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Attorneys for Plaintiff RAYLYNN HOLMES
in her representative capacity as private attorney general

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

RAYLYNN HOLMES, individually and on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

PET FOOD EXPRESS, LTD., a California
Corporation; and DOES 1-10, inclusive,

Defendant.

Case No. 22CV014140

Assigned to: Hon. Noël Wise
Dept.: 21

Reservation ID: 947388561448

**DECLARATION OF JAMES R. HAWKINS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF SETTLEMENT
AGREEMENT AND RELEASE OF PAGA
CLAIMS**

Date: January 23, 2024
Time: 1:30 p.m.

Complaint Filed: July 12, 2022
Initial CMC: December 8, 2023
Trial: Not Set

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1. I am an attorney licensed to practice before all courts in the State of California. I am the owner and principal of James Hawkins APLC, counsel for Plaintiff Raylynn Holmes (“Plaintiff”) in the captioned action. Unless indicated otherwise, I have personal knowledge of the following facts in this declaration and, if called as a witness, I could and would testify to these facts under oath in court.

3. The terms of the Settlement are set forth in the Stipulation and Agreement for PAGA Representative Action Settlement, attached hereto as **Exhibit 1**. We respectfully request that the Court grant approval to this PAGA action settlement.

ly filed as a PAGA-only action on July 12, 2022, in Alameda County Superior Court. The complaint seeks PAGA penalties for Defendants' violations of the Labor Code and IWC Wage Order including (1) failure to pay minimum wage; (2) failure to provide lawful meal periods; (3) failure to authorize rest periods; (4) failure to timely pay wages due and payable during employment; (5) failure to provide employee wage statements; (6) failure to reimburse necessary expenses; (7) failure to maintain accurate payroll records; (8) failure to timely pay all wages owed upon termination; and (9) failure to provide suitable seating. Plaintiff provided notice of her

6. On or about September 8, 2022, Defendant timely answered the Complaint by generally denying all allegations and asserting numerous affirmative defenses.

7. The Parties met and conferred regarding the issues and allegations, and agreed to an early mediation. To that end, on November 8, 2022, the Plaintiff and Defendant (“the Parties”) stipulated to

1 stay the action and discovery pending private mediation. The stipulation was filed with the court.

2 **Plaintiff's Counsel Thoroughly Investigated the Factual and Legal Issues in the Action**

3 **Allowing Them to Objectively Assess the Settlement's Reasonableness.**

4 8. Since the filing of the Action and through execution of the Settlement, Plaintiff's
5 Counsel conducted a thorough investigation into the factual and legal issues implicated by
6 Plaintiff's claims and were able to objectively assess the settlement's reasonableness.

7 9. Prior to filing the Action, Plaintiff provided us with the factual bases for pursuing
8 her claims against Defendant for Labor Code violations. Plaintiff was intimately familiar with
9 Defendant's labor policies and practices, and over the course of multiple interviews,
10 knowledgeably summarized those policies and practices. Plaintiff explained how the policies and
11 practices were instituted and provided valuable insight into how they gave rise to the alleged
12 Labor Code violations. Based on these interviews and the review of available information, we
13 determined that there were legally sufficient grounds for pursuing this Action against Defendant.
14 Additionally, in preparation for drafting the LWDA notice and the civil complaint for the Action,
15 we conducted our own independent preliminary investigations into the factual bases for Plaintiff's
16 claims, which entailed, inter alia, a careful examination of Plaintiff's personnel files and
17 associated records.

18 10. We have conducted comprehensive research and investigation into both the factual
19 and legal elements of this case, specifically focusing on issues relevant to the aggrieved group.
20 This rigorous analysis has enabled us to objectively evaluate the reasonableness of the proposed
21 settlement. Prior to initiating litigation, we secured the Plaintiff's employment records and
22 engaged in a series of interviews, and research from publicly available sources. These crucial
23 steps provided us with foundational insights into Defendant's employment policies and practices
24 that appeared to violate California Labor Codes.

25 11. Following the formal filing of our case, we met and conferred with defense
26 regarding the allegations, defenses and claims. After the Parties agreed to an early mediation, we
27 then took immediate and strategic action to facilitate a resolution by submitting an informal
28 discovery request. This was not merely a procedural step; it was a calculated move aimed at

1 mediating the dispute and gathering essential information to strengthen our position. In the realm
2 of PAGA Group Information, our request was exhaustive. We sought to understand the scope of
3 the aggrieved group by asking for the total number of Aggrieved Employees both during the
4 PAGA Period and those currently employed in California. Additionally, we requested data on the
5 number of pay periods and a nuanced breakdown of shifts worked by these employees. This
6 information was pivotal in assessing the extent of the alleged violations and the potential damages
7 involved. Our inquiry into Time and Wage Records was equally comprehensive. We asked for a
8 random sampling of schedules, time records, and pay records for the Aggrieved Employees during
9 the PAGA Period. This sampling method was designed to provide a representative overview
10 without overwhelming the discovery process. For the Plaintiff specifically, we requested all time
11 records, actual wage statements, and even the methods used for time tracking, such as badge or
12 card swipes and computer log-ins. This level of detail allowed us to scrutinize any discrepancies
13 or irregularities in timekeeping and wage calculation. Regarding the Defendant's Policies and
14 Practices, our request was also far-reaching. We asked for all employee handbooks used during
15 the PAGA Period, along with a detailed list of policies and practices concerning timekeeping,
16 meal and rest periods, overtime calculations, and other relevant employment conditions.
17 Understanding the Defendant's official policies enabled us to pinpoint any systemic issues or
18 violations that may have occurred. Lastly, we sought information on any Prior Settlements or
19 Judgments. This was crucial for evaluating how past legal outcomes could influence our case,
20 particularly any settlements or judgments that could set a precedent or offer insights into the
21 Defendant's litigation behavior. Our comprehensive discovery request was designed to provide
22 us with a robust set of data, thereby laying a strong foundation for our legal strategy moving
23 forward and aiding us in the formulation of a damages model with the consultation of an expert.

24 12. In all, we received approximately a 33% sampling of time and wage records for
25 the aggrieved group which was contemplated to be approximately 2,641 employees working
26 approximately 48,952 pay periods during the PAGA period.

27 13. In connection with the mediation and settlement, we also extensively researched
28 the claims and settlements in similar actions, and the legal requirements for establishing liability

1 for penalties for the alleged violations.

2 14. Counsel for both parties conducted in-depth communications concerning the data,
3 assessing the merits of their individual claims and defenses, alongside other critical elements
4 pertinent to the settlement. Throughout the informal discovery stage, the Parties remained
5 committed and worked meticulously to ensure comprehensive information sharing, thus ensuring
6 well-informed discussions leading up to the mediation and critical analysis.

7 15. The Parties, including Counsel, confirm that they are not aware of any other
8 pending actions or claims that will be impacted by the Settlement.

9 **The Parties Settled the Action After Mediation and Extensive Negotiation**

10 16. the Parties attended mediation with an experienced and respected wage and hour
11 mediator, Gig Kyriacou, Esq., on August 1, 2023. The Parties engaged in extensive and
12 adversarial arms-length negotiations. After the mediation, Mr. Kyriacou made a mediator's
13 proposal that set forth the material terms of a proposed PAGA settlement. On August 3, 2023,
14 the Parties accepted the mediator's proposal and entered into a Memorandum of Understanding
15 ("MOU) memorializing settlement terms.

16 17. In late- November 2023, the Parties entered into the Stipulation and Agreement
17 for PAGA Representative Action Settlement. (Ex. 1.)

18 18. The Settlement achieved constitutes a fair, adequate, and reasonable compromise
19 of the claims at issue.

20 19. In summary, Plaintiff's Counsel performed a thorough investigation into the
21 claims at issue, which included: (1) determining Plaintiff's suitability as a private attorney general
22 through interviews, investigations, and analyses of her employment files and related records; (2)
23 evaluating all of Plaintiff's potential representative claims and those for the aggrieved group; (3)
24 researching similar PAGA actions as to the claims brought, the nature of the positions, and the
25 type of employer; (4) analyzing a sampling of time and wage records; (5) reviewing Defendant's
26 employment policies and practices; (6) researching settlements in similar cases; (7) participating
27 in mediation; (8) evaluating Plaintiff's claims and estimating Defendant's liability for purposes
28 of settlement; (9) reviewing and refining the scope of the claims and the relevant group; and (10)

1 participating in extensive arm's length negotiations with defense counsel aided by the mediator.

2 20. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
3 I can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
4 Agreement, is fair, reasonable, and adequate, and is in the best interests of the LWDA in light of
5 all known facts and circumstances, including the risk of significant delay, the uncertainty
6 associated with litigation, the uncertainty associated with PAGA claims, and various defenses
7 asserted by Defendant.

8 21. While Plaintiff's counsel argued that Defendant faced liability of approximately
9 \$42,562,000 in aggregate penalties for (initial and subsequent) violations of the Labor Code for
10 failure to pay all wages earned (including minimum wages and overtime), failure to provide meal
11 and rest periods, failure to pay premiums at the proper rate, failure to provide accurate, compliant
12 wage statements and keep accurate compliant time and payroll records, failure to comply with
13 notice provisions, failure to reimburse business expenses, failure to pay all wage during
14 employment and at termination, failure to provide sick leave and Covid sick leave, and failure to
15 provide suitable seats (including Labor Code sections 201-204, 210, 216, 218.5, 218.6, 221-224,
16 225.5, 226, 226.3, 226.7, 245-249, 256, 432, 510, 512, 515, 516, 558, 1174, 1194, 1194.2, 1195,
17 1197, 1197.1, 1198, 1198.5, 2699, 2699.3, 2802, 2810.5, and IWC Wage Order 7-2001),
18 Plaintiff's Counsel is cognizant that there is at least an argument that Defendant's exposure would
19 be approximately \$4,895,200 (48,952 violative pay periods multiplied by \$100¹). Moreover,
20 Plaintiff's counsel is cognizant of the risks involved with these types of PAGA representative
21 actions. After calculating Defendant's maximum exposure under PAGA, I then discounted that
22 exposure for settlement purposes to account for the risks of continued litigation, including: (i) the
23 strength of Defendant's defenses on the merits; (ii) the risk of losing at trial; (iii) the significant
24 risk that the Court would exercise its discretion under PAGA to drastically reduce the maximum
25 civil penalties available by statute; (iv) the chances of a favorable verdict being reversed on
26 appeal; (v) the potential for a change in applicable law which would undercut the PAGA claim;

27
28 ¹ Moreover, Plaintiff's counsel is aware that certain statutes provide for different penalties under PAGA (e.g. LC 226.3 provides for \$250 for an initial violation and \$1,000 for a subsequent violation); however, for the sake of discussion Plaintiff's counsel evaluated the claims using a \$100/\$200 framework.

1 and (vi) the difficulties attendant to collecting on a judgment. Taking into account the above
2 contingencies, I estimated the total realistic liability to be approximately \$2,674,500 – a discount
3 of approximately 54% overall.

4 22. The Settlement therefore constitutes a fair, adequate, and reasonable compromise
5 of the claims at issue. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement
6 Agreement that the Parties request that the Court approve on this Motion.

7 **The Terms of the Settlement**

8 23. The Settlement Agreement negotiated by the parties provides for Defendant to pay
9 \$612,500.00 as the “Gross Settlement Amount.” (Ex. 1 at Settlement, ¶ 13.) From the Gross
10 Settlement Amount, Plaintiff will apply for the following allocations: (1) up to \$204,166.67 shall
11 be paid to Plaintiffs’ Counsels for payment of attorneys’ fees (*Id.* at ¶ 38); (2) up to \$18,500.00
12 shall be paid to Plaintiffs’ Counsels for litigation expenses incurred in prosecuting the PAGA
13 claims (requested \$15,933.06); (3) up to \$10,000 shall be paid to Plaintiff as the Individual
14 Settlement Payment; (4) up to the amount of \$14,000 shall be paid for Settlement Administration
15 Costs to the Settlement Administrator, and (5) the PAGA Fund of \$368,400.27 (of which 75% or
16 approximately \$276,300.20 will be paid to the LWDA and 25% or \$92,100.07 to the PAGA
17 Aggrieved Employees). (*Id.*). Any reduction in awards from these maximum amounts will be
18 added to the PAGA Fund.

19 24. The Settlement is subject to Court approval consistent with Labor Code § 2699.
20 Upon approval, the PAGA Fund shall be allocated 75% to the LWDA and 25% among Aggrieved
21 Employees. The “Aggrieved Employees” means all current and former hourly non-exempt
22 employees of Defendant in California from July 12, 2021, to the date the Court grants approval
23 of the Settlement, as defined herein, (unless Defendant elects an earlier date pursuant to paragraph
24 39(b)). (Ex. 1 at ¶ 3.)

25 25. The PAGA Period means the period from July 12, 2021, through the date on which
26 this the Court approves the Settlement. (Ex. 1 at ¶ 17.) The Settlement was based upon the
27 representation that there was no more than 48,952 pay periods worked by 2,641 Aggrieved
28 Employees to the date of mediation. The Parties agreed that if the actual number of pay periods

1 in the PAGA Period was more than 10% over that number, Defendant would have the option to
2 pay a proportional increase in the Gross Settlement Amount or end the PAGA period on the date
3 by which the number of pay periods was no more than 53,848,500. (*Id.*; Ex. 1 at ¶ 39.)

4 26. The 25% payable to the Aggrieved Employees (referred to as the “PAGA
5 Aggrieved Employee Payment”) will be divided among the Aggrieved Employees as follows:
6 25% of the PAGA Fund shall be divided among the Aggrieved Employees and paid as “Individual
7 PAGA Payments”. (Ex. 1¶¶ 16, 38.) The amount of each Aggrieved Employee’s Individual
8 PAGA Payment will be calculated on a pro rata basis based on the following formula: Individual
9 PAGA Payment = (Individual Pay Periods ÷ Total Pay Periods for the Aggrieved Group) x the
10 PAGA Aggrieved Employee Payment and interest. (Ex. 1 at ¶ 38.)

11 27. Within 30 days of the Effective Date, Defendant will provide the Settlement
12 Administrator with the Aggrieved Employee List. (Ex. 1 at ¶ 39.) Within 30 days after the
13 Effective Date, Defendant shall transmit the entire Gross Settlement Amount due under this
14 Settlement Agreement to the Settlement Administrator for deposit into the Settlement Fund
15 Account. (*Id.* at ¶ 38.)

16 28. Within 10 days after receipt of the Gross Settlement Amount or the Aggrieved
17 Employee List, whichever comes last, the Settlement Administrator shall mail each Aggrieved
18 Employee the PAGA Settlement Notice and the Individual Settlement Payment (the “PAGA
19 Packet”) via U.S. First Class Mail. (Ex. 1 at ¶ 39.) Settlement checks shall remain valid and
20 negotiable for 180 calendar days from the date of their issuance. (Ex. 1 at ¶ 38.) Any unpaid
21 cash residue or unclaimed Aggrieved Employee funds, plus any accrued interest that has not
22 otherwise been distributed pursuant to order of the Court, shall be transmitted to a *cy pres*, Legal
23 Access Alameda. (*Id.*) The Notice of PAGA Settlement that the Parties request that the Court
24 approve and order the Administrator to send out is attached **hereto as Exhibit 3**.

25 Upon approval by the Court, Plaintiffs and each Aggrieved Employee will release
26 Defendant and each Released Party of the Released Claims set forth in the PAGA Release. (Ex.
27 1 at ¶ 37.) The “PAGA Period,” including the period of the release, is the time period from July
28 12, 2021, through the settlement approval date. (Ex. 1 at ¶¶ 17, 37) Per the PAGA Release (*Id.*):

1 Upon the Effective Date, Plaintiff, on behalf of herself, the State of California, and all Aggrieved
2 Employees, releases the Released Parties from all claims for civil penalties under PAGA arising
3 from the same facts and/or claims alleged in the complaint as well as those included in all of
4 Plaintiff's letters to the LWDA, including but not limited to claims under California Labor Code
5 sections 201, 202, 203, 204, 210, 216, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174,
6 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2698, 2699, 2699.3, 2802, 3287, and 3288, as well
7 as IWC Wage Orders, including, but not limited to, Wage Orders 4 and 7, or claims that were
8 pled or that could have been pled based on the facts alleged in the Complaint during the PAGA
9 Period. The period of the release shall extend to the limits of the PAGA Period. The *res judicata*
10 effect of the judgment will be the same as that of the Release.

11 29. The LWDA will be served with a copy of this motion with the Settlement
12 Agreement through the online process as required by Labor Code § 2699(l), and therefore the
13 LWDA has been provided notice of this PAGA settlement and this motion. This service on the
14 LWDA is verified in the accompanying proof of service. The proof of electronic submission is
15 **attached hereto as Exhibit 4.**

16 **THE PAGA SETTLEMENT IS FAIR AND REASONABLE**

17 30. While PAGA and its legislative background do not explicitly mandate a Court's
18 evaluation of a PAGA settlement against the "value" of the claims, the penalties proposed here
19 are also reasonable within this framework and represent fair, reasonable, and adequate resolution
20 of the action.

21 31. In this case, the Plaintiff has calculated that Defendant's likely maximum potential
22 penalty exposure as approximately \$4,895,200. However, the risks associated with continuing the
23 litigation underscore that the Settlement represents a fair resolution of the contested claims,
24 achieved through thorough arm's length negotiations. Additionally, Defendant denies any
25 liability, arguing that if any were to be established, it is likely that the Court would exercise its
26 discretion to lessen any penalties, asserting that any violations were unintentional and of minor
27 consequence to the extent any existed (which it denied).

28 32. Based on Defendant's representations, Plaintiff estimates that there were

1 approximately 2,641 Aggrieved Employees and 48,952 PAGA Pay Periods to the date of
2 mediation.

3 33. Regarding the calculation of civil penalties, the PAGA stipulates a \$100 penalty
4 per aggrieved employee for each pay period of the first violation and usually \$200 for each
5 aggrieved employee for subsequent violations, as per Labor Code § 2699(f)(2). Plaintiff, citing
6 *Amaral v. Cintas Corp.*, 163 Cal.App.4th 1157 (2008), contended that a \$200 civil penalty should
7 be levied for each violation after Plaintiff had notified Defendant of their claims via PAGA letters
8 to the LWDA. In contrast, the Defendant strongly disagreed, referencing a later district court
9 interpretation of *Amaral*. This interpretation stated that a \$200 civil penalty for “subsequent”
10 violations can only be imposed after an employer is notified of a violation by a court or
11 commission (*Amalgamated Transit Union Local 1309 v. Laidlaw Transit Servs.*, C.D. Cal 2009).
12 This viewpoint is supported by several cases, including *Bernstein v. Virgin Am., Inc.*, 990 F.3d
13 1157, 1173 (9th Cir. 2021) and *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019
14 WL 2436998, which states that heightened penalties are not applicable until an employer is
15 formally notified of a Labor Code violation by a court or the Labor Commissioner. As a result,
16 Defendant argued that the \$200 penalty rate was not applicable, as they had not been previously
17 cited for such violations.

18 34. Plaintiff maintained that penalty stacking was permissible, arguing for a \$100
19 penalty for each initial Labor Code violation and \$200 for subsequent ones, suggesting that
20 separate penalties for each violation could potentially subject Defendant to over \$42 million in
21 liability for both initial and subsequent violations. On the other hand, Defendant vehemently
22 opposed this view, insisting that the maximum penalty under PAGA should not exceed \$100 per
23 pay period, citing various precedents to support this stance (as previously detailed). Defendant
24 argued against the possibility of penalty stacking, noting that even if permissible, it's rare for
25 courts to exercise discretion in favor of such stacking. Aware of this perspective, Plaintiff's
26 Counsel acknowledged that, based on this line of reasoning, Defendant's highest potential liability
27 for the primary claims (including unpaid minimum and overtime wages, regular rate violations,
28 meal/rest violations, and related claims for wage statement violations and waiting time penalties)

1 might be estimated at about \$4,895,200. This figure is derived from multiplying 48,952 violative
2 pay periods by \$100 per period.

3 35. However, this projected maximum liability doesn't consider various potential
4 risks and defenses against the claims presented. For instance, Defendant disputes the possibility
5 of proving a violation for each pay period for every employee, arguing in favor of their legally
6 compliant policies and practices. Therefore, Defendant asserts that the claims lack merit, and the
7 estimated exposure is exaggerated. Defendant further argues that any alleged violations (which
8 they categorically deny) were confined to a small subset of employees and affected a limited span
9 of workweeks, as the alleged conduct was specific to keyholders. Additionally, Defendant
10 maintained that their written policies complied with legal standards and any departure from these
11 policies was due to managerial discretion, making it unsuitable for group-wide litigation. The
12 Defendant also contends that the nature of work in their retail setting did not feasibly allow for
13 the use of seats. Defendant's counsel maintains their stance that no employee, including the
14 Plaintiff, sustained injuries because of their actions.

15 36. Defendant broadly contends that the PAGA claims are fraught with individualized
16 issues, challenging their manageability for trial, a position taken despite Plaintiff's argument that
17 manageability is not a prerequisite for trial. For instance, Defendant points out that the aggrieved
18 employees held diverse roles across multiple locations in the state, each with varying sales
19 volumes, sizes, product types, and customer traffic.

20 37. Further, Defendant asserts that even if the claims were substantiated, this
21 estimation does not consider the courts' broad discretion to reduce civil penalties based on the
22 specifics of a case, particularly if full penalties would be unjust, arbitrary, oppressive, or
23 confiscatory, as per Labor Code § 2699(h). Additionally, Defendant challenges the fundamental
24 validity of the claims, especially arguing that the standards of "willfulness" and the existence of
25 "good faith" defenses significantly diminish the certainty of any civil penalties. Given these
26 factors, the Parties propose that the settled PAGA penalties are justifiable and equitable.

27 38. In the face of these defenses, Plaintiff successfully secured a settlement wherein
28 Defendant agreed to pay \$612,500.00 to resolve the action involving highly contested issues---

1 many of which primarily related to short periods of time that were allegedly unpaid, as well as
2 meal period and rest break violations. This outcome is highly favorable and stands as a
3 particularly reasonable resolution considering the risks and uncertainties inherent in the PAGA
4 claims in this case. The amount is adequate to fulfill the objectives of PAGA without being
5 deemed unjust, arbitrary, oppressive, or confiscatory.

6 **PLAINTIFF’S SEPARATE INDIVIDUAL SETTLEMENT IS PROPER**

7 39. Plaintiff is a former employee of Defendant who has taken exceptional courage in
8 challenging her former employer's actions by filing this lawsuit. Her belief is that the defendant
9 should be held accountable for its serious violations of the Labor Code. As a result of Plaintiff's
10 actions, there has been a substantial recovery under PAGA. Throughout the process, Plaintiff has
11 been an active participant, providing valuable information, sharing vital documents, and keeping
12 herself well-informed about the progress of the case. Her dedication and efforts have been
13 instrumental in achieving a positive outcome. Plaintiff's unwavering commitment to justice and
14 fairness is highly commendable and serves as a shining example for others to follow.

15 40. Plaintiff's decision to resolve her individual claims as part of her Individual
16 Settlement Payment (as detailed in Exhibit 1, Settlement, ¶ 9, 38(b)) aligns perfectly with the
17 provisions of the California Labor Code. This law explicitly allows a Plaintiff to independently
18 settle personal damage claims while simultaneously pursuing PAGA claims on behalf of
19 aggrieved employees. The PAGA statute, specifically Labor Code § 2699(g)(1), states that
20 “[n]othing in this part shall operate to limit an employee’s right to pursue or recover other
21 remedies available under state or federal law, either separately or concurrently with an action
22 taken under this part.” This provision not only upholds but encourages the right of employees to
23 seek individual claims in conjunction with PAGA actions. Such an approach is in complete
24 harmony with the fundamental understanding that PAGA claims, aimed at securing civil penalties
25 for aggrieved employees, are distinct and separate from personal claims for unpaid wages and
26 statutory penalties. This strategic resolution by Plaintiff demonstrates a keen awareness of legal
27 rights and judicious use of legal provisions to achieve a comprehensive and fair outcome.

28 41. The Individual Settlement Payment, constituting less than two percent of the Gross

1 Settlement Amount, stands as an entirely justifiable figure. It's important to recognize that without
2 the Plaintiff's proactive involvement, neither LWDA nor the aggrieved employees would have
3 benefitted from the outcomes of this action. The value and impact of the Plaintiff's actions cannot
4 be overstated. Moreover, given that the Plaintiff is fully within her rights to resolve both her
5 individual and PAGA claims, it is respectfully submitted that this Court should acknowledge the
6 fairness and prudence of the Settlement Agreement and approve the Individual Settlement
7 Payment. This approval would not only honor the legal process but also underscore the
8 effectiveness of assertive legal action in achieving equitable results for all parties involved.

9 **REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

10 42. In 1993, I graduated from the University of California, Los Angeles with a
11 Bachelor of Arts Degree. Following graduation, I attended Whittier Law School. In 1996,
12 while a full-time law student, I was also a full-time Judicial Extern for the Honorable Consuelo
13 B. Marshall, United States District Court for the Central District of California. After
14 approximately five months of service for Judge Marshall, I became a full-time extern for the
15 United States Attorney's Office, Central District of California. My externship lasted for
16 approximately five months. Thereafter, in 1997, I graduated from Whittier Law School. The
17 same year, I was admitted to practice law in the State of California.

18 43. From 1997-2007, I was a named partner at Hawkins & Sofonio, a law firm based
19 out of Irvine, California. At Hawkins & Sofonio, I pioneered the employment department
20 litigating plaintiff related employment issues such as: Wrongful Termination, Age
21 Discrimination, Disability, Wage and Hour and Sexual Harassment claims. Through the
22 success and experience I obtained litigating employment related matters; I commenced the
23 Wage and Hour division of our employment department in 2002. Since then, I have spent the
24 vast majority of my practice litigating Wage and Hour Class Actions.

25 44. In 2007, I incorporated my wage and hour class action practice as James
26 Hawkins APLC. Since its inception, this law firm has been exclusively involved in class action
27 and complex litigation. In 2009, I opened an additional office in Miami, Florida, prosecuting
28 wage and hour class actions.

1 45. I have a great deal of experience in wage and hour class action and representative
2 action litigation. I have obtained certification of numerous classes and have obtained resolutions
3 of numerous other class actions and representative actions. I have also been approved as class
4 counsel in many other wage/hour class actions, and I am currently litigating numerous others.
5 Although not an all-inclusive list, over the years I have prosecuted the following class action
6 matters as lead and/or co-lead counsel, all of which implicated similar law and facts to those
7 associated with this action:

8 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
9 2009-00268714-CU-OE-CXC.

10 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
11 No.: 09-cv-0168.

12 c. *Dao v. 3M Company, et al.* USDC, CENTRAL DISTRICT, Case No. CV-08-
13 04554.

14 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.

15 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
16 SACV08-00412.

17 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
18 Superior Court, Case No. BC393709.

19 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
20 Court, Case No. BC 357912.

21 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County
22 Superior Court, Case No. RIC 440630.

23 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.

24 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court,
25 Case No. 05CC00013.

26 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
27 Case No. 105-CV047499, et al. J.C.C.P. No. 4460.

28 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,

Case No. RIC 420909.

m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT, Case No. CV09-05848.

n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL DISTRICT, Case No. SACV 08-680.

o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No. 05CC00128.

p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No. 07CC01292.

q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior Court, Case No. BC411477.

r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case No. 06CC00099.

s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC 330145.

t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case No. CGC-07-461612.

u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No. 07CC00015.

v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case No. 07CC01347.

w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court, Case No. BC387088.

x. ***Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour Cases***, Los Angeles Superior Court, Case No. JCCP 4545.

y. ***Placencia v. Amcor Packaging Distribution, Inc.***, Orange County Superior Court, Case No. 30-2013-00694012-CU-OE-CXC.

z. ***Trani v. Lisi Aerospace, et al.***, Los Angeles Superior Court, Case No. BC495527.

1 aa. **Galvan v. Goodwin Co.**, Orange County Superior Court, Case No. 30-2013-
2 00637062-CU-OE-CXC.

3 bb. **Reyes v. Bristol Fiberlite**, Orange County Superior Court, Case No. 30-2013-
4 00653425-CU-OE-CXC.

5 cc. **Gutierrez v. HMT Tank, USDC Central Dist.**, Case No. CV14-1967-
6 CAS(MANx).

7 dd. **Williams v. Il Fornaio America Corp.**, Sacramento County, Case No. 34-2011-
8 0009616.

9 ee. **Aguilar v. 7-Eleven, Inc.**, Orange County, Case No. 30-2009-002687141-CU-
10 OE-CXC.

11 ff. **Madrigal v. Huntington Beach Market Broiler, Inc.**, Orange County, Case No.
12 30-2012-00611260.

13 gg. **Vang v. Jazz Semiconductor, Inc.**, Orange County, Case no. 30-2011-00460278.

14 hh. **Cano v. Financial Statement Services, Inc.**, Orange County, Case No. 30-2013-
15 00653349-CU-OE-CXC.

16 ii. **Gonzalez v. Quality Aluminum Force, LLC**, Orange County, Case No. 30-2015-
17 00817941-CU-OE-CXC.

18 jj. **Smith v. Space Exploration Technologies Corp.**, Los Angeles County Case No.
19 BC554258.

20 kk. **Madrigal v. Balda C Brewer, Inc.**, Orange County Case No. 30-2015-00820218-
21 CU-OE-CXC.

22 ll. **Mendez v. Liberty Glass Fabricators, Inc.**, Riverside County Case No. RIC
23 1800119.

24 mm. **Attia v. Neiman Marcus Group, Inc.**, United States District Court for the Central
25 District of California Case No. 8:16-cv-001504-DOC-FFM

26 nn. **Vigueras v. Red Robin**, United States District Court for the Central District of
27 California Case No. 8:17-cv-1422-JVS-DFM.

28 oo. **Payne v. Marriott Ownership Resorts, Inc.**, San Diego County Case No. 37-2018-

00015175-CU-OE-CTL.

46. In sum, my firm has been the lead or co-lead counsel in hundreds of cases since its inception. We have recovered hundreds of millions of dollars for employees in the State of California and millions for the State as well through PAGA.

47. Our firm has served as class counsel in a number of significant wage and hour settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest wage and hour class action settlement in California history at \$130,000,000. During this case, Plaintiffs appealed a decertification order. This case involved several appeals. The appellate record amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume reporters' transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to augment the record, and several additional letters informing the appellate court of new legal authority issued after *Dukes*. The matter was argued to and submitted by the Court of Appeal on September 15, 2016, and on November 21, 2016, the decertification order was reversed and the case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* ("Lubin"), 5 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision to the California Supreme Court. The Supreme Court denied Wackenhut's petition for review of *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually through more litigation, the parties were able to secure the 130 million settlement that was approved on October 21, 2019 by Judge Highberger in the Los Angeles Superior Court.

48. Additionally, in early 2020, our firm served as lead counsel in a class action jury trial in the Central District of California involving the class and PAGA representative claims of over 23,000 employees which were successfully resolved in the midst of trial for \$8,500,000.

49. Even more recently, our office along with co-counsel filed an appeal in the 9th circuit in *Valiente, et. al. vs. Swift Transportation Co. of Arizona*, Case No. 21-55456, challenging the retroactive application of The Motor Vehicle Safety Act, 49 U.S.C. § 31141 preemption of California meal and rest periods laws as applied to commercial drivers.

1 50. Our firm has settled many high-stakes class and representative actions. Hawkins’
2 settlements have directly compensated hundreds of thousands of California workers and
3 consumers. Hawkins’ actions have also forced employers to modify their policies for the benefit
4 of employees including changing the compensation structure for certain employees and
5 changing practices to ensure that workers will be able to take timely rest and meal breaks. A
6 leader in prosecuting PAGA enforcement actions, Hawkins has secured millions of dollars in
7 civil penalties for the State of California.

8 51. Based on our experience, demonstrated competence, resources to prosecute the
9 claims at issue and reputation among our colleagues in the both the defense and plaintiffs’ bar, I
10 respectfully submit our firm’s experience in the field of wage and hour cases provides us the
11 ability to prosecute claims swiftly and often times without the need for protracted litigation.
12 Although, as demonstrated in the *Wackenhut* cases, we do not give up fighting for class
13 members when challenged and necessary.

14 52. Here, the Parties’ agreement to pay Plaintiff’s Counsel’s fees of up to
15 \$204,166.67 (or approximately 1/3 of the Gross Settlement Amount) is reasonable.

16 53. To date, my firm has expended approximately 216.9 hours litigating this matter. I
17 worked 94.9 hours on this case, at a rate of \$1050 an hour, for a total of \$99,645.00. Attorney
18 Christina Lucio, who is of counsel and has 16 years of experience, worked 86.6 hours on this
19 case at a rate of \$775 an hour for a total of \$67,115.000. Attorney Eric Tims, who is of counsel
20 and has 1.5 years of experience, worked 25.2 hours at a rate of \$450 an hours, for a total of
21 \$11,340. My paralegals worked a total of 10.2 hours on this case at a rate of \$200 an hours for a
22 total of \$2,040. Accordingly, the total lodestar amount between all of us is \$180,140 and the
23 multiplier is 1.3.

24 54. We have borne the entire risk and cost of this litigation on a pure contingency fee
25 basis.² The legal issues raised drew significantly upon our experience and the extensive review
26 and analysis of documents and information by me and others at my firm. In a complex action

27 _____
28 ² Indeed as an example, James Hawkins APLC litigated a certified class case entitled *Cole, et. al. v. CRST*, in the
Central District of California Case No. ED-CV 08-1570-VAP, for approximately 11 years which ultimately resulted
in Judgment in favor of the Defendant and confirmed on appeal, where hundreds of thousands of dollars in costs
including thousands of hours of attorney time by Plaintiffs were never recovered.

1 such as this, the proposed attorneys' fees are on the low side of the market rate for contingency
2 fees as we have invested numerous hours and costs into the litigation of this matter.

3 55. In a complex action such as this, the proposed attorneys' fees are in line with the
4 market rate for contingency fees. The reasonableness of our hourly rates is further confirmed
5 by comparing such rates with the rates of comparable counsel practicing complex and class
6 litigation as detailed in the attached excerpt from the 2021 Real Rate Report compiled by
7 Wolters Kluwer that surveyed the hourly rates charged in 2021 by hundreds of attorneys in the
8 Los Angeles County area. For example, the real market rates of Los Angeles County area
9 attorneys who practiced "Litigation" are surveyed at page 17 of the report, which describes the
10 2021 rates charged by 342 Los Angeles County partners and 433 Los Angeles County
11 associates. For that category, the Third Quartile Los Angeles County rates were \$1,042 per hour
12 for partners and \$806 per hour for associates. Similarly, page 26 of the report describes the 2021
13 rates charged by 70 Los Angeles County associates with "Fewer Than 3 Years" of experience.
14 For this category, the Third Quartile Los Angeles County rate was \$622 per hour for associates.
15 Page 26 of the report also describes the 2021 rates charges by 128 Los Angeles County
16 associates with "3 to Fewer Than 7 Years" of experience. For that category, the Third Quartile
17 Los Angeles County rate was \$821 per hour for associates. Likewise, page 32 of the report
18 describes the 2021 rates charged by 173 Los Angeles County partners with "Fewer Than 21
19 Years" of experience. For this category, the Third Quartile Los Angeles County rate was \$1,065
20 per hour for partners. A true and correct excerpt of this 2021 Real Rate Report survey is
21 attached hereto as **Exhibit 5**.

22 56. Furthermore, our requested hourly rates are in line with the Laffey Matrix,
23 attached hereto as **Exhibit 6**.

24 57. As such, Plaintiff's counsel respectfully requests the Court award its fees in
25 accordance with the percentage of the common fund approach, based upon a reasonable
26 contingency fee on the Settlement Amount. (*See Laffitte v. Robert Half International, Inc.*
27 (2016) 1 Cal. 5th 480). The total billable hours we have invested and will continue to invest in
28 prosecution of this action, should they be approved by the Court, have been substantial. Plaintiff

1 and her Counsel respectfully submit the fees provision of the Settlement is fair and can be cross-
2 checked for reasonableness under lodestar.

3 58. James Hawkins, APLC also seeks reimbursement of out-of-pocket costs of
4 \$15,933.06 which includes projected costs for the filing of this motion. These costs were
5 necessary and reasonable to successfully prosecute this action, including fees associated
6 with mediation, filing fees, and service charges, which are normally billed to and paid by the
7 client. These costs have been necessary costs associated with the prosecution of this important
8 matter. I respectfully request that the Court grant the request for reimbursement of these costs
9 in accordance with the Settlement Agreement. A true and correct copy of James Hawkins,
10 APLC's litigation costs is attached as **Exhibit 7** hereto.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed on December 27, 2023 in Irvine, California.

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James R. Hawkins

EXHIBIT 1

James R. Hawkins (SBN 192925)
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Attorneys for Defendant
PET FOOD EXPRESS, LLC

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

RAYLYNN HOLMES, individually
and on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

PET FOOD EXPRESS, LTD., a
California Corporation; and DOES 1-
10, inclusive,

Defendants.

CASE NO. 22CV014140

ASSIGNED FOR ALL PURPOSES TO
HON. EVELIO GRILLO – DEPT. 21

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Action Filed: July 12, 2021
Trial Date: None Set

1 IT IS HEREBY STIPULATED, by and between Plaintiff Raylynn Holmes, individually
2 and on behalf of all other allegedly aggrieved employees, on the one hand, and Defendant Pet Food
3 Express, LLC (erroneously sued as “Pet Food Express, Ltd.”) on the other hand, and subject to the
4 approval of the Court, that the Action, as defined below, is hereby compromised and settled
5 pursuant to the terms and conditions set forth in this Settlement Agreement and Release of PAGA
6 Claims (“Settlement Agreement”) and that the Court shall enter judgment, subject to the continuing
7 jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and terms set
8 forth herein which by this reference become an integral part of this Settlement Agreement.

9 **DEFINITIONS**

10 1. “Action” means the representative action entitled *Holmes v. Petfood Express, Ltd.*,
11 Alameda County Superior Court, Case No. 22CV01410.

12 2. “Aggrieved Employees” means all current and former hourly non-exempt
13 employees of Defendant in California from July 12, 2021, to the date the Court grants approval of
14 the Settlement, as defined herein, (unless Defendant elects an earlier date pursuant to paragraph
15 39(b)).

16 3. “Aggrieved Employees Portion” means the 25% of the PAGA Fund that will be
17 distributed pro rata to each Aggrieved Employee.

18 4. “Approval Hearing” means the hearing to be conducted by the Court after the filing
19 of an appropriate motion by Plaintiff, at which time Plaintiff shall request that the Court approve
20 the Settlement, enter the Judgment, and take other appropriate action.

21 5. “Defendant” means Pet Food Express, LLC (erroneously sued as “Pet Food
22 Express, Ltd.”).

23 6. “Defense Counsel” means Constance E. Norton, Elizabeth Staggs-Wilson, and
24 Robert Geiger of Littler Mendelson, PC.

25 7. “Effective Date” means when all of the following events have occurred: (i) this
26 Agreement has been executed by Plaintiff, Defendant, Plaintiff’s Counsel and Defendant’s
27 Counsel; (ii) Notice of the Settlement has been sent to the LWDA; (iii) the Court has given
28 approval to the Settlement; (v) the Court has entered the Court’s Final Order and Judgment and

1 Notice of Entry of Judgment has been filed; and (vi) five (5) days after the later of any of the
2 following events: (A) the period for filing any appeal, writ or other appellate proceeding opposing
3 the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed;
4 (B) any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed
5 finally and conclusively with no right to pursue further remedies or relief; or (C) any appeal, writ
6 or other appellate proceeding has upheld the Court's Final Order and Judgment with no right to
7 pursue further remedies or relief.

8 8. "Employee Information" means information regarding the Aggrieved Employees
9 that Defendant shall in good faith compile from its records and shall be authorized by the Court to
10 transmit in a secured manner to the Settlement Administrator. Employee Information shall be
11 transmitted in electronic form and shall include each Aggrieved Employee's full name; last known
12 address; Social Security number; and total number of PAGA Pay Periods.

13 9. "Individual Settlement Payment" means the amount the Court authorizes to be paid
14 to Plaintiff, Raylynn Holmes, in addition to her Individual PAGA Payment, in recognition of
15 Plaintiff's effort and risk in prosecuting the Action.

16 10. "Individual PAGA Payment" means the amount payable from the PAGA Fund to
17 each Aggrieved Employee.

18 11. "Judgment" means the final order and judgment to be entered by the Court granting
19 approval of the Settlement and this Settlement Agreement as binding upon the Parties and the
20 Aggrieved Employees.

21 12. "LWDA" means the California Labor and Workforce Development Agency.

22 13. "LWDA Payment" means the portion of the PAGA Fund payable to the LWDA (75
23 percent).

24 14. "Gross Settlement Amount" means the maximum amount Defendant shall have to
25 pay in connection with this Settlement, which shall be inclusive of all Individual PAGA Payments
26 to the Aggrieved Employees, Plaintiff's Counsel's Fees and Expenses, the Individual Settlement
27 Payment, Settlement Administration Costs, and the LWDA Payment. Subject to Court approval
28 and the terms of this Settlement Agreement, the maximum Gross Settlement Amount Defendant

1 shall be required to pay is Six Hundred Twelve Thousand Five Hundred Dollars and Zero Cents
2 (\$612,500.00).

3 15. "Notice" means the Notice of PAGA Settlement, substantially in the form attached
4 hereto as **Exhibit 1**, which shall be subject to Court approval and which the Settlement
5 Administrator shall mail to each Aggrieved Employee at their last known address explaining the
6 terms of this Settlement Agreement and the Settlement.

7 16. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California
8 Labor Code sections 2698, *et seq.*

9 17. "PAGA Fund" means the Gross Settlement Amount, minus Settlement
10 Administration Costs, Individual Settlement Payment, Plaintiff's Counsel's Fees and Expenses.

11 18. "PAGA Period" means the period from July 12, 2021, through the sooner of the date
12 on which this the Court approves the Settlement or the date elected according to the terms of
13 Paragraph 39.

14 19. "Parties" means Plaintiff and Defendant.

15 20. "Plaintiff" means Plaintiff, Raylynn Holmes.

16 21. "Plaintiff's Counsel" means James Hawkins, Christina Lucio, and Mitchell Murray
17 of JAMES HAWKINS APLC.

18 22. "Plaintiff's Counsel's Fees and Expenses" means reasonable attorneys' fees for
19 Plaintiff's Counsel's litigation and resolution of this Action not to exceed 33 1/3% of the Gross
20 Settlement Amount, and expenses and costs reasonably incurred in connection with this Action as
21 documented in Plaintiff's Counsel's billing statement in an amount not to exceed Eighteen
22 Thousand Five Hundred Dollars and Zero Cents (\$18,500.00).

23 23. "Qualifying Pay Periods" means the total number of pay periods during which an
24 Aggrieved Employee performed work as a non-exempt employee of Defendant in California during
25 the PAGA Period, based on Defendant's records, which shall be used to calculate Individual PAGA
26 Payments.

27 24. "Released Parties" means Defendant and any of its past, present and future direct or
28 indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of their past,

1 present and future owners, managers, officers, directors, employees, partners, members,
2 shareholders, investors, agents, attorneys, insurers, reinsurers, and any individual or entity which
3 could be jointly liable as an employer with Defendant.

4 25. "Settlement" means the final and complete disposition of the Action pursuant to this
5 Settlement Agreement.

6 26. "Settlement Administration Costs" means the reasonable costs and fees of
7 administering the Settlement to be paid from the Gross Settlement Amount, including, but not
8 limited to: (i) printing, mailing, and re-mailing (if necessary) Settlement Packets to the Aggrieved
9 Employees; (ii) preparing and submitting to Aggrieved Employees and government entities all
10 appropriate tax filings and forms; (iii) computing the amount of and distributing Individual PAGA
11 Payments, the Individual Settlement Payment, Plaintiff's Counsel Fees and Expenses, and the
12 LWDA Payment; (iv) establishing a Qualified Settlement Fund ("QSF"), as defined by the Internal
13 Revenue Code; and (vi) preparing and submitting filings required by law in connection with the
14 payments required by the Settlement.

15 27. "Settlement Administrator" means Phoenix Settlement Administrators.

16 28. "Settlement Packet" means the packet of documents that shall be mailed to all
17 Aggrieved Employees by the Settlement Administrator, including the Notice and each Aggrieved
18 Employee's respective Individual PAGA Payment.

19 **RECITALS**

20 29. Pleading History. On July 12, 2022, Plaintiff filed this Action, which included
21 Plaintiff's individual and representative claim for penalties under the PAGA, against Defendant in
22 Alameda County Superior Court, entitled *Raylynn Holmes vs. Pet Food Express, Ltd.*, Alameda
23 Superior Court, Case No. 22CV014140 ("Complaint").

24 30. On September 8, 2022, Defendant filed an Answer to the Complaint.

25 31. Settlement Negotiations. On August 1, 2023, after the Parties engaged in extensive
26 document and information exchange, the Parties participated in a private mediation session with
27 mediator Gig Kyriacou, Esq. After the mediation, Mr. Kyriacou made a mediator's proposal that
28 set forth the material terms of a proposed PAGA settlement. On August 3, 2023, the Parties

1 accepted the mediator's proposal and entered into a Memorandum of Understanding ("MOU")
2 memorializing settlement terms.

3 32. Benefits of Settlement to Plaintiff and the Aggrieved Employees. Plaintiff and
4 Plaintiff's Counsel recognize the expense and effort of lengthy continued proceedings that would
5 be necessary to litigate Plaintiff's claims in the Action through trial and through any possible
6 appeals. Plaintiff also has taken into account the uncertainty and risks of the outcome of further
7 litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Plaintiff's Counsel
8 are also aware of the burdens of proof necessary to establish liability for the claims asserted in the
9 Action, both generally and in response to Defendant's defenses thereto. Based on the foregoing,
10 Plaintiff and Plaintiff's Counsel have determined the Settlement set forth in this Settlement
11 Agreement is fair, adequate, and reasonable and provides genuine and meaningful relief consistent
12 with the underlying purposes of PAGA.

13 33. Defendant's Reasons for Settlement. Defendant has concluded that any further
14 defense of the Action would be protracted and expensive for all Parties. Substantial amounts of
15 Defendant's time, energy, and resources have already been, and unless this Settlement is completed,
16 shall continue to be, devoted to the defense of the claims asserted by Plaintiff. Defendant has also
17 taken into account the risks of further litigation in reaching its decision to enter into this Settlement.
18 Even though Defendant contends it is not liable for any of the claims alleged by Plaintiff in the
19 Action, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in
20 this Settlement Agreement and to put to rest the claims alleged in this Action. Defendant has
21 asserted and continues to assert that the claims alleged by Plaintiff have no merit and do not give
22 rise to liability. This Settlement Agreement is a compromise of disputed claims. Nothing contained
23 in this Settlement Agreement, no documents referred to herein, and no action taken to carry out this
24 Settlement Agreement, shall be construed or used as an admission by or against Defendant as to
25 the merits or lack thereof of the claims asserted in the Action. Defendant contends that it has
26 complied with all applicable state, federal and local laws.

27 **TERMS OF SETTLEMENT**
28

1 NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements
2 set forth herein, the Parties agree, subject to the Court's approval, as follows:

3 34. Binding Settlement. This Settlement shall bind the Parties and all Aggrieved
4 Employees, subject to the terms and conditions hereof and the Court's approval.

5 35. Tax Liability. The Parties make no representations as to the tax treatment or legal
6 effect of any of the payments specified herein, and the Aggrieved Employees are not relying on
7 any statement or representation by the Parties, Plaintiff's Counsel or Defense Counsel in this regard.
8 The Aggrieved Employees and Plaintiff's Counsel understand and agree that they shall be
9 responsible for the payment of all taxes and penalties assessed on the payments specified herein,
10 and shall hold the Parties, Plaintiff's Counsel, and Defense Counsel free and harmless from and
11 against any claims resulting from treatment of such payments as non-taxable, including the
12 treatment of such payments as not subject to withholding or deduction for payroll and employment
13 taxes.

14 36. Circular 230 Disclaimer. THE PARTIES ACKNOWLEDGE AND AGREE THAT
15 (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN
16 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES,
17 PLAINTIFF'S COUNSEL, OR DEFENSE COUNSEL AND OTHER ADVISERS, IS OR WAS
18 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
19 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS TAX ADVICE WITHIN THE
20 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
21 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
22 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
23 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
24 SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT
25 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
26 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO
27 RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
28 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE

1 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER
2 TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
3 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
4 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
5 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
6 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
7 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

8 37. Approval of Settlement. Plaintiff shall be responsible for filing a motion, and related
9 papers, with the Court to approve the Settlement and enter the Judgment. The Parties agree to work
10 diligently and cooperatively to have this Settlement presented to the Court for approval. Plaintiff
11 will prepare and deliver to Defense Counsel all documents necessary for obtaining approval, including: (i)
12 a draft of the notice, and memorandum in support, of the Motion for Approval; (ii) a draft proposed Order
13 Granting Approval of PAGA Settlement; (iii) a draft proposed Notice; (iv) a signed declaration from the
14 Administrator; (v) a signed declaration from Plaintiff; and (v) a signed declaration from Plaintiff's Counsel
15 firm attesting to its competency.

16 38. Released Claims.

17 a. Aggrieved Employees' Release. Upon the Effective Date, Plaintiff, on behalf of
18 herself, the State of California, and all Aggrieved Employees, releases the Released Parties from
19 all claims for civil penalties under PAGA arising from the same facts and/or claims alleged in the
20 complaint as well as those included in all of Plaintiff's letters to the LWDA, including but not
21 limited to claims under California Labor Code sections 201, 202, 203, 204, 210, 216, 218.6, 225.5,
22 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2698, 2699,
23 2699.3, 2802, 3287, and 3288, as well as IWC Wage Orders, including, but not limited to, Wage
24 Orders 4 and 7, or claims that were pled or that could have been pled based on the facts alleged in
25 the Complaint during the PAGA Period. The period of the release shall extend to the limits of the
26 PAGA Period. The *res judicata* effect of the Judgment will be the same as that of the release.

27 b. Plaintiff's Individual Release. In addition to the Released PAGA Claims discussed
28 above, upon the Effective Date, and in exchange for the Individual Settlement Payment described

below at paragraph 38(b), upon the Funding Date, Plaintiff, for and on behalf of herself and her agents, heirs, executors, administrators and assigns (“Releasing Parties”) unconditionally waives, releases and forever discharges the Released Parties from any and all claims, actions, causes of action, rights, suits, debts, contracts, obligations, agreements, proceedings, damages, charges, losses, and expenses (including attorneys’ fees and costs) of any nature whatsoever, whether based in contract, statute or the common law, relating to any matters of any kind, whether known or unknown, suspected or unsuspected, that they may possess arising from any omissions, acts, and any and all events or facts that have occurred up until and including the date of the signing of this Agreement, including without limitation: (i) any and all claims actually alleged or could have been alleged in connection with, or arising directly or indirectly out of or in any way connected with Plaintiff’s employment with Defendant or any of the Released Parties; (ii) any and all claims relating to or arising from Plaintiff’s relationship with the Released Parties and the termination of the relationship; (iii) any and all claims relating to unpaid wages, missed meal and rest periods, meal period and rest break premiums, sick pay, vacation pay, calculation of bonuses or commissions, and any other form of compensation, and any and all penalties, including but not limited to waiting time penalties and penalties under California Labor Code Section 226, and interest relating to such claims; (iv) any and all claims for wrongful discharge of employment; breach of contract, both expressed and implied; breach of covenant of good faith and fair dealing, both expressed and implied; negligent or intentional interference with contract or prospective economic advantage; and defamation; (v) any and all claims against the Released Parties for any other tort, contract, common law, constitutional or statutory claims, including but not limited to, any violation(s) of the California Labor Code, the federal Fair Labor Standards Act (except as prohibited by applicable law), the National Labor Relations Act, Title VIII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act, the Americans with Disabilities Act, as amended, the Employee Retirement Income Security Act of 1974, as amended, the federal Worker Adjustment Retraining Notification Act (as well as any counterpart), the Family and Medical Leave Act of 1993 (as well as any state counterpart), the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Equal Pay Act, the

1 Affordable Care Act, the Uniformed Services Employment and Reemployment Rights Act, the
2 Federal Hazardous Materials Regulations, the Fair Credit Reporting Act, the California Parental
3 Leave Act, the California Paid Sick Leave Act, the Genetic Information Nondiscrimination Act of
4 1998, California Constitution Article 1 section 8, California's Industrial Welfare Commission
5 Wage Orders, the Healthy Workplaces, Healthy Families Act of 2014, California Health and Safety
6 Code sections 11161.8, 1276.5, 1278.5, 13337, *et seq.*, and 105100, *et seq.*, California Business
7 and Professions Code sections 2725, 2750, *et seq.*, and 17200, *et. seq.*, Title 22 of the California
8 Code of Regulations, including but not limited to section 72313, 72315 and 72501 ("Individually
9 Released Claims"). Plaintiff also waives any and all rights conferred upon her under Section 1542
10 of the California Civil Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
12 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
13 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
14 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
15 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

16 This waiver is not a mere recital but is a knowing waiver of rights and benefits by Plaintiff. This
17 is a bargained-for provision of the Agreement and is further consideration for the covenants and
18 conditions contained herein.

19 39. Funding and Allocation of the Gross Settlement Amount. Defendant shall pay a
20 Gross Settlement Amount not to exceed Six Hundred Twelve Thousand Five Hundred Dollars and
21 Zero Cents (\$612,500.00). Defendant shall make the payment to the Settlement Administrator in
22 any feasible manner, including, but not limited to, by way of a wire transfer, the Gross Settlement
23 Amount not later than thirty (30) days after the Effective Date. Should the number of pay periods
24 worked by the Aggrieved Employees from the start of the PAGA Period until the date the Court
25 approves the settlement increase by more than 10% above 48,952 pay periods (*i.e.*, by more than
26 4,896 pay periods), Defendant shall have an option to either: (1) end the PAGA Period on a date
27 where the Released Claims are for no more than 53,848 pay periods; or (2) increase the Gross
28

1 Settlement Amount on a *pro-rata* basis equal to the percentage increase in the number of pay
2 periods worked by the Aggrieved Employees above 53,848.

3 a. Individual PAGA Payments.

4 i. Individual PAGA Payments shall be paid by the Settlement
5 Administrator from the Individual Aggrieved Employees Portion of the PAGA Fund pursuant to
6 the following formula: Defendant shall provide the Settlement Administrator with the Qualifying
7 Pay Periods for each Aggrieved Employee. The Settlement Administrator shall then divide the
8 Aggrieved Employees' Portion of the PAGA Fund by the total number of Qualifying Pay Periods
9 for all Aggrieved Employees resulting in a value for each pay period worked by the Aggrieved
10 Employees during the PAGA Period ("Pay Period Value"). The Settlement Administrator shall
11 then multiply the number of Qualifying Pay Periods for each Aggrieved Employee by the Pay
12 Period Value.

13 ii. Individual PAGA Payments shall be made by check and shall be
14 made payable to each Aggrieved Employee as set forth in this Settlement Agreement.

15 iii. Individual PAGA Payments shall be allocated as non-wage penalties
16 not subject to payroll tax withholdings. The Settlement Administrator shall issue an IRS Form
17 1099-MISC to each Aggrieved Employee along with the Individual PAGA Payment.

18 iv. Individual PAGA Payment checks shall remain negotiable for one
19 hundred eighty (180) days from the date of mailing. If an Individual PAGA Payment check remains
20 uncashed after one hundred eighty (180) days from issuance, the Settlement Administrator shall
21 distribute the value of the uncashed check to a *cy pres*: Legal Services for Children, San Francisco.
22 In such event, such Aggrieved Employees shall nevertheless remain bound by the Settlement.

23 b. Individual Settlement Payment. Subject to Court approval, Plaintiff shall be
24 paid an Individual Settlement Payment not to exceed Ten Thousand Dollars and Zero Cents
25 (\$10,000.00), or any lesser amount as awarded by the Court, for her time and effort in bringing and
26 presenting the Action and for releasing her Released Claims. Defendant shall not oppose or object
27 to Plaintiff's request for an Individual Settlement Payment in an amount not to exceed Ten
28 Thousand Dollars and Zero Cents (\$10,000.00). The Individual Settlement Payment shall be paid

1 to Plaintiff from the Gross Settlement Amount no later than ten (10) days after Defendant provides
2 the Settlement Administrator with the Gross Settlement Amount. The Settlement Administrator
3 shall issue an IRS Form 1099-MISC to Plaintiff for her Individual Settlement Payment. Plaintiff
4 shall be solely and legally responsible to pay any and all applicable taxes on her Individual
5 Settlement Payment and shall hold harmless Defendant, Plaintiff's Counsel, and Defense Counsel
6 from any claim or liability for taxes, penalties, or interest arising as a result of payment of the
7 Individual Settlement Payment. The Individual Settlement Payment shall be made in addition to
8 Plaintiff's Individual PAGA Payment. Any amount requested by Plaintiff for the Individual
9 Settlement Payment not awarded by the Court shall become part of the PAGA Fund and shall be
10 distributed to the LWDA and the Aggrieved Employees.

11 c. Plaintiff's Counsel's Fees and Expenses. Subject to Court approval,
12 Plaintiff's Counsel shall be entitled to receive reasonable attorneys' fees in an amount not to exceed
13 33 1/3% of the Gross Settlement Amount, which amounts to Two Hundred Four Thousand One
14 Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$204,166.67). In addition, Plaintiff's Counsel
15 shall be entitled to an award of reasonable costs associated with Plaintiff's Counsel's prosecution
16 of the Action in an amount not to exceed Eighteen Thousand Five Hundred Dollars and Zero Cents
17 (\$18,500.00). Plaintiff's Counsel shall provide the Settlement Administrator with a properly
18 completed and signed IRS Form W-9 in order for the Settlement Administrator to process the
19 Plaintiff's Counsel's Fees and Expenses approved by the Court. Defendant shall not oppose or
20 object to Plaintiff's request for an award of attorneys' fees in an amount that does not exceed Two
21 Hundred Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$204,166.67) or
22 request for an award of reasonable costs not to exceed Eighteen Thousand Five Hundred Dollars
23 and Zero Cents (\$18,500.00). In the event that the Court awards Plaintiff's Counsel less than Two
24 Hundred Four Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$204,166.67) in
25 attorneys' fees and/or less than Eighteen Thousand Five Hundred Dollars and Zero Cents
26 (\$18,500.00)) in costs, the difference shall become part of the PAGA Fund and shall be distributed
27 to the LWDA and the Aggrieved Employees. The Settlement Administrator shall pay Plaintiff's
28 Counsel any Court-awarded attorneys' fees and costs no later than fifteen (15) days after Defendant

1 provides the Settlement Administrator with the Gross Settlement Amount. Plaintiff's Counsel shall
2 be solely and legally responsible to pay all applicable taxes on any Court-award attorney's fees and
3 costs. The Settlement Administrator shall issue an IRS Form 1099-MISC to Plaintiff's Counsel for
4 the Plaintiff's Counsel's Fees and Expenses. This Settlement is not conditioned upon the Court
5 awarding Plaintiff's Counsel any particular amount of attorneys' fees or costs, unless the amount
6 awarded is more than specified in this paragraph, in which case the difference shall be awarded
7 from the PAGA Fund and shall not increase the Gross Settlement Amount.

8 d. Settlement Administration Costs.

9 i. The Settlement Administration Costs, which are estimated not to
10 exceed Fourteen Thousand Dollars and Zero Cents (\$14,000.00) shall be paid from the Gross
11 Settlement Amount. The Parties agree to cooperate in the Settlement administration process and
12 to make all reasonable efforts to control and minimize Settlement Administration Costs.

13 ii. The Parties each represent they do not have any financial interest in
14 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
15 that could create a conflict of interest.

16 iii. The Settlement Administrator shall keep the Parties timely apprised
17 of the performance of all Settlement Administrator responsibilities required by the Settlement. The
18 Settlement Administrator shall be authorized to establish a QSF pursuant to IRS rules and
19 regulations in which the Gross Settlement Amount shall be placed and from which payments
20 required by the Settlement shall be made.

21 40. Settlement Administration.

22 a. Mailing of Settlement Packets. Within thirty (30) days of the Effective Date,
23 Defendant shall provide the Settlement Administrator with the Employee Information for purposes
24 of mailing the Settlement Packets to Aggrieved Employees. Upon receipt of the Employee
25 Information, the Settlement Administrator shall perform a search based on the National Change of
26 Address Database maintained by the United States Postal Service to update and correct any known
27 or identifiable address changes. Within fifteen (15) days of receiving the Gross Settlement Amount
28 from Defendant as provided herein, the Settlement Administrator shall mail the Settlement Packets

1 to all Aggrieved Employees *via* regular First-Class U.S. Mail. The Settlement Administrator shall
2 exercise its best judgment to determine the current mailing address for each Aggrieved Employee.
3 The address identified by the Settlement Administrator as the current mailing address shall be
4 presumed to be the most current mailing address for each Aggrieved Employee. The Parties agree
5 that this procedure for notice provides the best notice practicable to Aggrieved Employees and fully
6 complies with due process.

7 b. Undeliverable Settlement Packets. Any Settlement Packet returned to the
8 Settlement Administrator as non-deliverable shall be re-mailed to the forwarding address affixed
9 thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt
10 to determine a correct address by the use of skip-tracing, or other type of automated search, using
11 the name, address, and/or Social Security number of the Aggrieved Employee involved, and shall
12 then perform a re-mailing to the Aggrieved Employee whose Settlement Packet was returned as
13 non-deliverable, assuming another mailing address is identified by the Settlement Administrator.

14 c. Determination of Individual PAGA Payments. The Settlement
15 Administrator shall determine the eligibility for, and the amount of, each Aggrieved Employee's
16 Individual PAGA Payment under the terms of this Settlement Agreement.

17 d. Disputes Regarding Administration of Settlement. Any dispute not resolved
18 by the Settlement Administrator concerning the administration of the Settlement shall be resolved
19 by the Court. Prior to any such involvement of the Court, counsel for the Parties shall confer in
20 good faith and make use of the services of mediator Gig Kyriacou, if necessary, to resolve the
21 dispute without the necessity of involving the Court.

22 e. Accounting. The Settlement Administrator will provide an accounting under
23 oath to the Parties of the amounts paid out, not later than sixty (60) days after payment to the final
24 Aggrieved Employee.

25 f. Monitoring and Reviewing Settlement Administration. The Parties have the
26 right to monitor and review the administration of the Settlement to verify that the monies allocated
27 under the Settlement are distributed in the correct amount, as provided for in this Settlement
28 Agreement.

1 g. Best Efforts. The Parties agree to use their best efforts to carry out the terms
2 of this Settlement Agreement.

3 41. Nullification of Settlement. In the event: (i) the Court does not enter the Judgment;
4 or (ii) the Settlement Agreement does not become final for any other reason, this Settlement
5 Agreement shall be rendered null and void, any order or judgment entered by the Court in
6 furtherance of this Settlement Agreement shall be treated as void from the beginning, and this
7 Settlement Agreement and any documents related to it shall not be used in any other civil, criminal,
8 or administrative action against Defendant or any of the other Released Parties. In the event an
9 appeal is filed from the Judgment, or any other appellate review is sought, administration of the
10 Settlement shall be stayed pending final resolution of the appeal or other appellate review.

11 42. No Admission by Defendant. Defendant denies all claims alleged in this Action and
12 deny all wrongdoing whatsoever by Defendant. Neither this Settlement Agreement, nor any of its
13 terms and conditions, nor any of the negotiations connected with it, are a concession or admission,
14 and none shall be used against Defendant as an admission or indication with respect to any claim
15 of any fault, concession, or omission by Defendant. The Parties agree that this Settlement
16 Agreement shall not be admissible in this or any other proceeding as evidence that Defendant is
17 liable to Plaintiff or any Aggrieved Employee, other than according to the terms of this Settlement
18 Agreement.

19 43. No Publicity. The Parties agree that Plaintiff and Plaintiffs' Counsel will not
20 communicate the fact of, or the terms of, this Settlement Agreement to members of the press,
21 including to Verdicts and Settlements. The Parties and their respective counsel also agree not to
22 publish the fact of, or terms of, this Settlement Agreement or any related information on their
23 website, for advertising purposes and/or in publication materials generally available to the public.

24 44. Exhibits and Headings. The terms of this Settlement Agreement include the terms
25 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
26 herein. The Exhibits to this Settlement Agreement are an integral part of the Settlement. The
27 descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for
28 convenience of reference only.

1 45. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
2 the entire agreement between the Parties, and no oral or written representations, warranties, or
3 inducements have been made to Plaintiff or Defendant concerning this Settlement Agreement or its
4 Exhibits other than the representations, warranties, and covenants contained and memorialized in
5 this Settlement Agreement and its Exhibits. No other prior or contemporaneous written or oral
6 agreements may be deemed binding on the Parties.

7 46. Interim Stay of Action. The Parties agree to stay and to request that the Court stay
8 all proceedings in the Action, except such proceedings necessary to implement and complete the
9 Settlement and enter the Judgment.

10 47. Amendment or Modification. This Settlement Agreement may be amended or
11 modified only by a written instrument signed by counsel for all Parties or their successors-in-
12 interest.

13 48. Authorization to Enter into Settlement Agreement. The Parties shall cooperate with
14 each other and use their best efforts to effect the implementation of the Settlement. In the event the
15 Parties are unable to reach agreement on the form or content of any document needed to implement
16 the Settlement, or on any supplemental provisions that may become necessary to effectuate the
17 terms of this Settlement Agreement, the Parties may seek the assistance of the Court and/or
18 mediator Gig Kyriacou to resolve such disagreement. The person signing this Settlement
19 Agreement on behalf of Defendant represents and warrants that he or she is authorized to sign this
20 Settlement Agreement on behalf of Defendant. Plaintiff represents and warrants that she is
21 authorized to sign this Settlement Agreement and that she has not assigned any claim, or part of
22 any claim, covered by this Settlement to a third-party. Plaintiff acknowledges that she has read this
23 Settlement Agreement, that she fully understands her rights, privileges, and duties under the
24 Settlement Agreement, and enters this Settlement Agreement freely and voluntarily. Plaintiff
25 further acknowledges that she has had the opportunity to consult with her attorneys to seek an
26 explanation of the terms of this Settlement Agreement and the consequences of signing this
27 Settlement Agreement. Additionally, the Parties have cooperated in the drafting and preparation
28

1 of this Settlement Agreement. Hence, in any construction made of this Settlement Agreement, the
2 same shall not be construed against any of the Parties.

3 49. Binding on Successors and Assigns. This Settlement Agreement shall be binding
4 upon, and inure to the benefit of, the successors and assigns of the Parties.

5 50. California Law Governs. All terms of this Settlement Agreement and the Exhibits
6 hereto shall be governed by and interpreted according to the laws of the State of California, without
7 giving effect to any law that would cause the laws of any jurisdiction other than the State of
8 California to be applied.

9 51. Counterparts. This Agreement may be executed in one or more counterparts by
10 facsimile, electronic signature with verification of signature provided, or email which for purposes
11 of this Agreement shall be accepted as an original. All executed counterparts and each of them will
12 be deemed to be one and the same instrument. Any executed counterpart will be admissible in
13 evidence to prove the existence and contents of this Agreement.

14 52. Jurisdiction of the Court. Following entry of the Judgment, the Court shall retain
15 continuing jurisdiction California Code of Civil Procedure Section 664.6 to ensure the continuing
16 implementation of the provisions of this settlement and that the time within which to bring this
17 action to trial under California Code of Civil Procedure Section 583.310 shall be extended from the
18 date of the signing of this Agreement by all parties until the entry of the final approval order and
19 judgment or if not entered the date this Agreement shall no longer be of any force or effect.

20 53. Invalidity of Any Provision. Before declaring any term or provision of this
21 Settlement Agreement invalid, the Parties request that the Court first attempt to construe the terms
22 or provisions valid to the fullest extent possible consistent with applicable precedents so as to define
23 all provisions of this Settlement Agreement as valid and enforceable.

24
25
26 Dated: _____, 2023

Plaintiff Raylynn Holmes

1 of this Settlement Agreement. Hence, in any construction made of this Settlement Agreement, the
2 same shall not be construed against any of the Parties.

3 49. Binding on Successors and Assigns. This Settlement Agreement shall be binding
4 upon, and inure to the benefit of, the successors and assigns of the Parties.

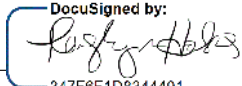
5 50. California Law Governs. All terms of this Settlement Agreement and the Exhibits
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7 giving effect to any law that would cause the laws of any jurisdiction other than the State of
8 California to be applied.

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15 continuing jurisdiction California Code of Civil Procedure Section 664.6 to ensure the continuing
16 implementation of the provisions of this settlement and that the time within which to bring this
17 action to trial under California Code of Civil Procedure Section 583.310 shall be extended from the
18 date of the signing of this Agreement by all parties until the entry of the final approval order and
19 judgment or if not entered the date this Agreement shall no longer be of any force or effect.

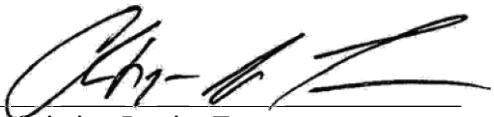
20 53. Invalidity of Any Provision. Before declaring any term or provision of this
21 Settlement Agreement invalid, the Parties request that the Court first attempt to construe the terms
22 or provisions valid to the fullest extent possible consistent with applicable precedents so as to define
23 all provisions of this Settlement Agreement as valid and enforceable.

24
25 Dated: 11/21/2023

26  DocuSigned by:
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27 Plaintiff, Ruyi Lin Thomas
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Dated: 11/21/2023


Christina Lucio, Esq
JAMES HAWKINS APLC
Plaintiff's Counsel

Dated: _____, 2023

Pet Food Express, LLC
(for and on behalf of Defendant)
By: Denyelle Bruno
Its: Chief Executive Officer

Dated: _____, 2023

Atticus Lee
LITTLER MENDELSON, P.C.
Counsel for Defendant

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Christina Lucio, Esq
JAMES HAWKINS APLC
Plaintiff's Counsel

Dated: 11/22/2023 | 10:38:15 PST, 2023

DocuSigned by:

Denyelle Bruno

Pet Food Express, LLC
(for and on behalf of Defendant)
By: Denyelle Bruno
Its: Chief Executive Officer

Dated: 11/27/2023 | 16:57:31 PST, 2023

DocuSigned by:

Atticus Lee

Atticus Lee
LITTLER MENDELSON, P.C.
Counsel for Defendant

EXHIBIT 2

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

May 6, 2022

Via LWDA Website:

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail:

Pet Food Express, Ltd.
500 85th Avenue
Oakland, CA 94621
Receipt No.: 7021 0950 0000 7161 5064

Via Certified Mail:

Agent for Service of Process for
Pet Food Express, Ltd.
Rozanna Lew
500 85th Avenue
Oakland, CA 94621
Receipt No.: 7021 0950 0000 7161 5057

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Raylynn Holmes, individually and on behalf of all others similarly situated, gives notice of her intent to commence a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendant Pet Food Express, Ltd., a California Corporation; and DOES 1-10 (“Defendants”)¹ via certified mail.

Plaintiff was employed by Defendants as an hourly, non-exempt employee. Plaintiff began her employment with Defendants on or about June 4, 2018 and continued such employment through May 2021. She worked as an Assistant Manager from June 2018 until being promoted to Associate Manager in February 2021.

¹ Plaintiff does not know the true names and capacities, whether individual, partner or corporate, of DOES 1-10, inclusive, and for that reason, said DOES are designated under such fictitious names. Plaintiff will amend this notice when the true names and capacities are known. Plaintiff is informed and believes each DOE was responsible in some way for the matters alleged herein and proximately caused him and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working with Defendants during the relevant time period. (“Aggrieved Employees”) This notice is timely as it is provided within one year of the violations.

Plaintiff asserts certain violations on behalf of a subgroup of the Aggrieved Employees who held “manager” or keyholder positions. The Manager Group is a subgroup of the Aggrieved Employees.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants regardless of their classification, job title, or whether they were hired directly or through a labor contractor or staffing agency.

Failure to Pay Minimum Wages, Including Overtime

Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1198 and the IWC Wage Order by failing to pay all wages owed including overtime and minimum wages. The Wage Orders 7-2001 and Labor Code sections 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code section 510 and the Wage Orders provide that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay.

Plaintiff alleges that she and the aggrieved employees were frequently not paid minimum wages and earned overtime because they were required to work while off the clock before and after shifts, and during purported meal periods. Such time is compensable time. However, in violation of the law, Plaintiff and the aggrieved employees were not paid for such time.

Failure to Provide Lawful Meal Periods

Plaintiff and other similarly situated employees regularly worked in excess of five hours a day without being provided a meal period of not less than 30 minutes in which they were relieved of all duties, as required by California Labor Code §§226.7, 512, and Wage Order No. 4-2001 and 7-2001. Plaintiff and Aggrieved Employees were often not provided lawful meal periods in part because Defendants maintained and enforced scheduling practices, staffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before thirty minutes. Defendants also failed to pay the premium pay at one hour’s additional wage at the employee’s regular rate of compensation mandated by Labor Code §226.7(c) and Wage Order No. 7-2001, subd. 11(B) for each workday they did not receive a timely uninterrupted meal period. As a result of the violation of California Labor Code §§ 226.7 and 512 and Wage Order 7-2001, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

In addition, Plaintiff alleges that members of the Manager Group were also required to remain on premises during purported meal periods and were required to forego meal periods as a result of Defendants' policies and practices which required managers to remain on duty during purported meal periods.

Failure to Authorize and Permit Rest Periods

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violated Labor Code §§ 226.7, 1198, and Section 12(A) of IWC Wage Order 4-2001 and 7-2001 which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code § 226.7(b) and Section 12(B) of Wage Order 4 and 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of additional pay at the employee's regular rate of compensation for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent any rest periods were taken they were not compliant because employees were essentially required to remain on duty by Defendants prohibition of Plaintiff and Aggrieved Employees to leave the premises during rest periods. Defendants violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of compensation when lawful rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

In addition, Plaintiff alleges that members of the Manager Group were also required to remain on premises during purported rest periods and were required to forego rest periods as a result of Defendants' policies and practices which required a manager to remain on premises and on duty when he or she was the only manager on duty at the time.

Failure to Timely Pay Wages During Employment

Labor Code section 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, and other sections became due and payable to Plaintiff and each aggrieved employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

Labor Code section 210(a) provides that "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 201.3, 204, 204b, 204.1, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

-
- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
 - (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Failure to Provide Accurate Itemized Employee Wage Statements

Labor Code section 226(A) reads in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

Defendants have failed to record many of the items delineated in applicable Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of the fact that each wage statement which failed to accurately compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and rest periods, or which failed to include compensation for all minimum wages earned or overtime hours worked, as described herein, was an inaccurate wage statement. In addition, Defendants failed to include all applicable hourly rates in effect during each pay period, including Plaintiff’s and Aggrieved Employees’ hourly and overtime rates of pay. Further, Defendants double counted certain hours listed and premiums.

Failure to Reimburse Necessary Expenses

Labor Code section 2802 requires employers to reimburse employees for necessary expenses incurred. Defendants’ also violated California Labor Code §2802 by failing to reimburse Plaintiff and Aggrieved Employees for necessary expenses in direct relation to work performed. Expenses included, but are not limited to, cell phone usage, mileage, and expenses required to work from home (internet and computer). By way of example, Plaintiff, and upon information and belief the Aggrieved Employees, were required to use their personal vehicles to travel for work related purposes, including to make deposits at the bank. By way of further example, Plaintiff, and upon information and belief the Aggrieved Employees, were required to use personal cell phones to look up information and products for customers while on the sales floor and were required to use personal computers and home internet to work from home at various points. Plaintiff and the Aggrieved Employees were not reimbursed for such expenses.

Failure to Keep Accurate Payroll Records

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 4-2001, Wage Order 7-2001, Labor Code 1174, and 1198. The IWC Wage Orders

required in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be records...(5) Total hours worked in the payroll period and applicable rate of pay...” Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged herein, including without limitation, failing to keep records of all hours worked, failing to keep track of all wages earned at the proper rates.

Failure to Timely Pay All Wages Owed Upon Separation of Employment

Defendants have violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and all other similarly situated former employees at the time employment as required under California Labor Code §§ 201 and 202, including meal premium pay and overtime pay. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due, including without limitation vacation, immediately upon discharge or within seventy-two (72) hours of voluntary separation of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee’s wages until the back wages are paid in full or an action is commenced. Therefore, Defendants have violated California Labor Code §§201, 202, and 203, and Defendants are liable for civil penalties pursuant to Labor Code §§2698 *et seq.*

Failure to Provide Suitable Seating

In addition, Plaintiff alleges that Defendants failed to provide suitable seats to aggrieved employees. Wage Order 7-2001 provides: “All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” Defendants failed to provide aggrieved employees, including Plaintiff, with seats—despite the fact that the nature of the work reasonably permits the use of seats. Labor Code section 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff and the other current and former aggrieved employees with suitable seats in violation of Wage Order 7-2001, Defendants also violated Labor Code section 1198.

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

EXHIBIT 3

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Raylynn Holmes v. Pet Food Express, LLC, Case No. 22CV014140

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.**

To: <<FIRST_NAME>> <<LAST_NAME>>
<<ADDRESS 1>>
<<ADDRESS 2>>

I. Notice of PAGA Settlement

The Alameda County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Raylynn Holmes (“Plaintiff”) on behalf of herself, the State of California, and all non-exempt employees employed by Pet Food Express, LLC (“Pet Food Express” or “Defendant”) in California between July 12, 2021 and [DATE OF COURT APPROVAL] (the “PAGA Period”) (collectively, the “Aggrieved Employees”). You are receiving this Notice because you are in the group of Aggrieved Employees.

In this lawsuit, Plaintiff claims that Pet Food Express violated certain provisions of the Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. Specifically, Plaintiff alleges that Pet Food Express failed to: 1) pay all minimum wages and overtime wages worked; 2) provide timely, uninterrupted, and lawful meal periods, or provide applicable premium pay in lieu thereof; 3) provide timely, uninterrupted, and lawful rest breaks, or provide applicable premium pay in lieu thereof; 4) timely pay all wage due and payable during the Aggrieved Employees’ period of employment; 5) provide accurate and itemized wage statements; 6) reimburse necessary business expenses; 7) keep accurate employment records; 8) timely pay all wages due and payable upon separation of employment; and 9) provide suitable seating. Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other Aggrieved Employees under the Private Attorneys General Act (“PAGA”).

The Court has not made a determination about Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims. Pet Food Express, LLC denies each of Plaintiff’s claims and any wrongdoing, and maintains that it was in compliance with the California Labor Code at all times. Pet Food Express enters into this settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

II. Release

Pursuant to the Court's approval of the parties' Settlement Agreement and according to the terms and provisions of the Settlement Agreement, upon the Effective Date, Plaintiff, on behalf of herself, the State of California, and all Aggrieved Employees, will release the Released Parties from any and all claims under PAGA arising from the same facts and/or claims alleged in the complaint as well as those included in Plaintiff’s letters to the LWDA, including, but not limited

to, claims under California Labor Code sections 201, 202, 203, 204, 210, 216, 218.6, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2698, 2699, 2699.3, 2802, 3287, and 3288, and the IWC Wage Orders, including, but not limited to, Wage Orders 4 and 7, and claims that were pled or that could have been pled based on the facts alleged in the Complaint during the PAGA Period (“PAGA Released Claims”). The period of the release shall extend to the limits of the PAGA Period. The res judicata effect of the Judgment will be the same as that of the Settlement Agreement

The “Released Parties” are Pet Food Express, LLC and its past, present and future owners, direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as each of their past, present and future owners, managers, officers, directors, employees, partners, members, shareholders, consultants, joint venturers, investors, agents, attorneys, insurers, accountants, reinsurers, legal representatives, and any individual or entity which could be jointly liable as an employer with Defendant.

III. Calculation of Individual PAGA Payment

According to Pet Food Express’s records, you are an Aggrieved Employee and are therefore entitled to a share of the settlement. The Court approved [25% OF PAGA FUND] to be split among the Aggrieved Employees. The amount of your Individual Settlement Payment was calculated by dividing the number of qualifying pay periods you worked for Pet Food Express as a non-exempt employee in California between July 12, 2021 and [DATE OF COURT APPROVAL], by the total number of qualifying pay periods all Aggrieved Employees worked for Pet Food Express in California during this time period, and multiplying the result by [25% OF PAGA FUND].

Enclosed is a check representing your share of the settlement. The check shall remain valid for one hundred and eighty days (180) days. Checks remaining un-cashed for more than 180 days after issuance will be donated to Legal Services for Children in San Francisco, California. One hundred percent (100%) of each Individual Settlement Payment shall be allocated to miscellaneous income for which an IRS Form 1099 will issue, if required by law. You shall be solely and legally responsible for paying any and all applicable taxes on your share of the settlement.

III. Settlement Administrator

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Phoenix Settlement Administrators, at the contact information below with any questions. You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

If you have any questions, please contact:

Settlement Administrator
Phoenix Settlement Administrators
[ADDRESS]
[PHONE NUMBER]

EXHIBIT 4



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Other Document

PAGA Number (LWDA-CM-): *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *



Your Zip/Postal Code *

Documents

Other Document * Ex. 1, 2023.1... executed).pdf**Other Attachment (if any)** No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Irma Ceja

From: Christina Lucio
Sent: Wednesday, December 27, 2023 2:56 PM
To: Staff; SD Staff
Subject: FW: Thank you for your Other Response or Document Submission

--

Christina Lucio
James Hawkins APLC
9880 Research Dr., Suite 200
Irvine, California 92618

Office Tel: [\(949\) 387-7200](tel:(949)387-7200)
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Christina@Jameshawkinsaplc.com

This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Date: Wednesday, December 27, 2023 at 2:55 PM
To: Christina Lucio <christina@jameshawkinsaplc.com>
Subject: Thank you for your Other Response or Document Submission

12/27/2023 02:55:40 PM

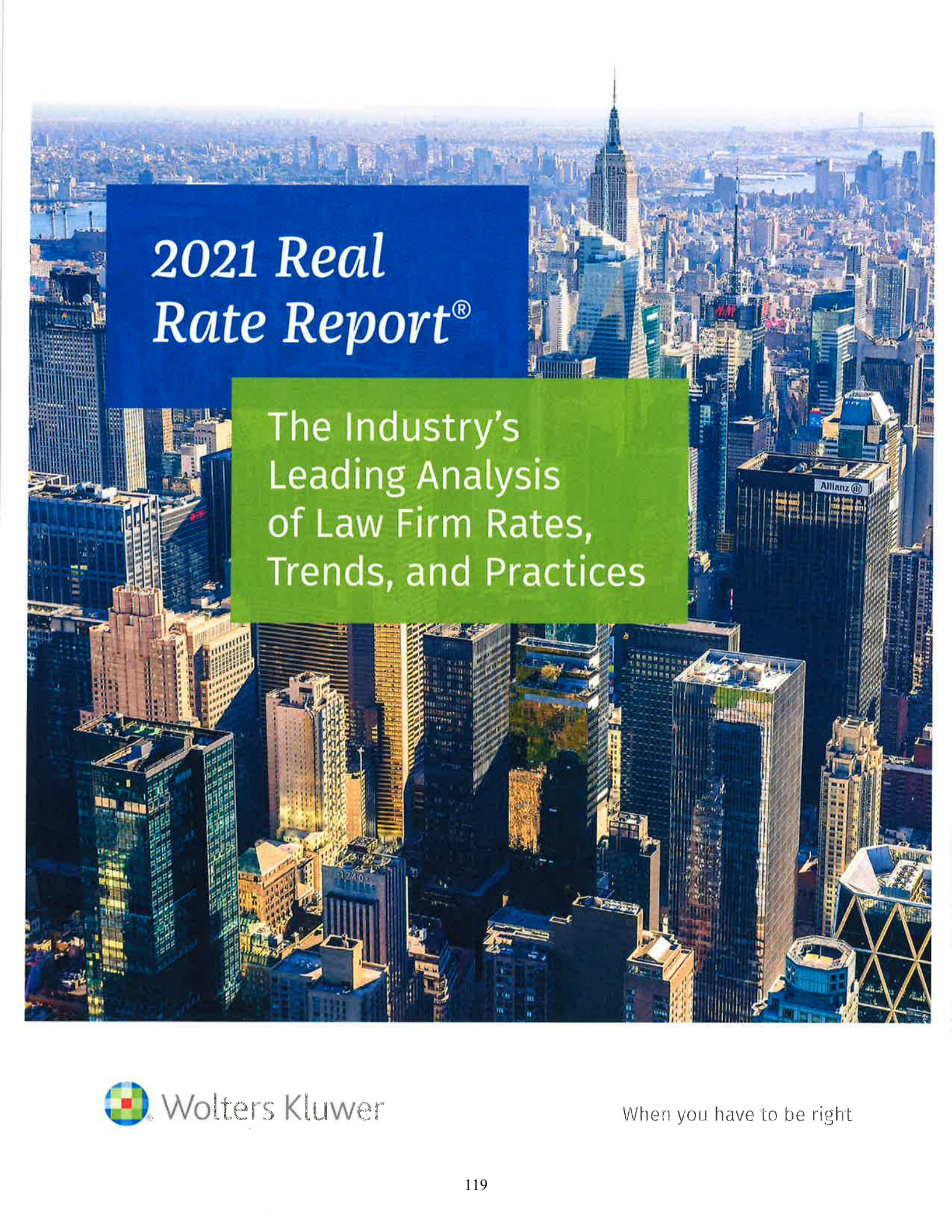
Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission
If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 5



2021 Real Rate Report®

The Industry's
Leading Analysis
of Law Firm Rates,
Trends, and Practices



Wolters Kluwer

When you have to be right

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A Letter to Our Readers

Welcome to the Wolters Kluwer's ELM Solutions Real Rate Report®, the industry's leading data-driven benchmark report for lawyer rates.

Our Real Rate Report has been a relied upon data analytics resource to the legal industry since its inception in 2010 and continues to evolve. The Real Rate Report is powered by Wolters Kluwer's ELM Solutions LegalVIEW® data warehouse, the world's largest source of legal performance benchmark data, which has grown to include over \$150 billion in anonymized legal data.

This year, we launched our LegalVIEW Insights Report series, which explores the emerging trends behind the overall legal spend volatility seen in corporate legal departments. The insights reports coupled with the Real Rate Report are great tools to drive actionable decisions.

The legal services industry relies on internal analytics and the use of external data resources, such as the LegalVIEW® data warehouse, to support legal management strategies. The depth and details of the data in the Real Rate Report enable you to better benchmark and make more informed investment and resourcing decisions for your organization.

As with past Real Rate Reports, all of the data analyzed are from corporations' and law firms' e-billing and time management solutions. We have included lawyer and paralegal rate data filtered by specific practice and sub-practice areas, metropolitan areas, and types of matters to give legal departments and law firms greater ability to pinpoint areas of opportunity. We strive to make the Real Rate Report a valuable and actionable reference tool for legal departments and law firms.

As always, we welcome your comments and suggestions on what information would make this publication more valuable to you. We thank our data contributors for participating in this program. And we thank you for making Wolters Kluwer's ELM Solutions your trusted partner for legal industry domain expertise, data, and analytics and look forward to continuing to provide market-leading, expert solutions that deliver the best business outcomes for collaboration among legal departments and law firms.

Sincerely,



Barry Ader

Vice President, Product Management and Marketing
Wolters Kluwer's ELM Solutions

Report Use Considerations

2021 Real Rate Report

- Examines law firm rates over time
- Identifies rates by location, experience, firm size, areas of expertise, industry, and timekeeper role (i.e., partner, associate, and paralegal)
- Itemizes variables that drive rates up or down

All the analyses included in the report derive from the actual rates charged by law firm professionals as recorded on invoices submitted and approved for payment.

Examining real, approved rate information, along with the ranges of those rates and their changes over time, highlights the role these variables play in driving aggregate legal cost and income. The analyses can energize questions for both corporate clients and law firm principals.

Clients might ask whether they are paying the right amount for different types of legal services, while law firm principals might ask whether they are charging the right amount for legal services and whether to modify their pricing approach.

Some key factors¹ that drive rates²:

Attorney location - Lawyers in urban and major metropolitan areas tend to charge more when compared with lawyers in rural areas or small towns.

Litigation complexity - The cost of representation will be higher if the case is particularly complex or time-consuming; for example, if there are a large number of documents to review, many witnesses to depose, and numerous procedural steps, the case is likely to cost more (regardless of other factors like the lawyer's level of experience).

Years of experience and reputation - A more experienced, higher-profile lawyer is often going to charge more, but absorbing this higher cost at the outset may make more sense than hiring a less expensive lawyer who will likely take time and billable hours to come up to speed on unfamiliar legal and procedural issues.

Overhead - The costs associated with the firm's support network (paralegals, clerks, and assistants), document preparation, consultants, research, and other expenses.

Firm size - The rates can increase if the firm is large and has various timekeeper roles at the firm. For example, the cost to work with an associate or partner at a larger firm will be higher compared to a firm that has one to two associates and a paralegal.

Rates increase in geographic areas with growing population

Additional analysis was performed to examine the impact of geographic location on law firm hourly rates. This report, like previous ones, shows that large, cosmopolitan legal services markets like New York City, San Francisco, and Los Angeles are associated with higher hourly rates. In addition, our analysis reveals a significant spike in hourly rates in areas of the country

¹ David Goguen, J.D., University of San Francisco School of Law (2020) Guide to Legal Services Billing Retrieved from: <https://www.lawyers.com/legal-info/research/guide-to-legal-services-billing-rates.html>

² Source: 2018 RRR. Factor order validated in multiple analyses since 2010

Report Use Considerations

that are currently experiencing high population growth. Significant average rate increases occurred from 2020 to 2021 in many areas, but especially Fresno, California (~15% average rate increase), Greenville, SC (~18%), Miami, FL (~9%), Nashville, TN (~11%), Oklahoma City (~13%), Phoenix, AZ (~10%), and Seattle, WA (~11%) -- all of which have experienced much higher than average population growth in recent years.

The correlation between hourly rates and population growth makes sense. When people and businesses move into an area, it creates a spike in demand for all sorts of goods and services, including legal services. However, it is hard for the supply of legal services to move as quickly as demand because attorneys looking to move into a new geographic area face high switching costs that most will refuse to pay unless they absolutely have to.

First, attorneys looking to take work in a new state have to get licensed there, which takes time and effort and is a distraction that can reduce their current income in the form of the number of hours they are able to bill to clients. Second, despite the rise in remote working, many attorneys looking to establish practices in a new geographic location may have to establish at least some physical presence there, find a new office, new lodging, and potentially uproot their entire family. Third, even if the switching costs of licensure, physically moving, etc. are paid, attorneys may fear yet another switching cost in the form of attrition of their existing clients from their original geographic locale, who may view them as no longer investing in their knowledge of the legal problems and legal solutions that are specific to the original locale.

³ Source: 2020 RRR. Factor order validated in multiple analyses since 2010

Section I: High-Level Data Cuts

Cities

By Matter Type

2021 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2021	2020	2019
Kansas City MO	Non-Litigation	Associate	95	\$250	\$320	\$385	\$323	\$288	\$278
		Partner	14	\$285	\$350	\$484	\$402	\$445	\$413
Las Vegas NV	Non-Litigation	Partner	19	\$250	\$300	\$445	\$375	\$421	\$480
		Associate	12	\$238	\$323	\$377	\$320	\$282	\$280
Little Rock AR	Non-Litigation	Partner	12	\$215	\$215	\$300	\$267	\$290	\$274
Los Angeles CA	Litigation	Partner	342	\$475	\$715	\$1,042	\$759	\$708	\$694
		Associate	433	\$402	\$602	\$806	\$610	\$583	\$535
Los Angeles CA	Non-Litigation	Partner	559	\$600	\$880	\$1,160	\$894	\$872	\$816
		Associate	761	\$480	\$685	\$895	\$696	\$665	\$620
Louisville KY	Litigation	Partner	18	\$265	\$356	\$405	\$344	\$353	\$338
		Associate	16	\$178	\$200	\$278	\$225	\$227	\$214
Louisville KY	Non-Litigation	Associate	12	\$208	\$215	\$249	\$224	\$230	\$197
		Partner	15	\$244	\$389	\$529	\$421	\$424	\$430
Madison WI	Non-Litigation	Partner	15	\$244	\$389	\$529	\$421	\$424	\$430
Memphis TN	Litigation	Partner	16	\$290	\$415	\$425	\$364	\$355	\$347
		Associate	20	\$298	\$340	\$369	\$345	\$346	\$334
Miami FL	Litigation	Partner	100	\$282	\$475	\$614	\$465	\$473	\$453
		Associate	100	\$282	\$475	\$614	\$465	\$473	\$453

Section I: High-Level Data Cuts

Cities

By Years of Experience

2021 - Real Rates for Associate

Trend Analysis - Mean

City	Years of Experience	n	First Quartile	Median	Third Quartile	2021	2020	2019
Jackson MS	7 or More Years	22	\$55	\$55	\$183	\$124	\$125	\$183
Kansas City MO	3 to Fewer Than 7 Years	26	\$252	\$310	\$349	\$306	\$294	\$292
	7 or More Years	28	\$295	\$325	\$370	\$325	\$283	\$282
Los Angeles CA	Fewer Than 3 Years	70	\$494	\$533	\$622	\$543	\$511	\$413
	3 to Fewer Than 7 Years	128	\$533	\$709	\$821	\$673	\$582	\$510
	7 or More Years	164	\$412	\$565	\$841	\$629	\$604	\$576
Miami FL	3 to Fewer Than 7 Years	14	\$277	\$340	\$408	\$364	\$323	\$323
	7 or More Years	30	\$310	\$475	\$540	\$431	\$429	\$374
Minneapolis MN	3 to Fewer Than 7 Years	23	\$330	\$351	\$462	\$394	\$388	\$355
	7 or More Years	26	\$326	\$448	\$580	\$441	\$397	\$384
Nashville TN	7 or More Years	13	\$245	\$283	\$325	\$287	\$271	\$253
New Orleans LA	3 to Fewer Than 7 Years	13	\$235	\$238	\$280	\$251	\$260	\$248
	7 or More Years	13	\$260	\$340	\$364	\$324	\$326	\$276
New York NY	Fewer Than 3 Years	160	\$440	\$590	\$775	\$629	\$560	\$513
	3 to Fewer Than 7 Years	237	\$412	\$670	\$875	\$681	\$625	\$559

Section I: High-Level Data Cuts

Cities

By Years of Experience

2021 - Real Rates for Partner

Trend Analysis - Mean

City	Years of Experience	n	First Quartile	Median	Third Quartile	2021	2020	2019
Los Angeles CA	Fewer Than 21 Years	173	\$550	\$855	\$1,065	\$815	\$724	\$703
	21 or More Years	332	\$527	\$725	\$1,145	\$844	\$818	\$758
Memphis TN	Fewer Than 21 Years	11	\$283	\$300	\$340	\$317	\$324	\$309
	21 or More Years	17	\$365	\$415	\$425	\$391	\$379	\$370
Miami FL	Fewer Than 21 Years	44	\$408	\$540	\$583	\$503	\$484	\$485
	21 or More Years	99	\$414	\$550	\$750	\$569	\$564	\$532
Milwaukee WI	Fewer Than 21 Years	14	\$306	\$358	\$433	\$373	\$355	\$323
	21 or More Years	26	\$375	\$470	\$545	\$535	\$530	\$431
Minneapolis MN	Fewer Than 21 Years	41	\$400	\$520	\$604	\$513	\$515	\$478
	21 or More Years	82	\$450	\$659	\$789	\$619	\$591	\$579
Nashville TN	Fewer Than 21 Years	27	\$375	\$464	\$495	\$436	\$413	\$374
	21 or More Years	49	\$420	\$470	\$536	\$481	\$472	\$433
New Orleans LA	Fewer Than 21 Years	24	\$275	\$305	\$390	\$346	\$361	\$337
	21 or More Years	40	\$295	\$332	\$412	\$352	\$373	\$369
New York NY	Fewer Than 21 Years	456	\$656	\$1,044	\$1,407	\$1,033	\$987	\$938

Section I: High-Level Data Cuts

Cities

By Role

2021 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Role	n	First Quartile	Median	Third Quartile	2021	2020	2019
Little Rock AR	Partner	16	\$215	\$250	\$300	\$272	\$287	\$282
Los Angeles CA	Partner	786	\$536	\$822	\$1,101	\$843	\$808	\$766
	Associate	1,110	\$450	\$653	\$860	\$664	\$636	\$587
Louisville KY	Partner	25	\$278	\$355	\$400	\$348	\$363	\$348
	Associate	25	\$180	\$210	\$264	\$224	\$228	\$210
Madison WI	Partner	15	\$241	\$389	\$536	\$419	\$435	\$440
Memphis TN	Partner	30	\$290	\$351	\$415	\$354	\$351	\$342
Miami FL	Partner	226	\$360	\$530	\$675	\$525	\$524	\$516
	Associate	149	\$265	\$361	\$475	\$375	\$381	\$365
Milwaukee WI	Partner	52	\$316	\$390	\$476	\$452	\$450	\$387
	Associate	36	\$270	\$305	\$358	\$316	\$305	\$269
Minneapolis MN	Partner	175	\$419	\$595	\$711	\$578	\$544	\$531
	Associate	137	\$295	\$406	\$521	\$405	\$377	\$376
Nashville TN	Partner	108	\$375	\$468	\$535	\$463	\$457	\$414
	Associate	73	\$252	\$311	\$338	\$305	\$283	\$257

EXHIBIT 6

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $\frac{1}{2}$ Years Out of Law School $\frac{1}{2}$ is calculated from June 1 of each year, when most law students graduate. $\frac{1}{2}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $\frac{1}{2}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $\frac{1}{2}$ 1-3" from June 1, 1996 until May 31, 1999, would move into tier $\frac{1}{2}$ 4-7" on June 1, 1999, and tier $\frac{1}{2}$ 8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 7

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 11/28/2023
Client: PETFOODEXPRS - Raylynn Homes
Matter: PETFOODEXPRESS - Pet Food Express- Raylynn Holmes v. Pet Food

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
05/06/2022	POS	Postage- 05.06.22 Certified Mail to Agent(s) re LWDA Filing	\$15.06		Unbilled				
05/06/2022	FIL	Filing Fee- 05.06.22 LWDA Filing Fee	\$75.00		Unbilled				
07/12/2022	FST	First Legal Network - E-Filing, Complaint; summons; Civil Case Cover IN#30205948	\$1,618.95		Unbilled				
08/10/2022	FST	First Legal Network- E-Filing: Ntc and Acknowledgment of Receipt #30209403	\$40.45		Unbilled				
10/26/2022	FST	First Legal Network - E-Filing - Case Management Statement IN# 30216387	\$40.45		Unbilled				
01/31/2023	MED	Mediation Services- Mediation CK#10586	\$9,750.00		Unbilled				
08/17/2023	EXA	Expert Analysis IN#9253 CK#11069	\$3,960.00		Unbilled				
09/21/2023	FST	First Legal Network - 09.21.23 Joint CMC Statement	\$40.45		Unbilled				
09/21/2023	FST	First Legal Network - Filing - CM Statement IN# 30252348	\$42.70		Unbilled				
10/09/2023	FST	First Legal Network - Future Estimated Costs until case completion; Motion for Final Approval, Declaration and related documents.	\$350.00		Unbilled				
		Total:	\$15,933.06	\$0.00					
		Balance:	\$15,933.06						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed-----			\$0.00						
Total Fees Unbilled : -----			\$0.00						
Total Fees Received : -----			\$0.00						
Total Soft Cost Billed : -----			\$0.00						
Total Soft Cost Unbilled : -----			\$0.00						
Total Soft Cost Received : -----			\$0.00						
Total Hard Cost Billed : -----			\$0.00						
Total Hard Cost Unbilled : -----			\$15,933.06						
Total Hard Cost Received : -----			\$0.00						
Total Taxes Billed : -----			\$0.00						
Total Taxes Unbilled : -----			\$0.00						
Total Taxes Received : -----			\$0.00						
Total Late Charges Billed : -----			\$0.00						
Total Late Charges Unbilled: -----			\$0.00						
Total Late Charges Received : -----			\$0.00						
Trust Balance: -----			\$0.00						



Superior Court of Alameda County Public Portal

Make a Reservation

HOLMES vs PET FOOD EXPRESS, LTD., A CALIFORNIA CORPORATION, et al.

Case Number: 22CV014140 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2022-07-12 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name:

HOLMES vs PET FOOD EXPRESS, LTD., A CALIFORNIA CORPORATION, et al.

Case Number:

22CV014140

Type:

Motion (Motion for Approval of PAGA Settlement)

Status:

RESERVED

Filing Party:

RAYLYNN HOLMES (Plaintiff)

Location:

Rene C. Davidson Courthouse - Department 21

Date/Time:

12/29/2023 9:00 AM

Number of Motions:

1

Reservation ID:

947388561448

Confirmation Code:

CR-ZAKFY8FOWNIKHNFEW

Fees

Description	Fee	Qty	Amount
Motion (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:

\$1.00

Type:

Visa

Account Number:

XXXX6358

Authorization:

02062D

Payment Date:

n/a

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