\$7,500.00), attorneys’ fees (\$75,195.00), actual litigation costs (\$**TBD**) and the Settlement Administrator’s costs (\$3,195.00) from the Gross Settlement Amount, the remaining

balance represents the Net Settlement Amount.

The Court has approved a Net Settlement Amount in the amount of \$ **TBD**. By statute, seventy-five percent of the Net Settlement Amount (\$**TBD**) goes to the State of California's Labor and Workforce Development Agency. The remaining twenty-five percent (\$**TBD**) will be paid to the individuals who were allegedly affected by the Labor Code violations at issue in the case. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

You are not a party to this lawsuit, but you and the government will be bound by the judgment in this matter as to civil penalties. As such, you will be giving up or "releasing" Pure Wafer from all claims, demands, liabilities, damages, attorney's fees, costs, and penalties that could have been recovered under the PAGA based on the facts asserted in the PAGA Action for alleged: (1) unpaid wages, minimum wages, regular wages, overtime and double time wages, in violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1; (2) meal and rest period violations, in violation of Labor Code sections 226.7 and 512; (3) untimely payment of wages, in violation of Labor Code section 204; (4) wage statement violations, in violation of Labor Code section 226(a); and (5) separation pay violations in violation of Labor Code sections 201, 202 and 203, and corresponding Wage Orders during the PAGA Claim Period (June 1, 2021 through November 30, 2023).

Should you have any questions regarding the settlement, the contact information for the settlement administrator is [INSERT]

Sincerely,

[NAME AND TITLE OF SIGNATORY]

Kovacevic - PAGA Settlement Agreement and Release - Final(48811373.1)

Final Audit Report

2023-12-04

Created:	2023-12-04
By:	Jessica Ortiz (jortiz@fisherphillips.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYXbyb7bQVXEUFgtkChpBzR98DmK-WrHD

"Kovacevic - PAGA Settlement Agreement and Release - Final(48811373.1)" History

-  Document created by Jessica Ortiz (jortiz@fisherphillips.com)
2023-12-04 - 11:03:09 PM GMT
-  Document emailed to scott.murcray@purewafer.com for signature
2023-12-04 - 11:04:39 PM GMT
-  Email viewed by scott.murcray@purewafer.com
2023-12-04 - 11:09:02 PM GMT
-  Signer scott.murcray@purewafer.com entered name at signing as Scott Murcray
2023-12-04 - 11:09:29 PM GMT
-  Document e-signed by Scott Murcray (scott.murcray@purewafer.com)
Signature Date: 2023-12-04 - 11:09:31 PM GMT - Time Source: server
-  Agreement completed.
2023-12-04 - 11:09:31 PM GMT

EXHIBIT 2

GZIM KOVACEVIC

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA ST., SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

April 25, 2022

VIA ON-LINE FILING AND CERTIFIED MAIL TO EMPLOYER

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Kovacevic v. Pure Wafer, Inc.*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of my claims against my former employer, Pure Wafer, Inc. (the "Company"). Specifically, I allege that the Company:

1. Violated Labor Code §§ 201-204, 226.2, 510, 558, 1194, 1197 and 1197.1 by not paying me and other similarly situated aggrieved employees minimum, regular, and overtime wages. Specifically, prior to the start of each shift, we were required to wait in line and undergo temperature checks and fill out Covid questionnaires, which were done off-the-clock. Further, as a result of such violations, the Company violated Labor Code § 226(a) as the wage rates, total hours worked, and net/gross wages earned shown on the wage statements were inaccurate due to the violations set forth above.

2. Violated Labor Code §§ 226.7 and 512 by not authorizing and permitting a duty-free rest and meal periods. Specifically, due to the workload, I and other aggrieved employees were routinely denied our meal and rest breaks or were required to take them late or were interrupted when taking such breaks. Despite not being provided with proper meal and rest breaks, the Company did not pay any premiums for such missed breaks. Further as a result of such violations, the Company violated Labor Code § 226(a) as the wage rates, total hours worked, and net/gross wages earned shown on the wage statements were inaccurate due to the violations set forth above and Labor Code §§ 201-203 by not paying employees all of their premiums upon separation of employment.

The address for the Company is:

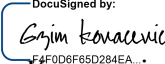
Pure Wafer, Inc.
2240 Ringwood Ave
San Jose, CA 95131

April 25, 2022

Page 2

Please contact my attorneys at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

F4F0D6F65D284EA...
Gzim Kovacevic

cc: Pure Wafer, Inc. (by certified mail)

EXHIBIT 3

Gzim Kovacevic, v. Pure Wafer, Inc.

Santa Clara County Superior Court Case No. 22CV401779

Kristen Agnew Time and Task Chart

<u>HOURS</u>	<u>DESCRIPTION OF WORK</u>
5.60	Review client intake notes; analysis and research re theories of liability; conferences with co-counsel re same.
3.30	Draft PAGA Notice, Class Action Complaint and Representative Action Complaint.
4.50	Review and respond to correspondence with defense counsel re Defendant's arbitration agreement; review and analyze terms of arbitration agreement; conduct legal research re defenses to arbitration; conferences with co-counsel re same.
1.70	Meet and confer with defense counsel re October 13, 2022 case management conference; prepare joint report; review and respond to correspondence with defense counsel re same.
.20	Review and respond to correspondence re briefing schedule for Defendant's motion to compel arbitration.
.90	Prepare joint reports re February 2, 2023 case management conference; review and respond to correspondence with defense counsel re same.
20.80	Review and analyze Defendant's motion to compel arbitration filed in class and PAGA actions; legal research re opposition; prepare opposition to motions to compel arbitration; review and analyze Defendant's reply; prepare for and appear at hearing on motions to compel arbitration; conferences with co-counsel re same.
1.0	Prepare demand for arbitration.
.50	Review and revise joint reports re May 12 2, 2023 case management conference; review and respond to correspondence with defense counsel re same.
.30	Review and respond to correspondence re mediation and selection of mediator; research re same.
4.20	Review and respond to correspondence with defense counsel re direct settlement negotiations; analyze and review Defendant's policies and prepare penalties calculations; conferences with co-counsel re status of settlement negotiations.
3.50	Review and revise MOU; conferences with defense counsel re same; review and respond to correspondence re same; review terms of MOU with client.

.30	Review and revise joint reports re September 28, 2023 case management conference; review and respond to correspondence with defense counsel re same.
8.60	Review and revise PAGA Settlement Agreement; review and respond to correspondence with defense counsel re revisions to Settlement Agreement; conferences with co-counsel regarding same; conference with client re terms of settlement; draft correspondence to client re same.
5.70	Conferences with defense counsel regarding enforcement of MOU; review and respond to correspondence with defense counsel re same; conferences with co-counsel and client re same; draft correspondence to client re settlement; conduct legal research re same.
.50	Prepare joint report re April 24, 2024 case management conference; review and respond to correspondence with defense counsel re same.
2.80	Prepare declaration re Defendant's motion to enforce the MOU.
7.40	Prepare PAGA approval motion and supporting declarations.
71.80	TOTAL HOURS

EXHIBIT 4

9/13/2024
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DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Kovacevic, Gzim v. Pure PAGA
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
71606	EXP	Mariana Becerra	1	75.00	75.00
4/29/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
LWDA					
71971	EXP	Olympia	2	0.25	0.50
4/30/2022		Photocopies			
WIP		Kovacevic, Gzim v. Pure PA			
Photocopies					
71972	EXP	Olympia	1	6.13	6.13
4/30/2022		Postage			
WIP		Kovacevic, Gzim v. Pure PA			
Postage					
71893	EXP	Erika Mejia	1	1483.77	1483.77
6/1/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Complaint					
72390	EXP	Erika Mejia	1	177.39	177.39
6/13/2022		Atty Service			
WIP		Kovacevic, Gzim v. Pure PA			
Attorney Service - Complaint Service					
72264	EXP	Erika Mejia	1	5.72	5.72
6/27/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - POS of Summons					
72628	EXP	Erika Mejia	1	453.77	453.77
8/4/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Complaint					
72785	EXP	Erika Mejia	1	5.72	5.72
8/17/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - 170.6					

9/13/2024
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DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
72919	EXP	Erika Mejia	1	5.72	5.72
9/9/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - POS of Summons					
73166	EXP	Erika Mejia	1	5.72	5.72
10/4/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Notice of Related Case					
73167	EXP	Erika Mejia	1	5.72	5.72
10/4/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Notice of Related Case					
73233	EXP	Erika Mejia	1	5.72	5.72
10/7/2022		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Joint CMS					
74282	EXP	Olympia	1	5.72	5.72
1/27/2023		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Joint CMS					
74281	EXP	Olympia	1	5.72	5.72
1/27/2023		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Joint CMS					
74697	EXP	Erika Mejia	1	5.72	5.72
3/17/2023		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Oppo to MTC Arb					
74698	EXP	Erika Mejia	1	5.72	5.72
3/17/2023		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Oppo to MTC Arb					
74700	EXP	Erika Mejia	1	5.72	5.72
3/17/2023		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Amended POS					
75155	EXP	Olympia	1	3.96	3.96
4/30/2023		Postage			
WIP		Kovacevic, Gzim v. Pure PA			
Postage					

9/13/2024
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DIVERSITY LAW GROUP
Slip Listing

Page 3

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
75520	EXP	Linda Lee	1	362.25	362.25
5/1/2023		Arbitrators			
WIP		Kovacevic, Gzim v. Pure PA			
AAA - Demand for Arbitration					
76211	EXP	Olympia	1	375.00	375.00
9/20/2023		Arbitrators			
WIP		Kovacevic, Gzim v. Pure PA			
Judicate West Mediation					
77141	EXP	Olympia	6	0.25	1.50
12/31/2023		Photocopies			
WIP		Kovacevic, Gzim v. Pure PA			
Photocopies					
77142	EXP	Olympia	1	0.63	0.63
12/31/2023		Postage			
WIP		Kovacevic, Gzim v. Pure PA			
Postage					
78089	EXP	Olympia	1	5.72	5.72
4/19/2024		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Joint CMS					
78171	EXP	Olympia	1	5.72	5.72
4/29/2024		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Notice of Change of Attorney					
78172	EXP	Olympia	1	5.72	5.72
4/29/2024		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Odyssey - Notice of Change of Attorney					
79131	EXP	Kristen Agnew	1	300.00	300.00
9/5/2024		Court fees			
WIP		Kovacevic, Gzim v. Pure PA			
Est PAGA Approval Fees					
Grand Total					
			0.00		3319.98
			0.00		0.00
			0.00		3319.98

EXHIBIT 5