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and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

MARIO MORALES, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

WESTERN PACIFIC PULP AND PAPER, a
California Corporation; and DOES 1 through
100 inclusive,

Defendants.

CASE NO. BC617544

[Assigned for all purposes to the Hon. Carolyn
B. Kuhl, Dept. 309]

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEREOF**

Accompanying Documents:

1. Evidence ISO Motion for Final Approval
2. [Proposed] Final Judgment

Date: April 4, 2018

Time: 11:00 a.m.

Dept: 309

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
2 NOTICE that on April 4, 2018, at 11:00 a.m. in Department 309 of the above-entitled court
3 located at 600 South Commonwealth Avenue, Los Angeles, California 90005, Named Plaintiff
4 Mario Morales will move this Court for final approval of the Joint Stipulation and Agreement to
5 Settle and Release Claims reached between the parties hereto.

6 This motion will be based upon this Notice, the accompanying Memorandum of Points
7 and Authorities, the accompanying Exhibit Volume and attached declarations, the Joint
8 Stipulation and Agreement to Settle and Release Claims previously filed with the Court on
9 October 13, 2017, the Stipulation to Amend Joint Stipulation and Agreement to Settle and
10 Release Claims previously filed with the Court on December 14, 2017, and upon any other
11 evidence and arguments as may be presented at the time of the hearing.

12 Respectfully submitted,

13 DATED: March 13, 2018

14 RASTEGAR LAW GROUP, APC

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S. Emi Minne

17 Attorneys for Plaintiff Mario Morales, individually,
18 and on behalf of all others similarly situated
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour class action brought by Named Plaintiff Mario Morales (“Named Plaintiff”) against Defendant Western Pacific Pulp and Paper (“Defendant”), primarily alleging that Defendant failed to provide legally compliant meal and rest periods. Named Plaintiff and Defendant (“the Parties”) have entered into a Joint Stipulation and Agreement to Settle and Release Claims (“Settlement” or “Settlement Agreement”), which provides for a total non-reversionary settlement amount of \$400,000.00. Class Members¹ will automatically receive an Individual Settlement Payment unless they elected to opt-out from the Settlement. On December 20, 2017, the Court entered an order granting preliminary approval of the Settlement. As of the filing of this motion, Notice of the Settlement has been mailed to the Class. There have been no objections to the settlement and no requests for exclusion.

The Settlement was reached following a full day of mediation with Eugene Moscovitch, Esq. The Parties engaged in a significant amount of formal and informal discovery prior to mediation. The Settlement provides substantial benefits to Class, is fair, reasonable and adequate, and is in the best interest of the Class. Accordingly, final approval should be granted.

II. SUMMARY OF THE CASE

Defendant is a recycling company operating out of Downey, California. Named Plaintiff was employed by Defendant as an hourly-paid, non-exempt employee from approximately February 11, 2015 to August 19, 2015. Declaration of Farzad Rastegar (“Rastegar Dec.”) ¶ 3; Declaration of Mario Morales (“Morales Dec.”) ¶ 3.

On April 19, 2016, Named Plaintiff filed a putative class action Complaint against Defendant alleging the following six causes of action: (1) Failure to provide meal periods; (2) Failure to authorize and permit rest periods; (3) Failure to provide accurate itemized wage statements and maintain required records; (4) Failure to timely pay all wages upon termination of employment; (5) Unfair Business Practices; and (6) Representative Action for Civil Penalties for

¹ All capitalized terms not otherwise defined in this Memorandum are intended to have the same meaning as the capitalized terms in the Settlement Agreement.

1 Violation of the Labor Code Private Attorneys General Act of 2004. Rastegar Dec. ¶4.

2 Following the filing of the Complaint, Named Plaintiff's Counsel made significant
3 investigation regarding the claims of the Named Plaintiff and the potential defenses thereto.
4 Specifically, on January 10, 2017, Plaintiff propounded Special Interrogatories and Requests for
5 Production of Documents on Defendant, and noticed the deposition of Defendant's PMQ.
6 Shortly thereafter, Counsel for the Parties met and conferred about resolving this case, and
7 agreed to engage in private mediation and to exchange informal discovery. Pursuant to this
8 agreement, Defendant produced information and documents relevant to the claims alleged by
9 Plaintiff including a sampling of Class Members' payroll and time records and other documents
10 regarding Defendant's relevant wage and hour policies. Rastegar Dec. ¶ 5.

11 On June 2, 2017, the Parties participated in a full-day formal mediation with Eugene
12 Moscovitch, Esq. After exhaustive, arm's length negotiations, the Parties executed a
13 Memorandum of Understanding, the material terms of which are formalized in the Settlement
14 Agreement previously filed with the Court on October 13, 2017. Rastegar Dec. ¶ 6. Pursuant to
15 the Court's ruling on Plaintiff's Motion for Preliminary Approval, counsel for the Parties
16 subsequently executed a Stipulation to Amend Joint Stipulation and Agreement to Settle and
17 Release Claims (hereinafter "Stipulation to Amend Settlement"), which was filed with the Court
18 on December 14, 2017. Rastegar Dec. ¶ 7.

19 **III. THE SETTLEMENT AGREEMENT**

20 **a. Definition Of The Proposed Settlement Class**

21 The proposed Settlement Class is defined as: "All current and former non-exempt
22 employees of Defendant who worked for Defendant in the State of California any time between
23 April 19, 2012 through August 1, 2017." Settlement Agreement ¶¶ 1(c), 5(a). The Class Period
24 runs from April 19, 2012, through August 1, 2017, which reflects the four-year statute of
25 limitations period pursuant to Named Plaintiff's cause of action for violation of the Business &
26 Professions Code. Settlement Agreement ¶ 1(f). There are 109 Class Members. Declaration of
27 Elizabeth Kruckenberg ("Kruckenberg Dec.") ¶4.

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b. Settlement Amount

The total amount of settlement compensation to be paid by Defendant under the Settlement Agreement is \$400,000.00 (“Gross Settlement Amount”)². Settlement Agreement ¶¶ 1(n), 8(a).

The Gross Settlement Amount shall be allocated as follows:

- Class Representative enhancement award of \$5,000.00 to the Named Plaintiff;
- Attorney fees to Class Counsel in an amount up to 33 1/3% of the Gross Settlement Amount, i.e. \$133,333.00, plus reimbursement of reasonable and actual costs to Class Counsel up to \$10,000.00³;
- Settlement Administration Costs up to \$10,000.00; and
- PAGA Penalties in the amount of \$5,000.00. 75% of the PAGA Penalties (i.e. \$3,750.00) will be paid to the California Labor Workforce and Development Agency and 25% of the PAGA Penalties (i.e. \$1,250.00) to be distributed to Participating Class Members.

Settlement Agreement ¶ 8(b)(i)-(v). The Gross Settlement Amount, less the above payments, will be the “Net Settlement Amount” available to pay Class Members. Settlement Agreement ¶¶ 1(n), 8(b)(i). The Net Settlement Amount is currently estimated to be \$241,941.69.

Kruckenber Dec. ¶12.

The Gross Settlement Amount is non-reversionary, and no funds will revert to Defendant. The Gross Settlement Amount is all-inclusive in that it will include the Class Members’ payroll taxes and all other Settlement-related payments and costs. However, the employer’s share of any

² Defendant shall fund the Gross Settlement Amount through a series of three installments as follows: (1) \$200,000.00 within 10 business days of the Effective Date (“First Installment Payment”); (2) \$50,000.00 within 60 calendar days after the First Installment Payment (“Second Installment Payment”); and (3) \$150,000.00 within 365 calendar days of the Second Installment Payment (“Final Installment Payment”). Settlement Agreement ¶ 8(e)(i)-(iii). In order to ensure that Defendant adheres to this installment schedule, the Settlement Provides that Defendant shall pay up to an additional \$200,000.00 towards the Gross Settlement Amount if it defaults on any installment payment and does not timely cure said default. Settlement Agreement ¶ 8(f). Specifically, Defendant would pay an additional \$200,000.00 if the First Installment Payment is untimely, or an additional \$100,000.00 if either the Second Installment Payment or Final Installment Payment are untimely. Settlement Agreement ¶ 8(f)(i)-(iii).

³ As set forth in Plaintiff’s Motion for Approval of Attorney Fees and Costs, filed concurrently herewith under separate cover, Class Counsel’s actual final anticipated costs total \$7,975.31, which is substantially less than the amount allocated in the Settlement.

1 payroll taxes shall be paid by Defendant separately and in addition to the Gross Settlement
2 Amount. Settlement Agreement ¶¶ 1(n), 8(a).

3 Each Class Member who does not timely and/or properly opt out of the Settlement
4 (“Participating Class Members”) will receive an Individual Settlement Payment. Settlement
5 Agreement ¶ 9(d)(iii). Individual Settlement Payments will be calculated by dividing each
6 Participating Class Member’s Individual Workweeks by the Total Workweeks of all
7 Participating Class Members, and multiplying the resulting fraction by the Net Settlement
8 Amount. Settlement Agreement ¶ 10(a). Individual Settlement payments shall be deemed as 1/3
9 wages, 1/3 interest, and 1/3 statutory and civil penalties. Settlement Agreement ¶ 8(d).

10 Any Individual Settlement Payment checks remaining un-cashed after 180 calendar days
11 after issuance shall be deemed void, and any such residual funds shall be shall be distributed
12 pursuant to Code of Civil Procedure section 384 as follows: (1) twenty-five percent to the Status
13 Treasury for deposit in the Trial Court Improvement and Modernization Fund; (2) twenty-five
14 percent to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch; and
15 (3) 50 percent as *cy pres* to the Legal Aid Foundation of Los Angeles (“LAFLA”) located at
16 1550 W. 8th Street, Los Angeles, California 90017. LAFLA is a nonprofit, legal services
17 organization that assists California’s low-income working families protect their workplace rights
18 regardless of their ability to pay. The Parties believe that contributions to the LAFLA would
19 serve the interests of the class because they pursue worker’s rights in California. *See* Stipulation
20 to Amend Settlement, filed on December 14, 2017, ¶ 6.

21 **IV. STATUS OF THE NOTICE PROCEDURE**

22 To protect the right of absent class members, the trial court must provide the best notice
23 practicable to class members. *See Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12;
24 *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175. There is no requirement that all
25 class members receive actual notice, whether by mail or some other means; rather, “individual
26 notice must be provided to those class members who are identifiable through reasonable effort.”
27 *Eisen*, 417 U.S. at 175.

28 On December 20, 2017, this Court found on a preliminary basis that the Settlement
program meets the requirements of both California and federal law. Specifically, this Court

1 found that the Settlement to be fair, adequate and reasonable, and within the range of
2 reasonableness. The Court also found that the Notice of Class Action Settlement was the best
3 means practicable of providing notice under the circumstances, and constituted due and
4 sufficient notice of the class action, proposed settlement, and the final approval hearing to all
5 persons affected by and/or authorized to participate in the settlement, in full compliance with due
6 process and the notice requirements of California Code of Civil Procedure § 877.6.

7 The Settlement Administrator for the Settlement is Phoenix Settlement Administrators.
8 (“Settlement Administrator”). The Notice Packet previously approved by the Court was
9 provided to the Settlement Administrator on December 21, 2017. Kruckenberg Dec. ¶ 3. On
10 January 4, 2018, Defendant’s counsel provided the Settlement Administrator with list
11 containing the names, addresses, social security numbers and employment dates for 109 Class
12 Members. Kruckenberg Dec. ¶ 4. The information was updated by the Settlement
13 Administrator using a National Change of Address (NCOA) search on January 11, 2018.
14 Kruckenberg Dec. ¶ 5. On January 22, 2018, Notice Packets were mailed to all 109 Class
15 Members, in both English and Spanish. Kruckenberg Dec. ¶ 6.

16 As of the filing of this motion, 14 Notice Packets were returned to the Settlement
17 Administrator as undeliverable. None of these Notice Packets were returned with a forwarding
18 address. For the 14 Notice Packets returned without a forwarding address, the Settlement
19 Administrator attempted to locate a current mailing address using TransUnion TLOxp, one of
20 the most comprehensive address databases available for skip tracing. Of the 14 Notice Packets
21 that were skip traced, 8 updated addresses were obtained and the Notice Packets were promptly
22 re-mailed to those Class Members via first class mail. Kruckenberg Dec. ¶ 7. There were 6
23 undeliverable Notice Packets. Counsel for the Parties was able to provide updated contact
24 information for 2 of the 6 undeliverable Notice Packets. As of the date of the filing of this
25 motion, 4 notice packets were ultimately deemed undeliverable because an updated address
26 could not be obtained. Kruckenberg Dec. ¶ 8.

27 As of the drafting of this motion, there have been no objections to the Settlement and no
28 requests for exclusion. Kruckenberg Dec. ¶¶ 9-10. There are no outstanding disputes.
Kruckenberg Dec. ¶ 11. Participating Class Members will be paid a pro-rata share of the Net

1 Settlement Amount, which is currently estimated to be \$241,941.69. Presently, the anticipated
2 individual Settlement payments to Participating Class Members range from approximately
3 \$22.35 to \$6,168.11, with an average payment of \$2,219.65, without applicable taxes,
4 withholdings, and employee garnishments. Kruckenberg Dec. ¶ 12.

5 **V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

6 The trial court has broad discretion to determine whether a proposed class action
7 settlement is fair. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138; *Mallick v.*
8 *Superior Court* (1979) 89 Cal.App.3d 434, 438. There is a presumption of fairness of a class
9 action settlement when: 1) The settlement is reached as a result of arms length negotiations; 2)
10 There has been sufficient investigation and discovery; 3) Counsel is experienced in similar
11 litigation; and, 4) the percentage of objectors is small. *Dunk v. Ford Motor Company* (1996) 48
12 Cal.App.4th 1794, 1802. Before approving a class action settlement, a trial court must have an
13 understanding “of the amount that is in controversy and the realistic range of outcomes of the
14 litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120. However, the
15 parties need not provide an explicit statement of the maximum amount plaintiffs could have
16 potentially recovered. *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186
17 Cal.App.4th 399, 409.

18 **a. The Settlement Was Reached Through Arm’s Length Bargaining.**

19 The Settlement Agreement was reached following extensive negotiations during a full
20 day of mediation with Eugene Moscovitch, Esq. The settlement negotiations were at arm’s
21 length and, although conducted in a professional manner, were adversarial. The Parties went
22 into the mediation willing to explore the potential for a settlement of the dispute, but each side
23 was also committed and prepared to litigate through trial and appeal if a settlement had not been
24 reached. The proposed Settlement was reached at the end of a process that was neither
25 fraudulent nor collusive. To the contrary, counsel for the Parties advanced their respective
26 positions throughout the settlement negotiations. Rastegar Dec. ¶ 8.

27 **b. Settlement Negotiations Were Based On Sufficient Investigation And Discovery.**

28 Prior to reaching a settlement, Class Counsel conducted a significant investigation into
the claims alleged by Named Plaintiff. Class Counsel met with Named Plaintiff and conducted

1 legal research regarding the applicable Labor Code Sections. Plaintiff propounded Special
2 Interrogatories and Requests for Production and noticed the deposition of Defendant's PMQ.
3 After the Parties agreed to participate in private mediation, Defendant provided Class Counsel
4 with information pertaining to the claims in this case, including the number of putative Class
5 Members, a sampling of Class Members' timekeeping and payroll records, and other information
6 regarding Defendant's relevant wage and hour practices and procedures. Class Counsel carefully
7 analyzed this information and, based on this analysis, was able to act intelligently and effectively
8 in negotiating the proposed settlement. Rastegar Dec. ¶ 9.

9 **c. Class Counsel Have Extensive Experience In Class Action Wage And Hour
10 Litigation.**

11 The settlement negotiations were conducted by highly capable and experienced counsel.
12 Class Counsel are respected members of the bar with strong records of vigorous and effective
13 advocacy for their clients, and they are experienced in handling complex wage and hour class
14 action litigation. Rastegar Dec. ¶¶ 16-22. Named Plaintiff and Class Counsel were prepared to
15 litigate the claims in the action, but they support the proposed Settlement as being in the best
16 interests of the proposed classes.

17 **d. None of the Class Members Have Objected to or Opted Out from the Settlement
18 Agreement.**

19 The response of class members is clearly indicative of the fairness of the settlement. As set
20 forth above, there were notices mailed out to 109 Class Members. As of the filing of this motion
21 there have been **no objections** to the Settlement and **no opt-out requests**. Kruckenberg Dec. ¶¶
22 9-10. All 109 Class Members will receive payment under the Settlement. This response is a
23 strong indication of the fairness of the Settlement.

24 **e. The Settlement is Fair and Reasonable Given the Maximum Potential Recovery
25 and Risks of Continued Litigation**

26 In *Kullar v. Foot Locker Retail, Inc.*, the Court set forth factors that a trial court should
27 consider in evaluating the reasonableness of a class action settlement, including "the strength of
28 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
maintaining class action status through trial, the amount offered in settlement, the extent of
discovery completed and the stage of the proceedings, the experience and views of counsel, the

1 presence of a governmental participant, and the reaction of the class members to the proposed
2 settlement.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. Here, the
3 Proposed Settlement is clearly reasonable in light of these factors.

4 Class Counsel and Named Plaintiff were and remain confident of the merits of their
5 claims. Class Counsel considered several factors in reaching the decision to settle at this point in
6 the litigation. Class Counsel has calculated the maximum damages of the class members for
7 meal period violations to be approximately \$751,521.63. *Rastegar Dec.* ¶¶ 11-12.

8 Given the potential damages, the Gross Settlement Amount is reasonable given the
9 substantial risks entailed by this case. Although Named Plaintiff and Class Counsel are
10 confident of the merits of this case, they still had to balance the strengths of this case against the
11 risks in further litigating this action. A significant risk that the Settlement obviates is whether
12 this action would be deemed suitable for class treatment. Notably, the assigned certification
13 probabilities far exceed the rate of certification in contested motions in California over the past 5
14 years, based upon data available through the California Courts website. *See, Findings of the*
15 *Study of California Class Action Litigation, 2000-2006*, available at [http:// www.courts.ca.gov/](http://www.courts.ca.gov/documents/class-action-lit-study.pdf)
16 [documents/class-action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf) (finding that only 21.4% of all class actions were certified
17 either as part of a settlement *or* as part of a contested certification motion). Less than 20% of all
18 class actions are certified by way of contested motion. *Rastegar Dec.* ¶ 13.

19 Moreover, even if Named Plaintiff prevails at class certification, proving the amount of
20 wages due to each class member would be an expensive, time-consuming, and uncertain
21 proposition. In being able to prove liability and damages, Class Counsel will need to request and
22 analyze thousands of more pages of documents, obtain the contact information of absent class
23 members, contact them and obtain numerous declarations at great expense. There is a further
24 risk that, for at least part of their employment, some of the class members were not improperly
25 denied meal periods. Obtaining the cooperation of current employees would also be difficult,
26 given the likely reluctance to aid the prosecution of a lawsuit against a current employer. On the
27 other hand, Defendant would likely be able to obtain the cooperation of its current employees.
28 Trial and possible appeals would also substantially delay any recovery by the Settlement Class.
In contrast, through the proposed Settlement, the Class greatly benefits by receiving timely relief

1 without the risk of an unfavorable judgment. Rastegar Dec. ¶ 14.

2 In sum, when the risks of litigation, the uncertainties involved in achieving class
3 certification, the burdens of proof necessary to establish liability, and the probability of appeal of
4 a favorable judgment are balanced against the merits of Named Plaintiff's claims, it is clear that
5 the Gross Settlement Amount is fair, adequate, and reasonable. Rastegar Dec. ¶ 15.

6 **VI. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE.**

7 This Court preliminarily approved Phoenix Settlement Administrators to serve as the
8 Settlement Administrator. In Plaintiff's Motion for Preliminary Approval, Plaintiff informed the
9 Court that the estimated settlement administration costs would not exceed \$10,000.00. As of the
10 filing of this motion, the Settlement Administrator's total fees and costs, including costs and fees
11 incurred to date as well as anticipated fees and costs for completion of Settlement administration,
12 are \$8,000.00. Kruckenberg Dec. ¶ 13, Ex. B. This is substantially less than amount allotted to
13 settlement administration expenses in the Settlement, and should be reimbursed in full since the
14 administration costs incurred in this matter greatly benefitted the Class.

15 **VII. CONCLUSION**

16 The Settlement Agreement is fair and reasonable, and represents an excellent
17 opportunity for the current and former employees of Defendant to obtain recovery for
18 Defendant's alleged illegal wage and hour practices. To date, there have been no opt-outs or
19 objections, and all 109 Settlement Class Members will receive an Individual Settlement
20 Payment. For the reasons set forth above and in the Settlement Agreement on file, Named
21 Plaintiff respectfully requests that his Motion for Final Approval of Class Action Settlement be
22 granted.

23 Respectfully submitted,

24 DATED: March 8, 2018

25 RASTEGAR LAW GROUP, APC

26 

27 S. Emi Minne

28 Attorneys for Plaintiff Mario Morales, individually,
and on behalf of all others similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 years, and not a party to this action. My business address is 22760 Hawthorne Boulevard, Suite
4 200, Torrance, California 90505. On March 13, 2018, I served the following document or
5 documents:

6 **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION
7 SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
8 THEREOF**

9 ☒ **Via electronic transmission.** Pursuant to the order of the Court authorizing electronic
10 service, I caused the documents to be sent to the person at the e-mail addresses listed
11 below via File & ServeXpress. I did not receive, within a reasonable time after the
12 transmission, any electronic message or other indication that the transmission was
13 unsuccessful.

14 ☒ **By electronic transmission.** Pursuant to California Labor Code section 2699(1)(4), I
15 caused the documents to be sent to the person or entity listed below via
16 <https://dir.tfaforms.net/129>, the online filing system established by the California Labor
17 & Workforce Development Agency for the submission of proposed settlements of civil
18 actions filed pursuant to California Labor Code sections 2698, et seq. I did not receive,
19 within a reasonable time after the transmission, any electronic message or other
20 indication that the transmission was unsuccessful.

21 **Service List**

22 Julie A. Vogelzang (SBN 174411) 23 Lisa Hird Chung (SBN 246766) 24 SCHOR VOGELZANG LLP 25 600 B Street, Suite 2200 26 San Diego, CA 92101-4681 27 Telephone: (619) 906-2400 28 Facsimile: (619) 906-2401 Email: julie@schorvogelzang.com lisa@schorvogelzang.com (Via File & ServeXpress)	Attorneys for Defendant Western Pacific Pulp and Paper
PAGA Administrator California Labor & Workforce Development Agency 1515 Clay Street, Suite 801 Oakland, CA 94612 PAGA@dir.ca.gov (Via Online Filing System - https://dir.tfaforms.net/133)	Address of Record presented by the LWDA to timely process all PAGA related notices and correspondences

29 I declare under penalty of perjury under the laws of the State of California that the above
30 is true and correct. Executed on March 13, 2018, at Torrance, California.

31 
32 _____
33 Karla Banales