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6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9
10 **FOR THE COUNTY OF PLACER**

11 JESSE DOWNARD, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

15 SIERRA MENTAL WELLNESS GROUP, a
16 California Corporation; and DOES 1 to 100,
17 inclusive,

18 Defendants.

Case No. S-CV-0049587

CLASS ACTION

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 16, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha Hirashima

Filed: December 19, 2022

FAC Filed: March 27, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Jesse Downard (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant Sierra Mental Wellness Group, (“Defendant”) violated California law by 1) failing to
10 pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to
11 provide rest periods, 5) failing to provide accurate wage statements, 6) failing to timely pay all final
12 wages, 7) failing to reimburse employees for incurred expenses, and 8) by engaging in unfair
13 competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
14 (“PAGA”). These claims were based allegations that Defendant violated California law by 1) failing to
15 incorporate the value of on-call earnings when calculating the regular rate of pay for premium purposes
16 such as overtime, double time, sick leave, and meal and rest period premiums, 2) failing to have enough
17 staff to provide meal and rest periods to Plaintiff and putative class members, 3) engaging in rounding
18 practices, rounding of putative class members’ hours despite being able to record actual hours worked
19 down to the minute, and lack of rounding policy and its failure to inform Plaintiff and putative class
20 members of its rounding practices, and 4) failing to reimburse Plaintiff and putative class members for
21 use of their personal cell phone and internet for work purposes. The PAGA, waiting time penalty, wage
22 statement violation, and unfair competition claims also derive from these violations.

23 3. Plaintiff is the only named representative in this matter. From our initial investigations
24 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
25 class action. We filed the action on or about December 19, 2022. Plaintiff exhausted administrative
26 remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the
27 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on December 16, 2022,
28 setting forth the facts and theories of liability. A true and correct copy of the notice filed with the

1 LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant
2 via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no
3 response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for
4 more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA
5 and filed a First Amended Complaint on March 27, 2023. A true and correct copy of Plaintiff's
6 operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to
7 the LWDA on March 27, 2023, after we received an endorsed copy back from Court.

8 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

9 5. Defendant is represented in this matter by Matheny Sears Linkert & Jaime, LLP. From
10 the beginning, Defendant has contested the merits of this case, the suitability of the case for class action
11 or representative treatment, the manageability of the case at trial, and Plaintiff's ability to prove a
12 violation in each pay period for each employee among other defenses and contentions they made
13 challenging the propriety of this action. Defendant further contended, even assuming there was a
14 finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion
15 to substantially reduce any such penalties owed based on evidence of good faith attempts to comply
16 with California Labor Code obligations by Defendant. Notwithstanding its agreement to settle this
17 matter, Defendant believe the practices Plaintiff is contending are unlawful either do not exist or, to the
18 extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiff
19 and Class Members. Also, Defendant has contended that this matter is not appropriate for class
20 certification outside of this proposed class settlement.

21 6. Based on the expected testimony from Plaintiff and Class Members, a review of
22 Defendant's policies and procedures and other documents relating to the alleged claims, information on
23 the number of Class Members, Class Members' dates of employment, and a representative 20% sample
24 of Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in
25 light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations
26 that have taken place, I am convinced that the proposed settlement is in the best interest of the class.
27 The length and risks of trial and other normal perils of litigation that impact the value of the claims were
28 also considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect

1 of potential class certification issues as well as the uncertainty of class certification, the difficulties of
2 complex litigation, and the lengthy process of establishing specific damages and various possible delays
3 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
4 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
5 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
6 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I
7 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
8 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

9 7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
10 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
11 and potential damages for such claims. The parties engaged in informal discovery and exchange of
12 documents, including a representative 20% sampling of employee data, such as timecards, paystubs,
13 payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged
14 claims. The discovery covered all aspects of the asserted claims, including certification issues, merits
15 issues, damages, the scope and configuration of Class Members, the content and implementation of the
16 wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant
17 areas. Discovery included many different documents, including employee onboarding documents,
18 employee policy and handbooks, employment agreements, and timecards. From this production we
19 were able to determine information critical to a reliable damages analysis such as the average hourly
20 rate, average daily hours worked, average number of workweeks and pay periods that had potential
21 violations based on the asserted claims, the frequency with which violations occurred in a given week
22 and/or pay period, and the number of former employees. This information allowed my office to assess
23 both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this
24 litigation including providing factual information relating to Plaintiff's and Class Members' employment
25 conditions, providing a substantial number of documents, and answering questions regarding
26 Defendant's factual contentions in this matter. This was important because it directly related to our
27 ability to maintain this case as a class action and our ability to obtain a favorable settlement for the class.
28

1 8. Throughout this litigation our office had numerous communications with Defendant's
2 Counsel discussing our respective positions. The parties engaged in mediation on August 14, 2023,
3 using an experienced mediator, Russ J. Wunderli. It was only after one (1) year of extensive, arm's
4 length negotiations that the parties were able to reach a settlement, which only occurred after a full-day
5 mediation and after several days of assessment of the proposed settlement terms. The negotiations were
6 at all times contentious and adversarial, though still professional in nature.

7 9. The following represents the potential maximum recovery for each of Plaintiff's claims
8 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,
9 including a sample of time and payroll records for Class Members. There were 19,717 workweeks in
10 the Class Period, 2,275 PAGA pay periods, an average base hourly rate of \$30.22 and an average
11 overtime rate of \$45.33.

12 a) Unpaid Minimum Wages: This claim is based on allegations that Defendant did not pay
13 Plaintiff for all hours worked as Defendant rounded putative class members' hours
14 despite being able to record actual hours worked down to the minute, and Defendant's
15 lack of rounding policy and its failure to inform Plaintiff and putative class members of
16 its rounding practices. This claim is entirely comprised of liquidated damages under
17 California Labor Code section 1194.2 in the amount of \$320,401.25. Plaintiff only
18 claimed liquidated damages under this cause of action to avoid double recovery for
19 substantive wage loss because Plaintiff has also assumed that all unpaid hours qualified
20 for overtime compensation. There were substantial amounts of risk with respect to
21 certification and with Plaintiff proving the merits or damages. The issue with this claim
22 was whether the "rounding" was the result of a built-in feature of an app that was used to
23 record hours worked or the result of self-reporting by class members and/or instructions
24 by supervisors to document hours worked in a rounded manner. Where the rounding
25 was not the result of a singular app and/or procedure, this raised a substantial risk for
26 certification as the claim may require reviewing the circumstances surrounding each
27 timekeeper and why the time was rounded. Also, in our calculations, we based damages
28 off the gross amount of hours unpaid, not the net amount of hours unpaid. Thus, instead

1 of an average of 1.25 hours unpaid per week, the amount would very likely be lower to
2 the extent there was a *net* amount of unpaid time during that week. Given these facts, it
3 is likely a Court would find that they supported a good faith defense, which entirely
4 wipes out a claim for liquidated damages. See Cal. Lab. Code § 1194.2(b). Based on
5 the facts of this case, it is unlikely that there would be any recovery under this claim.

- 6 b) Unpaid Overtime Wages: In part, this claim is based on the same facts as the minimum
7 wage claim described above as it relates to rounding, and off the clock work, therefore,
8 is subject to the same risks outlined above. The maximum possible damages for the
9 rounding part of this claim are \$1,117,214.51. This amount does not take into account
10 any potential risks with respect to certification or Plaintiff proving the merits or
11 damages. As noted above, Plaintiff's calculations are based on being able to
12 consistently prove a net of 1.25 unpaid hours worked per week, per employee, for the
13 entirety of their employment. It is unlikely that such a finding would be made at trial for
14 the same reasons as stated above. The issue of daily overtime only occurred in about
15 43.10% of the time over the entire class. The overtime occurrence would reduce the
16 value of the rounding part of the overtime claim by at least 57%.

17 Unpaid Overtime based on RROP: This claim is also based on the allegations that
18 Defendant failed to pay Plaintiff and Class Members all overtime wages due to
19 Defendant's failure to incorporate the value of on-call earnings when calculating the
20 regular rate of pay for premium purposes such as overtime. The maximum possible
21 amount for this claim is \$212,450.68 for failure to calculate the on-call earnings into the
22 regular rate of pay based on 43.10% of affected workweeks. This amount does not take
23 into account any potential risks with respect to Plaintiff proving the merits or damages,
24 which was heavily disputed. For example, in addition to the issues cited above
25 regarding the minimum wage claims, Plaintiff would be put in the position of having to
26 prove that Defendant had a practice to violate its own policy regarding accurate
27 recording of hours. This presents substantial risk that the Court would find individual
28 issues predominate because inquiry as to why class members did not record accurate

1 time and/or whether the timekeeping software, the class members, or the supervisors
2 were responsible for entering the time into the system and rounding the time. This could
3 have reduced the damages for this claim, and the other asserted claims that either
4 directly depend on the regular rate of calculation (*i.e.* meal period premium regular rate
5 of pay) or indirectly depend on it as a derivative violation (*i.e.* wage statement penalties,
6 waiting time penalties, and PAGA penalties), by a considerable amount. Taking these
7 factors into account, a more realistic range of recovery for this claim would be a range of
8 \$335,164.35 to \$480,402.24 for the rounding allegations part of this claim, and a range
9 of \$63,735.20 to \$148,715.47 for the regular rate of pay miscalculations.

10 c) Meal Periods: Based on the sample data, the total exposure for this claim is
11 \$2,383,390.96. This amount does not take into account any potential risks associated
12 with this claim, which was heavily disputed. While Plaintiff contended that Defendant
13 maintained a regular and consistent practice of failing to provide all meal periods due to
14 lack of adequate staffing, Defendant's written meal period policy that was given to Class
15 Members at the time of hire and later during the course of their employment included
16 examples that explained to class members when and how to take their meal periods. For
17 instance, one examples states that "your meal period will be provided no later than the
18 end of your fifth hour of work" and "if you begin work at 8:00 a.m., you must start your
19 meal period by 12:59 p.m. (which is before the end of your fifth hour of work)." This
20 policy presented substantial risks for certification and proving this claim on the merits
21 because Defendant contends that it explained in detail its meal period policy, it had a
22 valid meal period policy, and it was not responsible for policing Class Members to
23 ensure they took their meal periods. This claim also was based on the contention that
24 Defendants failed to properly calculate the regular rate of pay for meal period premiums
25 that is actually paid to Class Members. This claim was based on the same types of
26 payments that were the basis for Plaintiff's overtime regular rate of pay claims. As a
27 result, the same risks associated with the overtime claims are present here and could
28

substantially reduce the value of this claim. Taking these factors into account, a more realistic range of recovery for this claim would be \$715,017.29 to \$1,668,373.67.

d) Rest Breaks: This claim was based on the same allegations as the meal period claim and was subject to the same risks. The maximum exposure for this claim is \$2,383,390.96. However, the claim was based on the same allegations as the meal periods and that Defendant lacked adequate staffing which led to Plaintiff and class members not being provided with compliant rest breaks. This claim was also heavily disputed and did not benefit from any presumptive violation based on time records under the law like meal period claims do. This presents substantial risk for Plaintiff ultimately being able to certify this claim, which is also very difficult to establish on the merits due to there being no requirements to document when, and for how long, rest periods were taken. Additionally, the variance in the actual experience of Class Members that took rest breaks presented substantial risks for certification and proving this claim on the merits. This claim was also based on the contention that Defendants failed to properly calculate the regular rate of pay for rest period premiums that is actually paid to Class Members. This claim was based on the same types of payments that were the basis for Plaintiff's overtime regular rate of pay claims. As a result, the same risks associated with the overtime claims are present here and could substantially reduce the value of this claim. Taking these factors into account, a more realistic range of recovery for this claim would be \$715,017.29 to \$1,668,373.67.

e) Reimbursement: This claim was based on Plaintiff's contention that he and Class Members were required to communicate with managers, supervisors, and other employees using their personal cell phones and internet. In addition, Plaintiff and Class Members used their personal cell phones to address patient placement, communicate with county members, enter timecards, text messages and for searching diagnosis codes and criteria. The maximum exposure for this claim is \$227,503.85. This amount does not take into account any potential risks associated with this claim. Defendant heavily disputed whether use of personal cell phones was required given the presence of

1 company computers and phones available on premises which could have allowed
2 Plaintiff and other class members to perform the same functions as on their cell phones.
3 This raised a substantial risk that the Court would find against Plaintiff on this claim. I
4 believe it is unlikely that any damages beyond a nominal amount would have been
5 awarded for this claim if the case went to trial. As a result, a realistic range of recovery
6 for this claim would be \$22,750 to \$68,251.15.

7 f) Sick Time RROP Violations: The maximum exposure for this claim is \$52,800. This
8 claim also was based on the contention that Defendants failed to properly calculate the
9 regular rate of pay for sick pay premiums that is actually paid to Class Members. This
10 claim was based on the same types of payments that were the basis for Plaintiff's
11 overtime regular rate of pay claims. As a result, the same risks associated with the
12 overtime claims are present here and could substantially reduce the value of this claim.
13 Taking these factors into account, a more realistic range of recovery for this claim would
14 be \$15,840 to \$36,960.

15 g) Wage Statement Violations: This claim is derivative of Plaintiffs' overtime, minimum
16 wage, and meal and rest period claims. The maximum exposure for this claim is
17 \$113,750, which is calculated based on an initial violation of \$50 per pay period per
18 employee. Based on our research, we did not find any prior Labor Commissioner or
19 court decisions that stated Defendant's practices and/or policies were improper. As
20 such, a "subsequent violation" may not be found for penalty calculation purposes and
21 the exposure analysis here is based on an "initial violation" valuation being adopted by
22 any fact finder if this matter went to trial. This amount does not take into account the
23 potential risks associated with this claim and assumes a violation in every pay period.
24 Because this claim is derivative of Plaintiff's other claims, the same risks identified
25 above for Plaintiff's minimum wages, overtime, meal period, and rest period claims
26 equally apply here, substantially affecting the potential value of this claim. Taking
27 these factors into account, a more realistic range of recovery for this claim is \$34,125 to
28 \$79,625.

- 1 h) Waiting Time Penalties: This claim is derivative of the minimum wage, overtime and
2 meal and rest period claims above. The maximum exposure for this claim is
3 \$1,298,251.20. However, this amount does not take into account the potential risks
4 associated with this claim. Because this claim is derivative, the same risks mentioned
5 above also apply to this claim. Similar to the liquidated damages for minimum wage
6 violations, there is a good faith dispute defense to waiting time penalty claims. *See Diaz*
7 *v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Based on the facts of
8 this case, it is more realistic that there would not be any recovery for this claim.
- 9 i) PAGA: This claim is derivative of the Labor Code violations identified above and would
10 be subject to all the same risks as the underlying claims it is based on. Additionally,
11 based on our research, we did not find any prior Labor Commissioner or court decisions
12 that stated Defendant's practices and/or policies were improper. As such, a “subsequent
13 violation” may not be found for penalty calculation purposes, and the exposure analysis
14 here is based on an “initial violation” valuation being adopted by any fact finder if this
15 matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
16 1209 (2008). Based on Class Members’ payroll data, the maximum total exposure for
17 this claim is \$1,723,668. This amount does not take into account any of the risks in
18 proving the merits of the underlying claims that the PAGA damages are based on. As
19 outlined above, there are substantial risks to the claims and it is unlikely that recovery
20 would be provided for several of the asserted claims let alone 100% of the potential
21 available penalty. Beyond the risks on the merits, the correct valuation of civil penalty
22 amounts for certain claims under PAGA were in dispute. For example, the calculation
23 valued civil penalties for failure to pay final wages under Labor Code section 256
24 (which provides the civil penalty amount will not exceed 30 days’ pay as waiting time
25 under the terms of Section 203) for a total of \$435,168.00 instead of the \$100 per
26 violation default penalty under Labor Code 2699(f), which results in a reduction to
27 \$95,454.55 for this claim. However, based on the facts of this case, it is more realistic
28 that there would not be any recovery for this claim. In addition to the risks on the merits

1 and disputes regarding the proper valuation of the penalty amounts, I believe the Court
2 may exercise its discretion to reduce PAGA penalties in this case because a majority of
3 the civil penalties sought would be in addition to amounts owed for substantive
4 violations, some of the violations are due to technical non-compliance with the Labor
5 Code, such as derivative wage statement violations, and Defendant produced legally
6 compliant policies among other documents, that a Court may find demonstrates a good
7 faith attempt at compliance. Courts are statutorily authorized to use discretion to reduce
8 penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore*
9 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v.*
10 *Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
11 The 82% reduction equates to roughly \$9-\$50 worth of civil penalties per pay period per
12 employee depending on the total potential value of the civil penalty (i.e. \$50-\$250),
13 which is more in line with actual awards based on my experience and review of awards
14 in other cases. Thus, even if using the maximum values possible and setting aside risks
15 of proving the claims on the merits, the total exposure may be cut to approximately
16 \$310,260.24 (82% reduction) to \$1,206,567.60 (30%) or lower. Using the lower,
17 disputed PAGA penalty values (\$682,500 total) would lower the potential exposure
18 further to \$122,850 (82% reduction) to \$477,750 (30%). It is important to note that this
19 discretionary reduction is completely separate and in addition to any risks on the merits.
20 Given the substantial risks associated with the claims, we believe the amount that might
21 ultimately be awarded under this claim would be significantly lower than our maximum
22 exposure calculation. Allocating \$20,000 to the PAGA claims in this case is
23 appropriate, especially in light of amounts that Courts have approved as reasonable
24 valuations in other cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010)
25 (approving \$0 allocation to the resolution of PAGA claims based on their being disputed
26 and being part of a class settlement which was evaluated based on the terms of the
27 agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
28 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-

1 1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018)
2 (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no
3 recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016)
4 (approving \$10,00 PAGA settlement allocation where total PAGA penalty exposure was
5 approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns*
6 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
7 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l,*
8 *LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
9 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
10 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
11 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010
12 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
13 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9
14 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v.*
15 *M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving
16 \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was
17 calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon*
18 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving
19 \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
20 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from
21 \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645,
22 at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA
23 out of \$6.9 million common-fund settlement).

24 10. In summary, Plaintiff's gross recovery of \$450,000 under the Agreement equals
25 approximately 4% of the maximum value of the claims in this matter and between 10% and 22% of the
26 more realistic range of recovery. After deducting from the Gross Settlement Amount the proposed
27 allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative,
28 Settlement Administrator Costs, and the PAGA Payment, the net recovery under the Agreement,

1 \$243,630.80, represents approximately 2% of the maximum value of the claims in this matter. The net
2 recovery also represents between 5% and 12% of the more realistic range of recovery. The average net
3 award is approximately \$806.72. I believe the Agreement represents a reasonable compromise of
4 claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement
5 now and ensure Class Members receive some compensation, rather than proceed to further litigation
6 and potentially recover nothing, was a motivating factor in reaching this Agreement.

7 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office
8 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
9 settlement or judgment should we recover a monetary amount. We took a risk that we would not
10 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
11 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
12 make sure employees are able to find affordable representation in order to ensure that employers are
13 complying with all their legal obligations towards employees and paying employees all their hard-
14 earned wages.

15 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
16 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
17 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
18 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
19 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
20 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
21 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
22 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
23 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
24 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
25 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
26 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
27 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
28 and an officer for the Latino Law Students Association from 2009 to 2010.

13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number of seminars covering issues in wage and hour litigation in general and complex class and PAGA litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

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

- 1 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
2 Sup. Ct.);
- 3 • *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
4 Ct.);
- 5 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 6 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
7 00271174 (Sac. Sup. Ct.);
- 8 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
9 Ct.);
- 10 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
11 Ct.);
- 12 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
13 Sup. Ct.);
- 14 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 15 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
16 Ct.);
- 17 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 18 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
19 00209613 (Sac. Sup. Ct.);
- 20 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 21 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
22 00222101 (Sac. Sup. Ct.);
- 23 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 24 • *Ferreya v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 25 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 26 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 27 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 28 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.

1 Ct.);

- 2 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 3 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 4 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 5 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 6 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 7 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 8 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 9 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 10 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 11 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 12 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 13 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 14 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 15 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 16 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 17 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-
18 EFB (E.D. Cal.);
- 19 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 20 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 21 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 22 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
23 00082201 (Sac Sup. Ct.);
- 24 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 25 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 26 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 27 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 28 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);

- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

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

1 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
2 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
3 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
4 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
5 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
6 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
7 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
8 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
9 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
10 as a Super Lawyer from 2014 to present.

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

- 20 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 21 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 22 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 23 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 24 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 25 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 26 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 27 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 28 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.

- Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
 - *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
 - *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
 - *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);

- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on the written and oral discovery, including defending a PAGA representative's deposition, drafting special interrogatories and request for production of documents, calculating class-wide damages, communicating with class representatives, drafting mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*

1 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct), *Pek, et al v. Varris*
2 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*
3 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
4 revolves around wage and hour matters, including PAGA claims.

5 19. In connection with any final approval hearing, I will be seeking attorneys' fees and
6 costs, an Enhancement Payment to the Class Representative, and Settlement Administrator Costs as set
7 forth in the Agreement. I will be requesting attorneys' fees and costs pursuant to the common fund
8 doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25,
9 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston &*
10 *Hunt v. Grawlty*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law supporting the requested
11 amounts will be set forth in the final approval motion, including information for the Court, quantify the
12 amount of time spent by Plaintiff on this case and any further risks and/or burdens incurred as a result
13 of acting as Class Representative, an updated declaration in support of actual litigation costs and
14 itemized cost spreadsheet, and declaration from the Settlement Administrator detailing the work
15 performed and Settlement Administrator Costs incurred. My firm's expected costs through final
16 approval are not expected to exceed \$10,000. Attached as Exhibit E is a true and correct copy of the
17 costs incurred prior to the filing of this Motion and the expected costs incurred through the final
18 approval and fairness hearing. Any difference in the awarded fees and costs, Class Representative's
19 Enhancement Payment, and Settlement Administrator Costs and the amounts allocated for each under
20 the Agreement will be added back to the Net Settlement Amount and distributed pro rata to Class
21 Members.

22 20. I have used several class action administrator companies in the wage and hour class
23 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
24 administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated
25 maximum cost of administering the class settlement of approximately \$7,750. A true and correct copy
26 of a cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. This is only an
27 estimate, and final pricing may vary depending on the issues, if any, that arise during the administration
28

1 of the settlement. However, the difference between the actual, lesser costs and \$15,000, if any, will be
2 paid to the Participating Class Members on a pro rata basis.

3 21. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
4 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
5 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
6 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
7 Exhibit G.

8 22. A true and correct copy of the proposed Notice of Settlement is being filed with this
9 Motion as Exhibit F.

10 23. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and
11 The Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement
12 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

13 24. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
14 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
15 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
16 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
17 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
18 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
19 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
20 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
21 Superior Court.

22 25. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
23 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
24 their current or former employment. This assistance regularly includes, but is not limited to, free legal
25 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
26 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
27 forms, and direct representation in administrative hearings, including administrative hearings in front of
28 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator

1 who provide assistance, along with experienced employment law attorney volunteers. These services
2 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
3 and continuing through today under CPB.

4 26. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
5 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
6 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
7 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
8 workers and advises them as to the available legal remedies. In addition to individual counseling on
9 employment issues, the CFWR educates workers, unions, and community members about workplace
10 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

11 27. The CFWR provides limited representation for low-wage workers in wage claims before
12 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
13 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
14 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
15 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
16 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
17 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
18 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
19 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
20 respect to those wage claims.

21 28. I believe the services provided by CPB and the CFWR promote the law consistent with
22 the objective of wage and hour class actions in general and in this case specifically.

23 29. I have spoken with every other attorney at my firm to determine whether they have any
24 relationship with either of the proposed *cy pres* beneficiaries.

25 30. I have volunteered for both organizations numerous times over the past several years,
26 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students
27 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB’s advisory
28 committee. These organizations are non-profits that assist low-income workers throughout California,

1 giving free legal advice regarding employment law issues and representing employees with wage claims
2 before the California Labor Commissioner. I have witnessed firsthand the quality service and attention
3 these entities provide to individuals in need of employment law advice and representation at the
4 California Labor Commissioner.

5 31. Brittany V. Berzin has never done any work, volunteer or otherwise, with CPB. During
6 law school, Ms. Berzin was a student volunteer for the CFWR for two summers. Since graduating law
7 school, she has volunteered for the CFWR approximately one to two times per year, assisting in the
8 advice clinic. Recently, Ms. Berzin volunteered to be on the Board of Directors and is currently the
9 Chair, which is an unpaid position. As Chair, Ms. Berzin is one of seven Board Members, who are all
10 from different law firms and/or local public and private organizations. No compensation or benefits,
11 monetary or otherwise, are provided to any Board Member or organization a Board Member is
12 associated with. The Executive Director of the CFWR supervises, directs, and controls the day-to-day
13 operations of the CFWR, not Ms. Berzin or the Board of Directors. As Chair, Ms. Berzin's additional
14 duties include scheduling meetings, drafting meeting agendas and presiding over meetings.
15 Furthermore, CFWR has not, and does not, provide any referrals to Shimoda & Rodriguez Law, P.C.

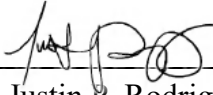
16 32. Galen T. Shimoda has volunteered for both organizations on and off over the past several
17 years through either presenting wage and hour seminars to law students who staff the free advice clinics
18 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
19 work with either organization since approximately March 2020. Mr. Shimoda has never received
20 payment or compensation of any kind in connection with any work he's done with either of the proposed
21 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
22 Bono, Inc. or the Center For Workers' Rights.

23 33. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor Mr. Shimoda have ever received
24 any compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in
25 connection with any of the volunteer work we have done with the organizations.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed on 10/27/2023 in Sacramento, California.

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6 Justin P. Rodriguez
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