

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
POLARIS LAW GROUP LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333
bill@polarislawgroup.com

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HERMIE EVANGELISTA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

LINDE INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 22STCV26341

**DECLARATION OF KRISTEN M. AGNEW IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Date: September 3, 2024

Time: 10:00 a.m.

Dept.: 7

Complaint Filed: August 15, 2022

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

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff
4 Hermie Evangelista (“Class Representative” or “Plaintiff”). I have personal knowledge of the
5 facts set forth below and if called to testify I could and would do so competently.

6 **FAIRNESS OF THE SETTLEMENT**

7 2. The Joint Stipulation of Class and Representative Action Settlement and
8 Amended Joint Stipulation of Class and Representative Action Settlement (“Settlement
9 Agreement” or “Agreement”) were the product of negotiations between highly able and
10 experienced attorneys on both sides who possessed the relevant data and extensive legal research
11 which they had carefully analyzed. The Parties engaged in arm’s length negotiations at mediation
12 with a highly experienced and known wage-and-hour mediator, Michael Loeb.

13 3. Additionally, Class Counsel conducted significant investigation in this case,
14 including informal discovery and exchanges of information regarding data for the putative class,
15 as well as documents and information pertaining to Defendant Linde Inc.’s (“Defendant”)
16 payroll policies and practices.

17 4. In connection with mediation, Defendant produced data regarding the number of
18 putative class members, the number of wage statements reflecting the payment of “sleeper miles”
19 issued to putative class members during the period of August 15, 2021 to March 26, 2023, and
20 the number of months worked by putative class members during the period of August 15, 2018
21 to March 26, 2023. Defendant also produced a copy of its reimbursement policies.

22 5. Using the data provided by Defendant, Class Counsel performed a comprehensive
23 damages analysis. I also investigated the applicable law as applied to the facts discovered
24 regarding the alleged claims of the putative class and potential defenses thereto. Thus, I entered
25 mediation with a clear understanding of Defendant’s maximum exposure.

26 6. Based on the class data provided by Defendant, Class Counsel estimates that the
27 total exposure for Plaintiff’s class and PAGA claims amount to \$902,600. However, this figure
28 assumes that the Court would “stack” penalties and award full PAGA penalties for each proven

1 violation during a pay period. The Gross Settlement Amount here is \$115,000, and thus amounts
2 to approximately 12.74% of the total estimated liability

3 **ATTORNEY QUALIFICATIONS**

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

10 8. Since 2009, my primary area of practice has been employment litigation. I have
11 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
12 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
13 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
14 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
15 companies in employment litigation in both state and federal courts, as well as before
16 government agencies, including the California Department of Labor. My practice included the
17 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
18 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
19 also handled a number of wage and hour class actions.
20

21 9. While at Ogletree and Seyfarth, I served as the lead associate on a number of
22 wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County
23 Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los
24 Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance*
25 *Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles
26 County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los
27 Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business*
28 *Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa*

1 *Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No
2 CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale*
3 *Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro*
4 *Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

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

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

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

5 13. I have served as lead trial counsel on class and representative PAGA bench trials,
6 in which the plaintiffs were the prevailing parties.

7 **ATTORNEYS' FEES AND LITIGATION COSTS**

8 14. To date, I have incurred approximately 58.60 hours in connection with the
9 litigation of this lawsuit. Attached hereto as **Exhibit A** is a summary of the hours I have
10 incurred to date.

11 15. As of January 1, 2024, my hourly rate in class and representative actions
12 increased to \$800. Accordingly, the total lodestar for my hours will be approximately \$46,880
13 (58.60 hours x \$800). I was recently approved at an hourly rate of \$800 in the matters of *Robert*
14 *Jordan v. Mondelez Global, LLC*, San Bernardino County Superior Court Case No.
15 CIVSB2202758; and *Alexis Tristan v. American Homes 4 Rent, L.P.*, Los Angeles County
16 Superior Court Case No. 23STCV17006. I was also previously approved at an hourly rate of
17 \$700.00 in a number of matters, including: *Foaad Hanna v. Equinix, LLC*, Santa Clara County
18 Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County
19 Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*,
20 Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
21 *Association*, Alameda County Superior Court Case No. RG18908139; *Gutierrez v. Spa Havens,*
22 *LP*, San Diego Superior Court Case No. 37-2019-00057065-CU-OE-NC; *Cruzado v. Ontario T,*
23 *Inc.*, San Bernardino Superior Court Case No. CIVSB2027249; *Ray v. C&W Facility Services,*
24 *Inc.*, San Bernardino Superior Court Case No. CIVSB2101321; *Alvarez v. Forterra Building*
25 *Products*, San Diego Superior Court Case No. 37-2020-00018179-CU-OE-CTL; *Dunn v.*
26 *Universal Plant Services of California, Inc.*, Solano County Superior Court Case No.
27 FCS056134, *Pulido v. Georgia-Pacific Corrugated III LLC*, Fresno Superior Court Case No.
28

1 18CECG00265; *In re: FPI Management Wage and Hour Cases*, Los Angeles Superior Court
2 Case No. JCCP5050; *Delgado v. Kloeckner Metals Corporation*, Los Angeles Superior Court
3 Case No. 20STCV22503; *Jackson v. Samuel, Son & Co. (USA) Inc.*, Riverside County Superior
4 Court Case No. CVRI2101679, *Blanton v. Communications Test Design, Inc.*, San Joaquin
5 Superior Court Case No. STK-CV-UOE-2021-0005136; *Diaz v. Acuity Brands Lighting, Inc.*,
6 San Bernardino Superior Court Case No. CIVDS2015583; *Flournoy v. Partners Personnel –*
7 *Management Services, LLC*, Riverside County Superior Court Case No. CVRI2102372; *Idian v.*
8 *VHSD ES INC.*, San Diego Superior Court Case No. 37-2019-00018927-CU-OE-CTL; *Miller v.*
9 *Stanbridge University*, Orange County Superior Court Case No. 30-2021-01206298-CU-OE-
10 CXC; *Romano v. SSA Terminals, LLC*, Los Angeles Superior Court Case No. 20STCV29048;
11 *Wise v. Le Petite Academy, Inc.*, San Joaquin Superior Court Case No., STK-CV-UOE-2021-
12 10561; *Chambers v. SOMACIS, Inc.*, San Diego Superior Court Case No. 37-2021-00033445-
13 CU-OE-CTL; *Johnson v. FS Palo Alto Employment, Inc.*, Santa Clara Superior Court Case No.
14 21CV389927; *Rodriguez v. U.S. Bank National Association*, Los Angeles Superior Court Case
15 No. BC617356; *Moss v. Sares Regis Operating Company, L.P.*, Orange County Superior Court
16 Case No. 30-2021-01201041-CU-OE-CXC; and *Rodriguez v. City National Bank*, Los Angeles
17 Superior Court Case No. 20STCV29761.

18
19 16. At the time the Parties negotiated the Settlement Agreement, I did not have a final
20 tally of the litigation costs incurred to date. As such, the Parties included a maximum amount
21 that could be attributed to costs under the settlement. To date, Diversity Law Group has incurred
22 costs in the amount of \$11,302.56 for litigation related expenses. Attached hereto as **Exhibit B** is
23 a true and correct copy of the cost report.

24 **NOTICE TO LWDA**

25 17. On April 25, 2024, my office uploaded the Court's Order Granting Preliminary
26 Approval to the LWDA's website. Attached hereto as **Exhibit C** is a true and correct copy of the
27 confirmation.

28 18. On August 9, 2024, my office uploaded a copy of the final approval motion to the

1 LWDA's website. Attached hereto as **Exhibit D** is a true and correct copy of the confirmation.

2
3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5 Executed on this 9th day of August 2024, at Los Angeles, California.

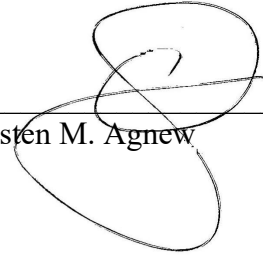
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Kristen M. Agnew

EXHIBIT A

Hermie Evangelista v. Linde, Inc.,
Superior Court of the State of California, County of Los Angeles, Case No. 22STCV26341
Time and Task Chart for Kristen Agnew

Hours	Description of Work
4.20	Review intake notes; conduct legal research re potential theories of liability.
3.30	Draft PAGA notice, class action complaint and representative PAGA complaint; confer with co-counsel re same.
4.80	Confer with co-counsel re preemption of 226.7 claim; prepare analysis re risk of summary judgment on preemption defense and likelihood of class certification.
.50	Confer with co-counsel re consolidation of class and representative actions.
.80	Review first amended complaint and confer with co-counsel re revisions.
1.40	Draft requests for production of documents (set one) and special interrogatories (set one).
1.00	Prepare PMK deposition notice and confer with co-counsel re same.
1.30	Draft informal discovery requests for putative class data for mediation; confer with co-counsel re same.
10.80	Review and revise Plaintiff's mediation statement; review and analyze Defendant's mediation statement; prepare for and attend mediation.
1.30	Review and revise memorandum of understanding ("MOU"); confer with co-counsel re Defendant's revisions to MOU.
9.30	Draft joint stipulation of class and representative action settlement ("settlement agreement"); continued meet and confer with defense counsel and co-counsel re revisions to settlement agreement; review and incorporate proposed revisions to settlement agreement.
.40	Confer with Phoenix re bid for administering settlement.
7.10	Draft motion for preliminary approval and supporting declarations; confer with co-counsel re same; review and incorporate defense counsel's revisions.
2.60	Review the Court's tentative concerning motion for preliminary approval; meet and confer with defense counsel re same; prepare joint statement in support of motion for preliminary approval; confer with Phoenix re cost to translate class notice.
1.00	Prepare amended settlement agreement; confer with defense counsel re same.
1.30	Prepare for and appear at hearing on motion for preliminary approval.
.90	Confer with settlement administrator regarding distribution of notice of class action settlement; confer with co-counsel re preliminary calculations; review and finalize notice; analyze and review reports from class administrator.

Hours	Description of Work
6.60	Draft and revise motion for final approval and supporting declarations; conduct legal research re same.
58.60	<u>TOTAL HOURS</u>

EXHIBIT B

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DIVERSITY LAW GROUP
Slip Listing

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Selection Criteria

Slip Classification Open
Client (hand select) Include: Evangelista v. Linde CA
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
72745	EXP	Mariana Becerra	1	75.00	75.00
8/11/2022		Court fees			
WIP		Evangelista v. Linde CA			
LWDA					
72766	EXP	Erika Mejia	1	1492.07	1492.07
8/15/2022		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Complaint					
73056	EXP	Olympia	2	0.25	0.50
8/31/2022		Photocopies			
WIP		Evangelista v. Linde CA			
Photocopies					
73057	EXP	Olympia	1	6.13	6.13
8/31/2022		Postage			
WIP		Evangelista v. Linde CA			
Postage					
73273	EXP	Erika Mejia	1	97.10	97.10
9/7/2022		Atty Service			
WIP		Evangelista v. Linde CA			
Attorney Service - Complaint Service					
73046	EXP	Erika Mejia	1	14.02	14.02
9/22/2022		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - POS of Summons					
73385	EXP	Erika Mejia	1	462.07	462.07
10/17/2022		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Complaint					
73722	EXP	Olympia	1	15.02	15.02
12/2/2022		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - POS of Summons & N&A					

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DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
73658	EXP	Olympia	1	15.02	15.02
12/2/2022		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Notice of ISC Order					
73870	EXP	Olympia	1	15.02	15.02
12/14/2022		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Notice of Cont of OSC					
74006	EXP	Olympia	12	0.25	3.00
12/31/2022		Photocopies			
WIP		Evangelista v. Linde CA			
Photocopies					
74007	EXP	Olympia	1	1.05	1.05
12/31/2022		Postage			
WIP		Evangelista v. Linde CA			
Postage					
74008	EXP	Olympia	5	0.25	1.25
12/31/2022		Photocopies			
WIP		Evangelista v. Linde CA			
Photocopies					
74009	EXP	Olympia	1	0.57	0.57
12/31/2022		Postage			
WIP		Evangelista v. Linde CA			
Postage					
74285	EXP	Olympia	1	15.02	15.02
1/27/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - CMS					
74289	EXP	Erika Mejia	1	15.02	15.02
1/30/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - CMS					
74419	EXP	Erika Mejia	1	15.02	15.02
2/14/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - FAC					
74421	EXP	Erika Mejia	1	15.02	15.02
2/14/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Request for Dismissal					

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Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
74763	EXP	Erika Mejia	1	35.62	35.62
3/28/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Stip to Cont Class Cert Deadline					
75103	EXP	Erika Mejia	1	15.02	15.02
5/10/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Request for Dismissal					
75105	EXP	Olympia	1	15.02	15.02
5/10/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Notice of Cont of OSC					
75130	EXP	Erika Mejia	1	15.02	15.02
5/10/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Request for Dismissal					
75114	EXP	Olympia	1	125.55	125.55
5/11/2023		Court fees			
WIP		Evangelista v. Linde CA			
Case Anywhere					
75115	EXP	Olympia	1	7975.00	7975.00
5/11/2023		Arbitrators			
WIP		Evangelista v. Linde CA			
JAMS Mediation					
75708	EXP	Nick Rosenthal	1	17.88	17.88
5/31/2023		Meals			
WIP		Evangelista v. Linde CA			
Meal					
75828	EXP	Olympia	1	135.00	135.00
8/7/2023		Court fees			
WIP		Evangelista v. Linde CA			
Case Anywhere					
76541	EXP	Olympia	1	135.00	135.00
11/7/2023		Court fees			
WIP		Evangelista v. Linde CA			
Case Anywhere					
76633	EXP	Olympia	1	15.02	15.02
11/15/2023		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - CMS					

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Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
76942	EXP	Olympia	1	0.63	0.63
11/30/2023		Postage			
WIP		Evangelista v. Linde CA			
Postage					
77348	EXP	Olympia	1	76.82	76.82
1/26/2024		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - MPA					
77418	EXP	Olympia	1	135.00	135.00
2/6/2024		Court fees			
WIP		Evangelista v. Linde CA			
Case Anywhere					
77825	EXP	Olympia	1	15.02	15.02
3/22/2024		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Notice of Change of Attorney					
77935	EXP	Erika Mejia	1	15.02	15.02
4/2/2024		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Supp Brief					
78065	EXP	Erika Mejia	1	15.02	15.02
4/15/2024		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - Decl of KA					
78151	EXP	Olympia	1	15.02	15.02
4/25/2024		Court fees			
WIP		Evangelista v. Linde CA			
ACE E Filing - NOE					
78270	EXP	Olympia	1	153.00	153.00
5/13/2024		Court fees			
WIP		Evangelista v. Linde CA			
Case Anywhere					
78970	EXP	Olympia	1	135.00	135.00
8/6/2024		Court fees			
WIP		Evangelista v. Linde CA			
Case Anywhere					
Grand Total					
Billable			0.00		11302.56

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Slip Listing

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Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
	Unbillable	0.00		0.00
	Total	0.00		11302.56

EXHIBIT C

From: [DIR PAGA Unit](#)
To: [Olympia Pena](#)
Subject: Thank you for your Court Order or Judgment Submission
Date: Thursday, April 25, 2024 9:24:06 AM

04/25/2024 09:23:47 AM

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

Item submitted: Court Order or Judgment

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 D