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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RONNIE WALDON, JR., an individual, on
behalf of himself and other similarly
situated,

PLAINTIFF,

v.

NOBU SAN DIEGO, LLC; and DOES 1
thru 50, inclusive,

DEFENDANTS.

Case No. 37-2023-00001244-CU-OE-CTL

[Case Assigned for All Purposes to Hon.
Katherine Bacal in Dept. C-69]

**DECLARATION OF LIANE
KATZENSTEIN LY IN SUPPORT OF
MOTION FOR APPROVAL OF
REPRESENTATIVE ACTION
SETTLEMENT**

Date: May 10, 2024

Time: 11:00 AM

Dept.: C-69

Reservation Number: 3059300

Complaint Filed: January 5, 2023

Trial Date: June 14, 2024

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I, Liane Katzenstein Ly, declare as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am the attorney of record for Plaintiff Ronnie Waldon, Jr. in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

2. I graduated from Florida State University in 2005 with a degree in English. I graduated from University of California, Davis School of Law in 2008. I am admitted to practice before the following Courts: United States District Court, Northern, Southern, Eastern, and Central of California; all of California State Courts.

3. I make this declaration in support of Plaintiff's Motion for Approval of Representative Action in the above-captioned case.

4. I have been involved in all of the settlement discussions leading to the present settlement as embodied in the PAGA Settlement Agreement (“Agreement”). A true and correct copy of the PAGA Settlement Agreement is attached hereto as Exhibit “1”.

BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY

5. On January 5, 2023, and in compliance with Labor Code § 2699.3(a)(1), written notice to Defendant and the Labor and Workforce Development Agency (“LWDA”) was provided seeking civil penalties under PAGA for violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802.

6. On January 5, 2023, Plaintiff Ronnie Waldon, Jr. filed a putative class action complaint against Defendant in in San Diego County Superior Court, Case No. 37-2023-00001244-CU- OE- CTL, entitled *RONNIE WALDRON JR., an individual, on behalf of himself and others similarly situated v. NOBU SAN DIEGO, LLC; and DOES 1 thru 50, inclusive.* (the “Action”, alleging Defendant’s violation of causes of action or: 1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, 1199; 2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; 3) Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7; 4) Failure to

1 Reimburse Expenses Pursuant to Labor Code § 2802; 5) Violation of Labor Code 226(a); 6) Penalties
2 Pursuant to Labor Code § 203; and 7) Violation of Business Professions Code § 17200.

3 7. Plaintiff has not received any response from the LWDA to his formal written notice.
4 As Plaintiff has waited more than sixty-five (65) days from the January 5, 2023 postmark date of his
5 written notice before filing his action, Plaintiff has complied with all of the requirements set forth in
6 Labor Code § 2699.3 to commence a representative action under PAGA.

7 8. On March 13, 2023, Plaintiff filed a First Amended Class and Representative Action
8 Complaint (“FAC”), adding a cause of action for penalties pursuant to Labor Code §2699, et seq.
9 based upon the alleged Labor Code violations enumerated in his original complaint.

10 9. After the filing of the FAC and meeting and conferring with Defendant’s Counsel,
11 Plaintiff’s Counsel was provided with a copy of an arbitration agreement signed by Plaintiff that
12 includes a class action waiver.

13 10. On May 5, 2023, Plaintiff filed a Second Amended Representative Action
14 Complaint, removing the class allegations and leaving a single cause of action for penalties pursuant
15 to Labor Code §2699, et seq., based upon the alleged Labor Code violations enumerated in the
16 operative complaint. The Second Amended Representative Action Complaint is the operative
17 complaint in the Action (the “Operative Complaint”).

18 THE DISCOVERY PROCESS AND MEDIATION

19 11. The Parties engaged in extensive informal pre-mediation discovery. Prior to
20 mediation, Defendant produced sample time and pay data for the Aggrieved Employees, as well as
21 Plaintiff’s personnel records.

22 12. Based on Defendant’s records, the data reveals that there are an estimated 129
23 Aggrieved Employees (including Plaintiff) who worked a total of 2,483 PAGA Pay Periods at issue.

24 13. On September 12, 2023, the Parties participated in an all-day mediation presided over
25 by experienced mediator Steven Pearl, which led to this formal PAGA Settlement Agreement that is
26 subject to the approval of the Court.

27 14. Although Defendant denies that it violated any pertinent law, it recognized the risks
28 and attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to

1 finalization of a formal PAGA Settlement Agreement and the approval of the Court. The Parties
2 negotiated the terms and conditions of the Agreement and now present the agreed-upon Settlement
3 to the Court for Approval.

4 THE SETTLEMENT

5 15. Defendant will pay the total sum of \$110,000.00 in full and final settlement of the
6 PAGA claims alleged.

7 16. Per the Agreement, the amount is allocated as follows:

8 Gross Settlement Amount	\$110,000.00
9 PAGA Counsel Fees Payment	\$36,666.67
10 PAGA Counsel Litigation Expenses Payment	\$13,500.00
11 Administrator Expenses Payment	\$7,000.00
Enhancement Payment	\$5,000.00
PAGA Penalties	\$47,833.33 (\$35,875.00 to the LWDA; \$11,958.33 to Aggrieved Employees)

12 17. The Agreement provided for counsel to receive cost reimbursement up to
13 \$13,500.00. However, counsel's final costs come to \$11,174.21. The extra \$2,325.79 will remain in
14 the net settlement fund, causing the net amount for distribution to the LWDA and Aggrieved
15 Employees to be slightly higher than the \$47,833.33 contemplated in the settlement agreement.

16 18. Each aggrieved employee shall receive a pro-rata portion of the remaining amount in
17 PAGA penalties by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
18 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
19 PAGA Period, and then multiplying the result by each Aggrieved Employee's PAGA Period Pay
20 Periods.

21 19. The PAGA Period or Release Period means the period from January 5, 2022 to
22 September 12, 2023.

23 20. For settlement purposes, the Aggrieved Employees are defined as "all non-exempt
24 employees who are employed or have been employed by NOBU SAN DIEGO, LLC, in the State of
25 California who worked one or more pay periods during the Release Period."

26 RISK AND EVALUATION OF THE SETTLEMENT

27 21. To help the Court evaluate the fairness of the Settlement, a discussion of the risk
28 evaluation and discount taken follows.

1 22. Plaintiff believed that Defendant may persuasively argue that the Court should
2 exercise its discretion to significantly reduce or altogether waive any penalties under PAGA.

3 23. PAGA Counsel anticipated that, at trial, Counsel for Defendant could make a
4 potentially persuasive argument that Defendant: (1) all Aggrieved Employees were properly paid
5 and/or reimbursed in accordance with Defendant's lawful policies and practices, and that any alleged
6 failure to compensate Aggrieved Employees was the result of inadvertence and clerical error; (2) all
7 Aggrieved Employees were provided with the opportunity to take meal and rest breaks in compliance
8 with California law; (3) until this Action was filed, no employees had complaints about any alleged
9 failure to pay wages, provide meal and/or rest breaks, reimburse expenses, issue accurate itemized
10 wage statements; (4) none of Defendant's employees suffered any harm from or actual damage as a
11 result of the conduct that forms the basis for Plaintiff's allegations. All of which, Counsel for
12 Defendant would argue, should mitigate in factor of significantly reducing or waiving any PAGA
13 penalties.

14 24. While Plaintiff disagrees that this analysis is legally correct or persuasive, PAGA
15 Counsel had to consider the foregoing facts and arguments and how they might impact any judgment
16 ultimately awarded to Aggrieved Employees if the Court were persuaded by them.

17 25. Here, Plaintiff and the aggrieved employees were not properly compensated for all
18 hours worked.

19 26. Plaintiff and the aggrieved employees were required to routinely work "off the clock"
20 and performed compensable activities before and after each working shift for which no pay was
21 provided.

22 27. On a regular and consistent basis, Plaintiff and the aggrieved employees were
23 required to arrive 15-30 minutes before their scheduled start time to complete COVID-19 screenings.
24 Nobu maintained "Wellness and Safety Guidelines" that required Plaintiff and the aggrieved
25 employees to: go to a designated area to be screened by a manager; have their temperature taken;
26 asked questions about whether they were experiencing COVID-19 symptoms; wash their hands for
27 at least twenty seconds; and change into uniform if required. All of these screening tasks were
28 performed off the clock and prior to clocking in for their shifts.

1 28. Moreover, Defendant also required that Plaintiff and the aggrieved employees use
2 their personal cell phones to complete mandatory COVID-19 screenings before their scheduled start
3 time. Each phone call took approximately five minutes. Plaintiff and the aggrieved employees were
4 not compensated for the time spent on these activities.

5 29. Defendant disputes this off the clock time and argues that all employees were paid
6 for all hours worked.

7 30. Here, Plaintiff and the aggrieved employees consistently worked shifts over five (5)
8 hours.

9 31. Defendant maintained a written policy for meal and rest periods but violated its own
10 policies. Defendant required that all hourly employees to take their meal periods between 4pm to
11 5pm before the restaurant opened for evening dining.

12 32. Additionally, Defendant has had a consistent policy of failing to pay Plaintiff and the
13 aggrieved employees one (1) hour of pay at the employees' regular rate of compensation for each
14 workday that the compliant meal period was not provided. On July 15, 2021, in *Ferra v. Loews*
15 *Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one
16 extra hour of bonus pay that employees are owed if an employer fails to provide a compliant meal
17 period or rest break. Specifically, the Court held that those bonus payments must include the hourly
18 value of any nondiscretionary earnings (such as a nondiscretionary bonuses, commissions, etc.), and
19 cannot simply be paid at an employee's base hourly rate.

20 33. Here, when meal periods are provided, Defendant has had a consistent policy of
21 paying meal period premiums at the base rate and not the appropriate blended rate in violation of
22 Labor Code §§ 226.7 and 512.

23 34. Defendant argued that the employees did receive their meal periods and presented
24 evidence that other employees would testify to that fact.

25 35. Additionally, Defendant maintained valid meal and rest period policies.

26 36. This presented a risk on the meal period claim that Plaintiff considered when
27 evaluating this settlement.

1 37. Here, Defendant failed to maintain a lawful procedure of providing rest breaks to
2 Plaintiff and the aggrieved employees.

3 38. Defendant maintained a written policy governing rest breaks, but the policy states
4 that rest breaks will only be given “as much as practicable” in the “middle” of each work period.

5 39. Defendant failed to provide Plaintiff and the aggrieved employees with
6 uninterrupted rest breaks of not less than ten (10) minutes as required by the Labor Code during the
7 relevant time period and did not ensure it occurred within the first 3.5 hours of an employee’s shift.

8 40. Defendant also did not pay rest break premiums even after it began providing some
9 rest breaks.

10 41. Further, Plaintiff and the aggrieved employees were not compensated with one (1)
11 hour of wages for each compliant rest period as required by Labor Code § 226.7.

12 42. Defendant again raised the defense that employees received their rest breaks and
13 presented evidence that employees would testify as such.

14 43. Given that the rest period policy was accurate, Plaintiff considered this a viable risk.

15 44. On a regular and consistent basis, Defendant has failed to reimburse Plaintiff and the
16 aggrieved employees the cost of using their personal cell phones to complete mandatory COVID-19
17 screenings for business related purposes.

18 45. These personal cell phones were a necessary part of Plaintiff and the aggrieved
19 employees’ job duties because if they did not complete the COVID-19 screenings over the phone,
20 they could not commence their scheduled shift.

21 46. These cell phones were not provided by Defendant, and Defendant failed to
22 reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal
23 cell phones for business related purposes.

24 47. Additionally, Plaintiff was required to download an app to view his work schedule,
25 as well as for payroll purposes. To Plaintiff’s knowledge, Defendant did not maintain an expense
26 reimbursement policy, nor was he ever informed to seek reimbursement for his cell phone use.

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48. Defendant raised possible defenses on the basis that COVID-19 Screening was no longer in effect during the PAGA Period and not all Aggrieved Employees used their cell phones for every pay period as on-site time-keeping systems were available to most, if not all, employees.

49. Accordingly, Plaintiff has acknowledged the risks posed and that the damages were relatively small.

50. Here, Defendant furnishes Plaintiff and the aggrieved employees with itemized wage statements that do not accurately show total hours worked.

51. Defendant furnishes Plaintiff and the aggrieved employees with itemized wage statements that do not accurately show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate because Plaintiff and the aggrieved employees performed work while off the clock. The work performed off the clock was not recorded and thus was not reflected in the aggrieved employees' wages and wage statements.

52. Further, Plaintiff and the aggrieved employees are issued wage statements that do not include accurate meal and rest premiums as a result of the claims alleged above.

53. As this is a derivative claim, the same risks present for the above claims were present for this claim.

54. Defendant failed to pay all wages owed and due upon their termination and/or resignation.

55. Plaintiff factored in the risk of establishing that any violation was “willful” and the fact that this claim is derivative.

56. In light of all these significant risks and given that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement Amount of \$110,000.00 was fair and reasonable.

ATTORNEY COMPETENCE

57. Kingsley & Kingsley is experienced in prosecuting employment litigation, and since 2000 we have focused our practice on wage, hour, and working condition violations. My firm is well versed in class action litigation and has diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending class action

lawsuits in Northern, Central, Eastern, and Southern California in both State and Federal Court.

Below is a small, but representative sampling of wage and hour cases handled by my firm:

- a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.
- d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.
- e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.
- f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.
- g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.
- h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January

2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.

j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.

k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.

l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.

m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was proposed for final settlement by the Honorable Richard L. Fruin on February 19, 2016, in the gross amount of \$5,250,000.

n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739). The matter was approved for final settlement by the Honorable Lee Smally Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of 38%.

o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The

1 matter was approved for final settlement by the Honorable Anthony W. Ishii in
2 November 2017, in the gross amount of \$6,100,000.00, plus interest, with
3 attorney's fees benchmark award of \$1,525,000.

- 4 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
5 15-101333). The matter was approved for final settlement before the Hon. Stephen
6 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with
7 attorneys' fees request of 33.33%.

8 58. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000
9 and since that time has been appointed class counsel on dozens of wage and hour class actions that
10 have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for
11 class certification in 15 matters and has successfully obtained class certification in 15 of those
12 cases. A brief sampling of which includes:

- 13 a. *Lewis v. Collabrus, Inc.*, Santa Clara County Superior Court (109CV-142927),
14 approved for Class Certification in 2011.
- 15 b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
16 December 19, 2012) (court granted contested class certification and appointed
17 Kingsley & Kingsley as class counsel).
- 18 c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
19 filed February 3, 2014) (court granted contested class certification and appointed
20 Kingsley & Kingsley as class counsel).
- 21 d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
22 filed January 27, 2015) (court granted contested class certification and appointed
23 Kingsley & Kingsley as class counsel).
- 24 e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214),
25 contested class certification granted in June 2020.
- 26 f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court (BCV-
27 16-102833), contested class certification granted in 2018.
- 28 g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544).

1 contested class certification granted in June 2020.

2 h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
3 contested class certification granted in August 2020.

4 59. PAGA Counsel is experienced in the handling of wage and hour class and
5 representative actions and supports this Settlement. Based on its analysis, PAGA Counsel believes
6 that this settlement is fair and reasonable and in the best interest of the aggrieved employees.

7 60. After factoring in the risks explained above, I believe that the proposed settlement
8 is fair and reasonable. I am not aware of any other pending matter or action asserting claims that
9 will be extinguished or adversely affected by this Settlement.

10 **REQUEST FOR ATTORNEYS' FEES AND COSTS**

11 61. As detailed fully in the Agreement, the settlement provides for Defendant to create a
12 Gross Settlement Amount of \$110,000.00. From that fund, Plaintiff requests an award of attorneys'
13 fees for PAGA Counsel in the amount of \$36,666.67, or 33.33% of the Gross Settlement Amount,
14 and \$11,174.21 in reimbursement for litigation costs.

15 62. In addition to the complexity of this case, PAGA Counsel has borne the entire risk
16 and costs of this litigation during the entire time that it has been pending, all on a pure contingency
17 basis. Through the investment of substantial effort and resources, PAGA Counsel has secured an
18 outstanding Settlement of behalf of the Aggrieved Employees. Defendant vigorously contested
19 liability, the amount of claimed damages, and the propriety of class certification. It is this kind of
20 situation, involving complex issues, that has been recognized as justifying a substantial attorney
21 fee award.

22 63. I am very familiar with the contingent fee market throughout California and in the
23 San Diego area, particularly as it pertains to complex employment, wage and hour, and class
24 action litigation. On behalf of my firm, I have negotiated numerous contingency fee agreements
25 with plaintiffs, both as individuals and as representatives in class action suits. Many of those
26 agreements provided that counsel will receive a fee that is between 33% and 40% of any recovery
27 that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred out of the
28 recovery amount. The named Plaintiff in this action signed a contingency fee agreement that

1 stated that counsel would be able to make a fee of up to 40% of any recovery if the case settles.
2 These are typical and standard percentages in employment-related contingency agreements
3 throughout California. Indeed, in my opinion, the Aggrieved Employees in this complex wage
4 and hour case could not have retained competent counsel in California, particularly with the
5 considerable skill and expertise of my firm, for any amount significantly less than the
6 contingency fee percentage provided in this retainer agreement. PAGA Counsel has never been
7 paid any money for attorneys' fees in this case and has advanced all costs.

8 64. There are always risks attendant to billing cases on a contingency basis. Those risks
9 are even higher in the current economic climate. Kingsley & Kingsley bills the vast majority of
10 its cases on contingency, and has been affected by recent bankruptcy filings. In three separate
11 cases, *Lozoya v. Shore House Café, Inc.*, No. 30-2008-00082103-CU-OE-CJC (Orange Super.
12 Ct. filed Mar. 7, 2008) and *Davis v. Crossfire Marketing Group, LLC*, No. CIVRS1207797 (San
13 Bernardino Super. Ct. filed October 5, 2012), the defendants both filed for bankruptcy protection
14 in June 2011 and January 2015 after years of litigation. My firm advanced costs and incurred
15 thousands of dollars in fees that will never be recovered.

16 65. Additionally, there are cases where PAGA Counsel takes on the extreme risk of
17 attempting to certify a class case, often times turning down class or individual settlement offers
18 that PAGA Counsel feels are not in the best interest of the Aggrieved Employees, only to lose
19 class certification and the costs and fees associated with the litigation. *See e.g., Prosad v. Del*
20 *Taco Restaurant Services, Inc.*, No. BC426538 (L.A. Super. Ct. filed Nov. 2009); *Perez v.*
21 *Safelite Group, Inc.*, CV-10-8653-RGK(FFMx) (C.D. Cal. filed October 5, 2010).

22 66. When PAGA Counsel's motions for class certification are denied, PAGA Counsel
23 often appeals the orders. Sometimes, these denials are overturned (*Perez v. Safelite Group, Inc.*,
24 553 Fed.Appx. 667 (9th Cir. 2015); *Anderson v. Total Renal Care, Inc.*, No. B236207 (Cal. Ct.
25 App. 2012)) and other times PAGA Counsel is unsuccessful (*Prosad v. Del Taco Restaurant*
26 *Services, Inc.*, No. B238605 (CA. Ct. App. 2012)).

27 67. In addition to appealing class certification denials, Kingsley & Kingsley has been
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involved in numerous lengthy and protracted appeals process before the California Court of Appeal, the Ninth Circuit, the Seventh Circuit, and the United States Supreme Court. Our firm specifically has taken and lost some issues on appeal that required the write-off of significant legal fees. Also, our firm has been successful on appeal and overturned unfavorable lower court rulings or successfully fought to have successful rulings affirmed. Below is just a sample of some of these appeals:

- a. *D'Este v. Bayer Corp.*, 565 F.3d 1119 (9th Cir. 2009) (lower court ruling that pharmaceutical sales representatives are exempt employees affirmed);
- b. *Budrow v. Dave & Buster's of California, Inc.*, 171 Cal. App. 4th 875 (2009) (lower court ruling in employer's favor that certain employees can share in mandatory tip pool affirmed);
- c. *Etheridge v. Reins Int'l California, Inc.*, 172 Cal. App. 4th 908 (2009) (lower court ruling in employer's favor that certain employees can share in mandatory tip pool affirmed);
- d. *Areso v. CarMax, Inc.*, 195 Cal. App. 4th 996 (2011) (lower court ruling in employer's favor approving employer's commission pay plan affirmed) ;
- e. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 183 L. Ed. 2d 153 (2012) (lower court ruling that pharmaceutical sales representatives are exempt employees affirmed);
- f. *Schaefer-LaRose v. Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) (lower court ruling that pharmaceutical sales representatives are exempt employees affirmed);
- g. *Fowler v. Carmax, Inc.*, No. B238426, 2013 WL 1208111 (Cal. Ct. App. Mar. 26, 2013), cert. granted, judgment vacated sub nom. *CarMax Auto Superstores California, LLC v. Fowler*, 134 S. Ct. 1277, 188 L. Ed. 2d 290 (2014) (lower court granted employer's motion to compel arbitration, Court of Appeal reversed, U.S. Supreme Court affirmed lower court);
- h. *Salazar v. Apple Am. Grp., LLC*, No. E059562, 2015 WL 314703 (Cal. Ct. App. Jan. 26, 2015), review denied (Apr. 22, 2015), cert. denied, 136 S. Ct. 688, 193 L.

Ed. 2d 519 (2015) (lower court ruling in employee's favor on motion to compel arbitration affirmed);

i. *Anaya v. J's Maint. Serv., Inc.*, No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb. 9, 2016) (lower court ruling in employee's favor on motion to compel arbitration affirmed);

j. *Cortez v. Doty Bros. Equipment Company, Inc.* (2017) 15 Cal.App.5th 1 (reversing in part and affirming in part trial courts order compelling arbitration);

k. *Lopez v. Friant & Associates, L.L.C.* (2017) 15 Cal.App.5th 773 (reversing summary judgement in favor of employer on wage statement claim);

l. *Kane v. Valley Shurry Seal Company*, Case No. C079558, Cal. Ct. App. May 8, 2018) (affirming judgement for employees after bench trial);

m. *Kim v. Reins International California*, Case No. S246911. Oral argument was held before the California Supreme Court on January 6, 2020 and a decision was published in March 2020.

68. Unlike plaintiffs' firms, which bear the risk of loss on contingency cases, defense firms are able to bill their clients for time spent on a case. As verified by a survey conducted by the National Law Journal nearly a decade ago, six California firms provided their hourly billing rates and of the six firms, five regularly charged in excess of \$500 for their partners. In fact, four of these firms charged as high as \$600, \$620, \$650 and up to \$850 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County, and San Diego County. This survey is attached hereto as Exhibit 2.

69. While plaintiff's firms strive to take on cases that are meritorious (for ethical as well as monetary reasons), as this Court knows, many of these cases hinge on the decision of class certification. Recently, there has been a renewed effort by defense counsel and/or their clients to challenge these cases and to push back, especially on certification motions. In addition, many novel legal issues have gone up on appeal, which has complicated the landscape for settlement.

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1 **PAGA COUNSEL’S HOURS AND HOURLY RATES ARE REASONABLE**

2 70. Here, a lodestar cross-check confirms that the percentage requested is reasonable.

3 PAGA Counsel have an aggregate lodestar in the amount of \$35,380.00 which represents 36.00
4 hours of attorney work on this litigation from its inception through the date of this filing of Plaintiff’s
5 instant Motion, and ten future hours.

6 71. As such, PAGA Counsel is asking for a lodestar multiplier of 1.04.

7 72. The amount of time spent on this case (46 hours), which culminated in a very
8 favorable proposed Settlement for the Aggrieved Employees, is reasonable given the complexity and
9 novelty of the issues involved, the vigorous defense, the length and intensity of the litigation, and the
10 exceptional results obtained.

11 73. PAGA Counsel litigated this action with great efficiency in light of the amount of
12 work required to achieve the Settlement.

13 74. The requested hourly rates in this case range from \$415.00 per hour to \$990.00.

14 75. PAGA Counsel’s hourly rates are fully supported by their experience and reputation
15 in handling complex employment litigation, including wage and hour class actions.

16 76. Mr. Kingsley is a 24-year attorney with expertise in wage and hour class action
17 lawsuits.

18 77. He has litigated several hundred such cases, including at the appellate level at the
19 U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court of
20 Appeal.

21 78. He is also a prolific speaker at various seminars on employment law and has
22 contributed to legal publications on employment topics.

23 79. In light of the impending increase of experienced lawyers in specialized practice, I
24 believe that the hourly rates charged by my firm are fair and reasonable and are comparable to or
25 less than those charged by my colleagues in California and the national market for prosecuting or
26 defending class actions.

27 80. My office billed for the following three attorneys for work performed on this case:
28 Eric Kingsley, Jessica Bulaon, and me.

1 81. I am a partner at Kingsley & Kingsley, APC, have a billing rate of \$715 per hour. I
2 am an honors graduate of Florida State University, and received my JD from the University of
3 California Davis School of Law in 2008, where I was an editor of the Environmental Law Journal
4 and a board member of the King Hall Negotiations Team.

5 82. Jessica Bulaon is an Associate Attorney at Kingsley & Kingsley, APC. She is billed
6 at \$415 per hour. Ms. Bulaon obtained her Bachelor of Arts from UCLA and her juris doctor from
7 UCLA School of Law in 2021.

8 83. An article in the Wall Street Journal on February 9, 2016 titled *Legal Hours Cross*
9 *New Mark: \$1,500 an Hour* states that “a review of filings over the past three months in about two
10 dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an
11 hour, with top rates at several large law firms exceeding \$1,400.” The article also explains that
12 “despite low inflation and weak demand for legal services, rates at large corporate law firms have
13 risen by 3% to 4% a year since the economic downturn.” Finally, the article notes that “the average
14 highest rate paid for law-firm partners was \$875 an hour in 2015.” This article is attached hereto as
15 Exhibit 3.

16 84. PAGA Counsel’s charged rates are commensurate with the prevailing market rates
17 in Tulare County for attorneys of comparable experience and skill handling complex litigation.

18 85. Furthermore, PAGA Counsel’s rates in calculating the lodestar are the same rates
19 charged to non-contingent hourly clients and thus necessarily reflect the current market value of
20 counsel’s legal services.¹

21 86. PAGA Counsel has made all reasonable attempts to avoid duplication of assignments
22 and to assign tasks to timekeepers at the appropriate billing rates.

23 87. Finally, PAGA Counsel’s rates are in line with the 2023-2024 Laffey Matrix, which
24 is a fee scale that courts often consult in determining the reasonableness of hourly rates. Under the
25 adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr.

26
27 ¹ The Court should also note that other California courts approved many of these same rates over
28 15 years ago. (See, e.g., *Bihun v. AT&T Info. Sys., Inc.* (1993) 13 Cal.App.4th 976, 997,
disapproved on other grounds, 6 Cal.4th 644, 664 [\$450 hourly rate was a reasonable fee based
on counsel’s knowledge, skill, experience and reputation].)

Kingsley, is \$1057, a reasonable rate for an attorney with 12 years of experience, such as myself, is \$878, a reasonable rate for an attorney with 4 years of experience, and a reasonable rate for an attorney with 3 or less years of experience, such as Ms. Bulaon is \$437. A true and correct copy of the 2023-2024 Adjusted Laffey Matrix is attached hereto as Exhibit 4.

88. Kingsley & Kingsley's attorneys' fees in the present case are broken down as follows:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTALS</u>
Eric B. Kingsley	14.40	\$990.00	\$14,256.00
Liane Katzenstein Ly	26.70 ²	\$715.00	\$19,090.50
Jessica Bulaon	4.90	\$415.00	\$2,033.50
KINGSLEY TOTAL ATTORNEYS' FEES	46.00		\$35,380.00

66. Kingsley & Kingsley, APC has spent significant time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. intake and interviewing Plaintiff and witnesses and flushing out facts and issues;
- b. researching employer and related causes of action;
- c. researching other pending and former matters against Defendant;
- d. fact development and investigating Defendant's ownership structure;
- e. researching and analyzing relevant claims under B&P 17200;
- f. investigation and discussion regarding job functions, duties, compensation, policies, and procedures, etc.;
- g. regular meetings and or communicating with the named Plaintiff;
- h. drafting pleadings (Complaints, Motion for Preliminary Approval, various documents related to Preliminary Approval, etc.);
- i. researching private right of action and various impact on class actions;
- j. preparing for and attending mediation;

² PAGA Counsel's current hours are 36.00. However, PAGA Counsel also anticipates an additional ten hours of future time through the hearing and the administration process. As such, PAGA Counsel is reporting a total of 46.00 hours.

- k. discussing issues related to damage model calculations;
- l. preparing and analyzing damage models;
- m. negotiating the terms of the settlement;
- n. reviewing and making changes to the Settlement Agreement;
- o. drafting and editing all documents for Settlement Approval;
- p. coordinating and overseeing all aspects of the administration of the Settlement (review documentation, approve form and content, etc.); and multiple communications with defense counsel.

89. Based on the aggregate lodestar, PAGA Counsel is requesting a multiplier of 1.04.

FACTORS THAT SUPPORT THE APPROVAL OF A MULTIPLIER

90. This case dealt with difficult legal and factual questions. Significantly, the risk attendant to the underlying claims in this matter was great considering Defendant's defenses as discussed in detail above. Were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. There are genuine issues in dispute.

91. Furthermore, PAGA Counsel was able to obtain close to the full value for this case.

92. As discussed above, PAGA Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter.

93. To achieve the ultimate result in this case, my firm had to incur substantial risk and expense, and were precluded from taking other fee generating employment for 46 hours of attorney time.

94. This matter had been handled purely on a contingency fee basis and my firm has advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting significant firm resources to prosecution of this matter.

95. PAGA Counsel believe this is an exceptional result that has been well received by the Aggrieved Employees.

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THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

96. In addition to their request for fees, PAGA Counsel further request reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this litigation, in the amount of \$13,500.00.

97. To date, Kingsley and Kingsley has incurred \$11,074.21 in costs.

98. PAGA Counsel anticipates incurring an additional \$100.00 in costs to file and serve this motion.

99. As such, counsel is requesting a cost reimbursement of \$11,174.21.

100. All of the requested costs are reasonable in amount and were necessarily incurred by Class Counsel in prosecuting this litigation.

101. All of these costs have been incurred in the course of this litigation, and all costs advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of filing the present motion.

102. Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court should approve the request for reimbursement in the amount of \$11,668.41.

THE COURT SHOULD APPROVE THE PROPOSED ENHANCEMENT TO PLAINTIFF

103. The Agreement calls for an enhancement payment of \$5,000.00 to the named Plaintiff, to be paid from the Gross Settlement Amount.

104. The time spent by Ronnie Waldon includes identifying competent counsel, providing information to PAGA Counsel regarding his relevant employment experiences, compiling documents, meeting with PAGA Counsel frequently to discuss the status of the case and the theories of liability, reviewing settlement documents, and making himself available for a full day of mediation.

105. PAGA Counsel considers this to be a fair and reasonable enhancement.

106. The enhancement takes into consideration the time, effort, risks, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Aggrieved Employees. Accordingly, Plaintiff should be awarded the agreed-upon enhancement of \$5,000.00.

**PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT
AGENCY**

107. As indicated on the Proof of Service, Plaintiff's accompanying Motion for Approval of Representative Action Settlement ("Motion") was uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion was filed. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached hereto as Exhibit "7".

EXHIBITS

1. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed PAGA Settlement Agreement.

2. Attached hereto as Exhibit "2" is a true and correct copy of the ALM Research 2007 NLJ Billing Survey.

3. Attached hereto as Exhibit "3" is a true and correct copy of Wall Street Journal on February 9, 2016 titled *Legal Hours Cross New Mark: \$1,500 an Hour*.

4. Attached hereto as Exhibit "4" is a true and correct copy of the 2023-2024 Adjusted Laffey Matrix.

5. Attached hereto as Exhibit "5" is a true and correct copy of the Kingsley & Kingsley, APC costs ledger reflecting costs incurred in this matter.

6. Attached hereto as Exhibit "6" is a true and correct copy of the Administrator's, Apex Class Action Administrators, bid.

7. Attached hereto as Exhibit "7" is a true and correct copy of the proof of submission to the LWDA as referenced in paragraph 107 above.

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

3 This declaration was executed this 29th day of November, 2023, in Los Angeles,
4 California.

5 
6 _____
Liane Katzenstein Ly

EXHIBIT "1"

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff RONNIE WALDON, JR. (“Plaintiff”) and defendant NOBU SAN DIEGO, LLC (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *RONNIE WALDON, JR., an individual, on behalf of himself and others similarly situated, PLAINTIFF, v. NOBU SAN DIEGO, LLC; and DOES 1 thru 50, inclusive, DEFENDANTS*, Case No. 37-2023-00001244-CU-OE-CTL initiated on January 5, 2023 and pending in Superior Court of the State of California, County of San Diego.
- 1.2. “Administrator” means Apex Claims Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees who are employed or have been employed by NOBU SAN DIEGO, LLC, in the State of California who worked one or more pay periods during the Covered PeriodRelease Period
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of San Diego.
- 1.8. “Defense Counsel” means SOLTMAN, LEVITT, FLAHERTY & WATTLES LLP.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the

Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

- 1.10. “Enhancement Payment” means the payment to the Plaintiff for initiating the Action and providing services in support of the Action.
- 1.11. “Gross Settlement Amount” means \$110,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, Enhancement Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.
- 1.12. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the Release Period.
- 1.13. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.14. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.15. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.16. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Enhancement Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.17. “PAGA Counsel” means KINGSLEY & KINGSLEY, APC, the attorneys representing the Plaintiff in the Action.
- 1.18. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.19. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the Release Period.

- 1.20. “PAGA Period” or “Release Period” means the period from January 5, 2022 to September 12, 2023.
- 1.21. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. Et seq.).
- 1.22. “PAGA Notice” means Plaintiff’s January 5, 2023 and January 19, 2023 letters to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.23. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ([insert amount]) and the 75% to LWDA ([insert amount]) in settlement of PAGA claims.
- 1.24. “Plaintiff” means RONNIE WALDON, JR., the named plaintiff in the Action.
- 1.25. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.26. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.27. “Released Parties” means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.28. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.29. Defendant” means named Defendant NOBU SAN DIEGO, LLC

2. RECITALS.

- 2.1. On January 5, 2023, Plaintiff commenced this Action by filing a Class Action Complaint alleging causes of action for 1) failure to pay wages and/or overtime under Labor Code §§ 510, 1194, 1194.2, and 1199; 2) failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512; 3) failure to provide rest breaks pursuant Labor Code § 226.7;

4) failure to reimburse expenses pursuant to Labor Code § 2802; 5) failure to provide accurate itemized wage statements pursuant to Labor Code § 226(a); 6) penalties pursuant to Labor Code § 203; and, 7) violation of Business & Professions Code § 17200, *et seq.* [On March 13, 2023, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for penalties under Labor Code § 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) for Defendant’s violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. On May 5, 2023, Plaintiff filed a Second Amended Complaint alleging only a single cause of action pursuant to PAGA for violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”)]. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On September 12, 2023, the Parties participated in an all-day mediation presided over by experienced mediator Steven Pearl which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, Plaintiff’s personnel records and extensive time and pay data for the Aggrieved Employees.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$110,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33-1/3% which is currently estimated to be \$36,666.67 and PAGA Counsel Litigation Expenses Payment of not more than \$13,500.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed

these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Plaintiff: An Enhancement Payment to the Plaintiff of not more than \$5,000.00 (in addition to any Individual PAGA Payment the Plaintiff is entitled to receive as an Aggrieved Employee). Defendant will not oppose Plaintiff's request for an Enhancement Payment that does not exceed this amount. To the extent the Enhancement Payment is less or the Court approves payment less than \$5,000.00, the Enhancement Payment will retain the remainder in the Net Settlement Amount. The Administrator will pay the Enhancement Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Enhancement Payment.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$47,833.33 to be paid from the Gross Settlement Amount, with 75% (\$35,875.00) allocated to the LWDA PAGA Payment and 25% (\$11,958.33) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$11,958.33) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 129 Aggrieved Employees who worked a total 2,483 of PAGA Pay Periods.
- 4.2. Aggrieved Employee Data. Within 15 days following preliminary approval, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 21 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, Enhancement/General Release Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator

must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the Release Period facts stated in the Operative Complaint and the PAGA Notice.

5.2 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the Release Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to

serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Apex Claims Administration to serve as the Administrator and verified that, as a condition of appointment, Apex Claims Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 129 Aggrieved Employees who worked 2,483 Pay Periods during the Release Period.

8.1 This representation is a material term of this PAGA Settlement Agreement. To the extent that the number of estimated pay periods, as represented by Defendant, increases by more than 10%, Defendant will have the option to increase the Gross Settlement amount proportionately. For example, if the number of pay periods increases by 12% then Defendant shall increase the GSA by 12%. If Defendant declines to do so, Plaintiff will have the option to terminate the settlement in its entirety and the Parties will be returned to their respective positions as if no settlement had been contemplated. Plaintiff shall communicate his decision to rescind the Settlement Agreement in writing to the Administrator and Defendant’s counsel within seven (7) calendar days after the date on which the Administrator communicates to the Parties that the Plaintiff’s Right to Rescind Clause has been triggered. Defendant shall have the option to preempt Plaintiff’s right to rescind by increasing the Gross Settlement Amount on a proportional basis.

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.13 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.14 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kingsley & Kingsley, APC
Eric B. Kingsley
Liane Katzenstein Ly
16133 Ventura Blvd., Suite 1200
Encino, CA 91436

To Defendant:

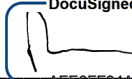
Kevin S. Wattles

Rachael L. Marko
SOLTMAN, LEVITT, FLAHERTY & WATTLES LLP
90 E. Thousand Oaks, Blvd., Suite 300
Thousand Oaks, CA 91360

- 10.15 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 10.16 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Plaintiff

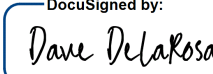
Dated: October 31, 2023

DocuSigned by:

AFEB0FE04A87F47E...

RONNIE WALDON, JR.

Defendant

Dated: 10/30/2023

DocuSigned by:

92FB990B0514493...

NOBU SAN DIEGO, LLC

Dated: October 31, 2023

KINGSLEY & KINGSLEY, APC

By: 

Eric B. Kingsley
Liane Katzenstein Ly
Attorneys for Plaintiff and all aggrieved employees

Dated: 10/30/2023

SOLTMAN, LEVITT, FLAHERTY & WATTLES
LLP

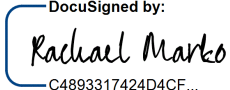
By: 
Kevin S. Wattles
Rachael L. Marko
Attorneys for Defendant NOBU SAN DIEGO, LLC

EXHIBIT "2"

	A	C	D	E	F	G	H	I	J	K	L
1											
2											
3											
4											
5											
6	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
7	Adams and Reese	\$500	\$225	\$255	\$165	\$198	\$305	\$278	\$197	\$300	\$275
8	Andrews Kurth	\$795	\$400	\$460	\$210						
9	Arent Fox	\$675	\$395	\$440	\$240						
10	Armstrong Teasdale	\$450	\$295	\$295	\$165						
11	Baker, Donelson, Bearman, Caldwell & Berkowitz	\$525	\$230	\$315	\$160	\$205	\$325	\$280	\$200	\$320	\$270
12	Barnes & Thornburg	\$485	\$265	\$295	\$180	\$225	\$350	\$302	\$220	\$355	\$310
13	Bass, Berry & Sims PLC	\$575	\$300	\$285	\$180						
14	Best Best & Krieger	\$495	\$290	\$350	\$160	\$203	\$275	\$212	\$235	\$390	\$265
15	Bond, Schoeneck & King	\$435	\$200	\$250	\$140	\$179	\$294	\$253	\$175	\$295	\$300
16	Bradley Arant Rose & White	\$520	\$240	\$280	\$180	\$211	\$335	\$258	\$205	\$330	\$260
17	Briggs and Morgan	\$500	\$250	\$325	\$195	\$233	\$391	\$344	\$230	\$395	\$350
18	Brinks Hofer Gilson & Lione	\$650	\$300	\$410	\$180	\$273	\$479	\$365	\$250	\$485	\$350
19	Broad and Cassel	\$450	\$250	\$310	\$165	\$232	\$361	\$294	\$225	\$360	\$275
20	Brownstein Hyatt Farber Schreck	\$675	\$260	\$270	\$170	\$219	\$373	\$308	\$218	\$390	\$325
21	Bryan Cave	\$695	\$320	\$495	\$165	\$295	\$493	\$394	\$295	\$490	\$375
22	Buchanan Ingersoll & Rooney	\$750	\$320	\$460	\$150						
23	Bullivant Houser Bailey	\$500	\$225	\$350	\$150	\$240	\$285	\$260	\$220	\$275	\$250
24	Burr & Forman	\$470	\$250	\$305	\$175	\$235	\$340				
25	Butzel Long	\$575	\$210	\$350	\$155						
26	Carlton Fields	\$600	\$280	\$375	\$190	\$243	\$406	\$312	\$245	\$405	\$300
27	Cooley Godward Kronish	\$875	\$470	\$555	\$250						
28	Covington & Burling	\$800	\$510	\$525	\$240						
29	Cozen O'Connor	\$750	\$230	\$530	\$155	\$283	\$420	\$350	\$280	\$425	\$340
30	Curtis, Mallet-Prevost, Colt & Mosle	\$735	\$635	\$560	\$280	\$361	\$666	\$396	\$360	\$685	\$480
31	Davis Wright Tremaine	\$695	\$300	\$390	\$170	\$257	\$430	\$375	\$250	\$423	\$375
32	Day Pitney	\$650	\$350	\$525	\$210	\$306	\$472	\$374	\$310	\$465	\$375
33	Dickinson Wright	\$530	\$260	\$275	\$170						
34	Dickstein Shapiro Morin & Oshinsky	\$825	\$425	\$440	\$225	\$336	\$552	\$438	\$360	\$550	\$425
35	Dinsmore & Shohl	\$475	\$235	\$285	\$155	\$199	\$342	\$275	\$190	\$340	\$250
36	Dorsey & Whitney	\$750	\$220	\$470	\$145	\$274	\$463	\$375	\$260	\$463	\$365
37	Duane Morris	\$705	\$315	\$465	\$150	\$310	\$475	\$416	\$305	\$470	\$415
38	Dykema Gossett	\$625	\$245	\$390	\$185	\$272	\$403				
39	Edwards Angell Palmer & Dodge	\$700	\$350	\$450	\$170	\$293	\$515	\$407	\$280	\$513	\$400
40	Epstein Becker & Green	\$675	\$280	\$440	\$155	\$290	\$471	\$380	\$280	\$475	\$395
41	Fenwick & West	\$775	\$500	\$500	\$245	\$360	\$590	\$395	\$370	\$600	\$410
42	Foley & Lardner	\$855			\$185	\$387	\$550	\$476	\$375	\$550	\$475
43	Ford & Harrison	\$560	\$325	\$395	\$210						
44	Fowler White Boggs Banker	\$500	\$230	\$325	\$150	\$217	\$345	\$303	\$210	\$340	\$300
45	Fox Rothschild	\$595	\$240	\$440	\$190						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
46											
47	Frost Brown Todd	\$455	\$225	\$255	\$145	\$180	\$303	\$256	\$170	\$295	\$255
48	Gardere Wynne Sewell	\$715	\$350	\$425	\$220	\$292	\$472	\$405	\$265	\$475	\$405
49	GrayRobinson, PA	\$500	\$175	\$250	\$250	\$198	\$319	\$224			
50	Greenberg Traurig, PA	\$850	\$300	\$505	\$175	\$311	\$490	\$407	\$310	\$500	\$415
51	Harris Beach	\$475	\$250	\$275	\$140						
52	Hiscock & Barclay LLP	\$375	\$220	\$250	\$160	\$185	\$278	\$245	\$180	\$280	\$250
53	Hodgson Russ	\$645	\$215	\$395	\$155	\$219	\$337	\$254	\$205	\$350	\$250
54	Hogan & Hartson	\$850	\$300	\$525	\$150	\$385	\$600	\$490	\$370	\$590	
55	Holland & Hart	\$585	\$275	\$345	\$165	\$269	\$388	\$335	\$275	\$385	\$335
56	Holme Roberts & Owen	\$635	\$285	\$420	\$195	\$284	\$412	\$353	\$265	\$410	\$345
57	Howard, Rice, Nemerovski, Canady, Falk & Rabkin	\$775	\$495	\$485	\$275						
58	Hughes Hubbard & Reed	\$825	\$595	\$560	\$240						
59	Husch & Eppenberger	\$425	\$190	\$260	\$130	\$179	\$297	\$248	\$175	\$295	\$245
60	Jackson Lewis	\$575	\$235	\$450	\$210						
61	Jenner & Block LLP	\$900	\$450	\$425	\$275	\$327	\$562		\$325	\$525	
62	Jones, Walker, Waechter, Poitevent, Carrere & Denegre	\$600	\$210	\$225	\$150						
63	Kelley Drye & Warren	\$800	\$400	\$500	\$255						
64	Knobbe, Martens, Olson & Bear	\$645	\$340	\$420	\$215						
65	Lane Powell Moss & Miller	\$515	\$300	\$300	\$205	\$255	\$370	\$345	\$255	\$370	\$345
66	Lathrop & Gage	\$450	\$225	\$300	\$140	\$185	\$300	\$215	\$185	\$300	\$260
67	Leonard, Street and Deinard	\$500	\$300	\$300	\$185						
68	Lewis, Rice & Fingersh	\$425	\$240	\$295	\$130						
69	Lindquist & Vennum	\$500	\$260	\$260	\$165						
70	Locke, Lord, Bissell & Liddell	\$900	\$375	\$390	\$190	\$281	\$488	\$399	\$280	\$490	\$425
71	Loeb & Loeb	\$875	\$425	\$500	\$240	\$384	\$606	\$505	\$400	\$600	\$500
72	Lord, Bissell & Brook	\$690	\$335	\$410	\$200	\$299	\$473	\$410	\$300	\$475	\$415
73	Lowenstein Sandler	\$725	\$380	\$395	\$205						
74	Luce, Forward, Hamilton & Scripps	\$725	\$325	\$450	\$220	\$281	\$465	\$381	\$280	\$475	\$395
75	Manatt, Phelps & Phillips	\$785	\$520	\$480	\$265	\$395	\$600	\$518	\$415	\$590	\$550
76	Marshall, Dennehey, Warner, Coleman & Goggin	\$400	\$135	\$300	\$120						
77	McCarter & English LLP	\$650	\$325	\$395	\$205						
78	McElroy Deutsch, Mulvaney & Carpenter	\$450	\$295	\$225	\$135	\$180	\$250	\$195	\$165	\$235	\$215
79	McKee Nelson	\$920	\$635	\$595	\$375	\$446	\$760	\$489	\$455	\$755	\$475
80	Michael Best & Friedrich	\$550	\$225	\$300	\$185	\$234	\$363	\$321	\$235	\$350	\$325
81	Miles & Stockbridge	\$535	\$315	\$405	\$205	\$260	\$397				
82	Miller & Martin	\$580	\$230	\$295	\$160	\$201	\$338	\$306	\$195	\$340	\$320
83	Miller, Canfield, Paddock and Stone, PLC	\$595	\$265	\$340	\$160	\$225	\$400	\$285	\$220	\$400	\$335
84	Montgomery, McCracken, Walker & Rhoads	\$575	\$320	\$320	\$195	\$260	\$419	\$360			
85	Moore & Van Allen	\$765	\$265	\$330	\$175						
86	Morgan, Lewis & Bockius	\$850	\$375	\$575	\$200						
87	Morris, Manning & Martin	\$625	\$350	\$400	\$180	\$285	\$436	\$380	\$310	\$395	\$440
88	Nexsen Pruet Jacobs & Pollard	\$420	\$220	\$250	\$150						
89	Ogletree, Deakins, Nash, Smoak & Stewart	\$575	\$270	\$360	\$200	\$256	\$348	\$312			
90	Patton Boggs	\$920	\$320	\$520	\$205	\$375	\$536	\$456	\$385	\$525	\$455
91	Pepper Hamilton	\$750	\$335	\$425	\$200						
92	Perkins Coie	\$805	\$205	\$500	\$145						

	A	C	D	E	F	G	H	I	J	K	L
	Firm Name	Partner Billing Rate High	Partner Billing Rate Low	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Partner Billing Rate Average	Firmwide Billing Rate Average	Associate Billing Rate Med	Partner Billing Rate Med	Firmwide Billing Rate Med
93											
94	Phelps Dunbar	\$450	\$170	\$205	\$130	\$174	\$243	\$184	\$175		
95	Phillips Lytle	\$435	\$245	\$300	\$140	\$205	\$309	\$223	\$205	\$300	\$215
96	Polsinelli Shalton Welte Suelthaus	\$600	\$250	\$250	\$175						
97	Quarles & Brady	\$575	\$260	\$335	\$185	\$233	\$377	\$319	\$235	\$375	\$325
98	Reed Smith	\$825	\$350	\$510	\$200	\$374	\$558	\$395	\$350	\$525	\$385
99	Robinson & Cole	\$575	\$340	\$325	\$200	\$295	\$424	\$328	\$280	\$420	\$330
100	Roetzel & Andress	\$460	\$210	\$275	\$110	\$198	\$302	\$264	\$200	\$300	\$260
101	Rutan & Tucker	\$600	\$335	\$350	\$210						
102	Saul Ewing	\$750	\$315	\$485	\$180	\$273	\$426	\$357	\$255	\$415	\$365
103	Schnader Harrison Segal & Lewis	\$750	\$240	\$385	\$175						
104	Schulte Roth & Zabel	\$850	\$650	\$585	\$235	\$435	\$724		\$440	\$745	
105	Sheppard, Mullin, Richter & Hampton	\$795	\$425	\$550	\$260						
106	Shughart Thomson & Kilroy	\$475	\$235	\$225	\$160						
107	Shumaker, Loop & Kendrick	\$465	\$200	\$360	\$180	\$221	\$311	\$289	\$220	\$305	\$300
108	Sills Cummis Epstein & Gross	\$650	\$350	\$375	\$195						
109	Smith, Gambrell & Russell	\$575	\$250	\$345	\$175						
110	Snell & Wilmer	\$675	\$275	\$390	\$170	\$248	\$390				
111	Steptoe & Johnson PLLC	\$325	\$200	\$250	\$170						
112	Stinson Morrison Hecker	\$600	\$230	\$250	\$175	\$207	\$333	\$295	\$225	\$365	\$285
113	Stoel Rives	\$500	\$275	\$350	\$160	\$231	\$379	\$324	\$230	\$375	\$330
114	Strasburger & Price	\$560	\$225	\$395	\$200	\$234	\$367	\$326	\$223	\$363	\$322
115	Sullivan & Worcester	\$700	\$415	\$420	\$245	\$309	\$550	\$438	\$290	\$540	\$440
116	Sutherland Asbill & Brennan	\$715	\$375	\$415	\$215	\$292	\$511	\$335	\$280	\$500	\$305
117	Thacher Proffitt & Wood	\$785	\$525	\$495	\$275	\$353	\$674	\$428	\$365	\$700	\$395
118	Thompson & Knight	\$730	\$370	\$370	\$205	\$295	\$496	\$415	\$310	\$485	\$400
119	Thompson Coburn	\$580	\$265	\$370	\$170						
120	Ulmer & Berne	\$470	\$240	\$290	\$165	\$212	\$343	\$280			
121	Vedder, Price, Kaufman & Kammholz	\$650	\$335	\$410	\$205	\$281	\$430	\$372	\$370	\$425	\$365
122	Wiggin and Dana	\$590	\$295	\$350	\$195						
123	Williams Mullen	\$600	\$300	\$425	\$205						
124	Wilmer Cutler Pickering Hale and Dorr	\$1,000	\$475	\$495	\$215						
125	Winstead Sechrest & Minick	\$620	\$345	\$360	\$180						
126	Winston & Strawn	\$845	\$400	\$590	\$200	\$365	\$608	\$455	\$395	\$640	\$523
127	Womble Carlyle Sandridge & Rice	\$575	\$290	\$370	\$195	\$268	\$426	\$355	\$265	\$425	\$360

EXHIBIT "3"

THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708>

BUSINESS | LAW

Legal Fees Cross New Mark: \$1,500 an Hour

Billing rates for partners at elite corporate law firms keep rising, despite low inflation, weak demand



Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at the mounting hourly fees of law partners at elite corporate law firms. Above, the U.S. Bankruptcy Court in New York. PHOTO: BRENDAN MCDERMID/REUTERS

By **SARA RANDAZZO** and **JACQUELINE PALANK**

Updated Feb. 9, 2016 10:11 a.m. ET

The day of the \$1,500-an-hour lawyer has arrived.

Partners at some of the nation's top law firms are approaching—and, in a few cases, surpassing—that watershed billing rate, making the \$1,000-an-hour legal fees that once seemed so steep look quaint by comparison.

Despite low inflation and weak demand for legal services, rates at large corporate law firms have risen by 3% to 4% a year since the economic downturn, according to Citi Private Bank's Law Firm Group.

“We just raise them every year,” said John Altorelli, a finance lawyer at DLA Piper LLP in New York, who says the firm has set his rate at more than \$1,500 an hour. Mr. Altorelli, who filed for personal bankruptcy in 2014 to halt a legal battle with the estate of his former law firm, Dewey & LeBoeuf LLP, cracked the \$1,000-an-hour mark a decade ago. His fees have risen steadily ever since.

To soften the blow to clients, Mr. Altorelli does more than half his work on some kind of fixed-fee basis. “Using hourly rates is really anachronistic, but we still do it,” he said.

Raising rates ensures that law firms keep up with the competition and helps them wrest more money from clients, who routinely demand discounts for all but the most sensitive work.

“If you think of the rules of supply and demand, how in the world can they keep raising their rates?” said Jeff Carr, a former general counsel of oil-and-gas services and equipment company FMC Technologies who for years has been an outspoken opponent of hourly legal rates.

The rate creep has boosted law firms’ revenue at a time when many of them are under pressure from lower-cost legal-service providers and corporate clients that are keeping more legal work in-house. Revenue at law firms rose 4% last year, according to Wells Fargo Private Bank’s Legal Specialty Group, though demand rose just 0.5%.

“Lots of law firms will charge whatever the market can bear,” said the head of one of the nation’s 200 largest law firms.

Documents filed in chapter 11 bankruptcy cases offer a rare public glimpse at mounting fees. These court filings show the rates of partners specializing in corporate restructuring, as well as those with specialties like tax, litigation and corporate law.

A review of filings over the past three months in about two dozen bankruptcy cases shows that senior partners routinely charge between \$1,200 and \$1,300 an hour, with top rates at several large law firms exceeding \$1,400.

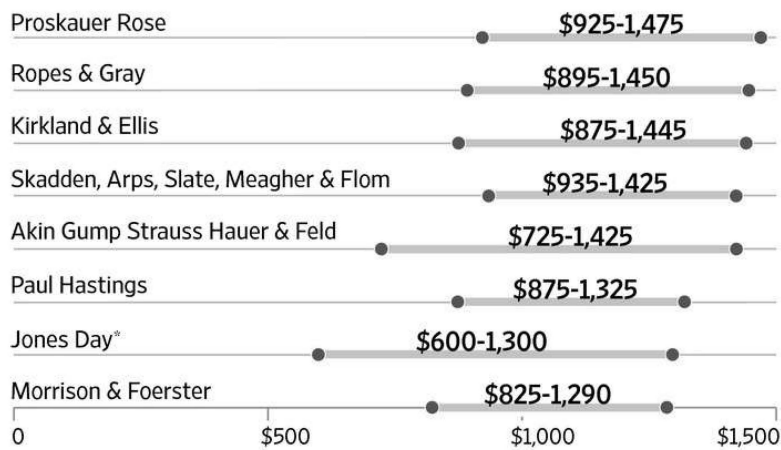
Proskauer Rose LLP’s hourly partner billing rate has climbed as high as \$1,475, while Ropes & Gray LLP’s tops out at \$1,450, court papers show.

Kirkland & Ellis LLP’s top hourly billing rate is now \$1,445. And rates at two firms—Akin Gump Strauss Hauer & Feld LLP and Skadden, Arps, Slate, Meagher & Flom LLP—peak at \$1,425 an hour.

Representatives of the law firms declined to comment.

Top Billers

Hourly rates of partners at top U.S. law firms now approach \$1,500.



*Includes partners and of counsel

Source: Bankruptcy court filings

THE WALL STREET JOURNAL.

Martin Bienenstock, who leads Proskauer's restructuring practice, called the \$1,225 an hour he billed clients last year "a market rate similar to my peers at other firms," and said he charges the same rate for nonbankruptcy work.

"The clients have kept coming back and growing during my 38-year career," he

said in an email, adding that clients generally prefer dealing directly with senior lawyers versus younger associates with lower rates.

In disclosing their firmwide rate increases, many firms tell the courts it is a standard way of keeping pace with "economic and other conditions." These include rising fixed costs, such as real estate and salaries.

In theory, a law-firm partner's pay rises and falls with the success of the firm. But, as competition for top talent increases, many firms feel the need to guarantee salaries or ensure a partner's pay doesn't fall, even in down years.

Still, only elite lawyers can charge \$1,400 an hour or more. Such rates are found almost exclusively in New York and other major markets, and only in the least price-sensitive fields like mergers and acquisitions, restructuring, tax, antitrust and high-stakes litigation and appeals.

For lawyers at the very top of those fields, hourly rates can hit \$1,800 or even \$1,950.

"You have a very few people at the very top where price is almost no object," said legal consultant Bruce MacEwen, who likens it to the way celebrities, sports stars and best-selling authors are paid. "It is a talent market."

Most lawyers in the U.S. fall well below those high marks. In a survey of in-house legal departments by BTI Consulting Group, the average highest rate paid for

law-firm partners was \$875 an hour in 2015, up more than 27% from three years earlier. Of the respondents, 38% had paid more than \$1,000 an hour for a lawyer, and the highest rate those in the survey paid was \$1,600 an hour.

For many firms, the stated rate is simply a starting point in discussions with corporate law departments. As a result, said legal consultant Ward Bower of Altman Weil, “sophisticated” law firms tend to implement annual rate increases to offset clients’ requests for discounts.

Such discounts are becoming more commonplace. A decade ago, law firms could typically get clients to pay around 92% of their stated rates, according to Thomson Reuters Peer Monitor. Last year, that fell to less than 83%.

Smaller companies can get squeezed the most on fees, because they don’t send enough work to any one law firm to get the best deals.

Companies with \$4 billion or more in annual revenue were twice as likely as those with less than \$100 million in revenue to use some form of alternative fee, according to a survey from industry trade group the Association of Corporate Counsel.

Some industry watchers view the raise-and-discount approach with skepticism.

“If clients are pushing back on rates, the answer isn’t to raise them” and then ask for a discount, Mr. MacEwen said. “The answer is to provide better total value.”

Write to Sara Randazzo at sara.randazzo@wsj.com and Jacqueline Palank at jacqueline.palank@wsj.com

EXHIBIT "4"

LAFFEY MATRIX

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

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

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

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

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

EXHIBIT "5"

#17200 #203 #2699 #classaction #hoursworked #mealbreak #minimumwage
#offtheclock #overtime #restbreaks #sandiegocounty #wagestatement

 Edit Tags

Statute of Limitations **5 Year Trial Rule** **Trial Date**
06/14/2024

Historic Cost

\$11,074.21

Postage Cost

\$5.80

Created: 11/7/2023 at 2:35 PM

Trialworks TaskCode

Postage Cost

Payee

DocuSign

Date Incurred

10/27/2023

Notes

Indiv & PAGA SA + W9

Research Cost

\$1,320.00

Created: 10/12/2023 at 3:41 PM

Trialworks TaskCode

costs

Description

Berger INV#9578 Re Nobu (Waldon) paid 10.12.23

Date Incurred

10/12/2023

Docs

 Berger INV#9578 Re Nobu (Waldon) paid 10.12.23.pdf ▼

Payee

Berger Consulting

Filing Fee

\$42.98

Created: 6/8/2023 at 10:52 AM

Trialworks TaskCode

filing fee

Date Incurred

6/5/2023

Payee

One Legal

Description

OLINV#05045148 Nobu 6.5.23

Docs

 OLINV#05045148 Nobu 6.5.23.pdf 

Filing Fee

\$18.48

Created: 6/8/2023 at 8:37 AM

Trialworks TaskCode

filing fee

Date Incurred

6/1/2023

Payee

One Legal

Description

OLINV#05036788 Nobu 6.1.23

Docs

 OLINV#05036788 Nobu 6.1.23.pdf 

Mediation Cost

\$7,500.00

Created: 5/22/2023 at 11:48 AM

Trialworks TaskCode

costs

Date Incurred

5/22/2023

Payee

Steve Pearl Mediation

Description

Steven Pearl Mediation fee re Nobu paid 5.22.23

Docs

 Steven Pearl Mediation fee re Nobu paid 5.22.23.pdf 

Filing Fee

\$39.07

Created: 5/25/2023 at 3:43 PM

Trialworks TaskCode

filing fee

Date Incurred

5/18/2023

Payee

One Legal

Description

OLINV#05001773 Nobu 5.18.23

Docs

 OLINV#05001773 Nobu 5.18.23.pdf ▼

Filing Fee

\$14.36

Created: 5/25/2023 at 12:27 PM

Trialworks TaskCode

filing fee

Date Incurred

5/16/2023

Payee

One Legal

Description

OLINV#04992851 Nobu 5.16.23

Docs

 OLINV#04992851 Nobu 5.16.23.pdf ▼

Filing Fee

\$52.50

Created: 5/18/2023 at 10:03 AM

Trialworks TaskCode

filing fee

Date Incurred

5/8/2023

Payee

One Legal

Description

OLINV#04974133 Nobu 5.8.23

Docs

 OLINV#04974133 Nobu 5.8.23.pdf ▼

Filing Fee

\$18.48

Created: 5/11/2023 at 3:50 PM

Trialworks TaskCode

filing fee

Date Incurred

5/5/2023

Payee

One Legal

Description

OLINV#04969133 Nobu 5.5.23

Docs

 OLINV#04969133 Nobu 5.5.23.pdf ▾

Filing Fee

\$52.50

Created: 5/11/2023 at 12:14 PM

Trialworks TaskCode

filing fee

Date Incurred

5/2/2023

Payee

One Legal

Description

OLINV#04959070 Nobu 5.2.23

Docs

 OLINV#04959070 Nobu 5.2.23.pdf ▾

Filing Fee

\$53.02

Created: 5/4/2023 at 12:57 PM

Trialworks TaskCode

filing fee

Date Incurred

4/18/2023

Payee

One Legal

Description

OLINV#04920659 Nobu 4.18.23

Docs

 OLINV#04920659 Nobu 4.18.23.pdf ▾

Filing Fee

\$53.02

Created: 5/4/2023 at 12:44 PM

Trialworks TaskCode

filing fee

Date Incurred

4/18/2023

Description

OLINV#04920570 Nobu 4.18.23

Docs

 OLINV#04920570 Nobu 4.18.23.pdf ▼

Filing Fee

\$18.48

Created: 5/4/2023 at 10:27 AM

Trialworks TaskCode

filing fee

Date Incurred

4/17/2023

Payee

One Legal

Description

OLINV#04914711 Nobu 4.17.23

Docs

 OLINV#04914711 Nobu 4.17.23.pdf ▼

Filing Fee

\$16.42

Created: 4/6/2023 at 3:03 PM

Trialworks TaskCode

filing fee

Date Incurred

3/21/2023

Payee

One Legal

Description

OLINV#04846566 Nobu 3.21.23

Docs

 OLINV#04846566 Nobu 3.21.23.pdf ▼

Filing Fee

\$55.34

Created: 3/23/2023 at 1:48 PM

Trialworks TaskCode

filing fee

Date Incurred

3/14/2023

Payee One Legal	Docs  OLINV#04828468 Nobu 3.14.23.pdf ▾
Description OLINV#04828468 Nobu 3.14.23	

Process Server Fee

\$157.23

Created: 2/13/2023 at 12:21 PM

Trialworks TaskCode costs	Description OCINV#308227 Nobu paid 2.8.23
Date Incurred 2/8/2023	Docs  OCVINV#308227 Nobu paid 2.8.23.pdf ▾
Payee OnCall	

Filing Fee

\$14.36

Created: 2/15/2023 at 12:23 PM

Trialworks TaskCode filing fee	Description OLINV#04701904 Nobu 1.26.23
Date Incurred 1/26/2023	Docs  OLINV#04701904 Nobu 1.26.23.pdf ▾
Payee One Legal	

Filing Fee

\$42.72

Created: 2/15/2023 at 10:28 AM

Trialworks TaskCode filing fee	Date Incurred 1/23/2023
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Payee One Legal	Docs  OLINV#04692547 Nobu 1.23.23.pdf ▾
Description OLINV#04692547 Nobu 1.23.23	

Created: 1/20/2023 at 3:54 PM

\$0.60

Trialworks TaskCode Copies	Payee Paper Cut
Date Incurred 1/20/2023	Notes Copy of PI's Ntc of assignment and CMC for mailing mail to Def

Postage Cost

\$0.57

Created: 1/20/2023 at 3:53 PM

Trialworks TaskCode Postage Cost	Notes PI's Ntc of assignment and CMC via regular mail
Date Incurred 1/20/2023	

Created: 1/19/2023 at 12:11 PM

\$1.00

Trialworks TaskCode Copies	Payee Paper Cut
Date Incurred 1/19/2023	Notes Copies of Amended PAGA Letter for mailing to Def

Postage Cost

\$15.64

Created: 1/19/2023 at 12:11 PM

Trialworks TaskCode

Postage Cost

Date Incurred

1/19/2023

Notes

Amended PAGA Letter to Def via cert mailing

Filing Fee

\$1,490.20

Created: 2/10/2023 at 9:50 AM

Trialworks TaskCode

filing fee

Date Incurred

1/11/2023

Payee

One Legal

Description

OLINV#04663862 Nobu 1.11.23

Docs

 OLINV#04663862 Nobu 1.11.23.pdf

Filing Fee

\$75.00

Created: 1/5/2023 at 11:08 AM

Trialworks TaskCode

filing fee

Date Incurred

1/5/2023

Payee

LWDA

Description

State of California - Department of Industrial Relations
Customer Receipt _ Purchase Confirmation

Docs

 State of California - Department of Industrial Relation...

Created: 1/5/2023 at 10:21 AM

\$0.80

Trialworks TaskCode

Copies

Date Incurred

1/5/2023

Payee	Notes
Paper Cut	Copies of LWDA Letter for mailing to Def

Postage Cost

\$15.64

Created: 1/5/2023 at 10:20 AM

Task/Code	Notes
	LWDA Letter to Def via USPS cert mailing

EXHIBIT "6"

**Quotation Request:**

Liane Katzenstein Ly
Kingsley & Kingsley, APLC
liane@kingsleykingsley.com
818.990.8300

Case Name:

Nobu

Date:

Friday, October 20, 2023

RFP Number:

83000003

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	140
Certified Language Translation:	Yes
Static Settlement Website	Yes
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization

Import and Standardize Data*	Per Hour	\$125.00	2	\$250.00
Data Analyst	Per Hour	\$150.00	2	\$300.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$550.00

Project Management

Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$620.00

Toll-Free Contact Center, Website, Reporting & Pre-Distribution

Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$50.00	1	\$50.00
Settlement Website: Static Apex URL	Static Rate	\$500.00	1	\$500.00
NCOA Address Update (USPS)	Static Rate	\$35.00	1	\$35.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$705.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	140	\$210.00
USPS First Class Postage	Per Piece	\$0.66	140	\$92.40
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.15	14	\$30.10
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	8	\$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Unclaimed Funds: State Controller's Unclaimed Property Fund	Static Rate	\$500.00	1	\$500.00
Sub Total:				\$3,402.50

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	2	\$270.00
Project Management Reconciliation	Per Hour	\$100.00	2	\$200.00
Declarations	Per Hour	\$120.00	2	\$240.00
Sub Total:				\$710.00

DISCOUNTED FLAT FEE: \$5,900.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the party's concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

**(Proof of Submission to Labor and
Workforce Development Agency)**

EXHIBIT "7"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On November 29, 2023, I served all interested parties in this action the following documents described as: **DECLARATION OF LIANE KATZENSTEIN LY IN SUPPORT OF MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Kevin S. Wattles
kwattles@slfesq.com

Rachael L. Marko
rmarko@slfesq.com

Linda Abernethy
labernethy@slfesq.com

SOLTMAN, LEVITT, FLAHERTY & WATTLES LLP

90 E. Thousand Oaks Blvd., Suite 300

Thousand Oaks, CA 91360

Attorneys for Defendant

ABRAMSON LABOR GROUP

William Zev Abramson

Wza@abramsonlabor.com

11846 Ventura Blvd., Suite 100

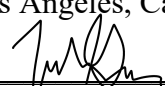
Studio City, CA 91604

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 29, 2023, at Los Angeles, California.


Taylor Gregg