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Attorneys for Plaintiff TARA TROTTER
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

TARA TROTTER, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SEC TRANSPORTATION, INC., a California
Corporation; STOCKTON EDUCATIONAL
CENTER, INC., an unknown association; and
DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0003641

*Assigned for All Purposes to Hon. Jayne Lee,
Department 10C*

CLASS ACTION

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

Date: _____

Time: 9:00 a.m.

Dept.: 10C

Judge: Hon. Jayne Lee

Filed: April 11, 2023

FAC Filed: July 7, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

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

8 2. The wage and hour claims were brought as a class action based on Plaintiff’s contention
9 that Defendants SEC Transportation, Inc., and Stockton Educational Center, Inc., (“Defendants”)
10 violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3)
11 failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay
12 premiums in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to timely pay all
13 final wages, 8) unlawfully inquiring into criminal history, and 8) engaging in unfair competition.
14 Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act (“PAGA”).
15 These claims were based on allegations that Defendants violated California law by 1) failing to pay
16 Plaintiff and Class Members’ split shift premiums, 2) failing to pay Plaintiff and Class Members for all
17 hours worked due to Defendants’ failure to pay Plaintiff and Class Members for the time spent waiting
18 for clients to be released from schools, 3) failing to provide Plaintiff and Class Members with off-duty
19 meal and rest periods, 4) failing to pay Plaintiff and Class Members meal period and rest period
20 premiums for missed meal and rest periods and for the on-duty meal and rest periods, 5) failing to pay
21 for all hours worked stated in Plaintiff’s and Class Members’ timecards, and 6) engaging in the
22 unlawful inquiry into the criminal history of Class Members. The PAGA, waiting time penalty, wage
23 statement violation, and unfair competition claims also derive from these violations.

24 3. Plaintiff is the only named representative in this matter. From our initial investigations
25 of Plaintiff’s claims and documents, we believed these wage and hour claims had merit and could be
26 maintained as a class action. We filed the action on or about April 11, 2023. Plaintiff exhausted
27 administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to
28 amending the Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on April 10,

2023, setting forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First Amended Complaint on July 7, 2023. A true and correct copy of Plaintiff's operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on July 13, 2023, after we received an endorsed copy back from Court.

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

5. Defendants are represented in this matter by Kroloff, Belcher, Smart, Perry & Christopherson. From the beginning, Defendants have contested the merits of the wage and hour claims, the suitability of the case for class action or representative treatment, the manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period for each employee among other defenses and contentions they made challenging the propriety of this action. Defendants further contended, even assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to comply with California Labor Code obligations by Defendants. Notwithstanding its agreement to settle this matter, Defendants believe the practices Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiff and Class Members. Also, Defendants have contended that this matter is not appropriate for class certification outside of this proposed class settlement.

6. Based on the expected testimony from Plaintiff and Class Members, a review of Defendants' policies and procedures and other documents relating to the alleged class claims, information on the number of Class Members, Class Members' dates of employment, and a representative sample of Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that have taken place, I am convinced that the proposed settlement is in the best

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

12 7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
13 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the wage
14 and hour claims and potential damages for such claims. The parties engaged in informal discovery and
15 exchange of documents, including a representative 15% sampling of employee data, such as time
16 records, paystubs, payroll data and relevant policies for the entirety of the statute of limitations
17 applicable to the alleged claims. As part of the claims' investigation, Plaintiff's counsel obtained from
18 Defendants Plaintiff's personnel file which included payroll records and relevant policies regarding the
19 claims. Plaintiff also provided Plaintiff's counsel with copies of policies, paystubs, timecards, and
20 emails related to the claims. The discovery covered all aspects of the asserted wage and hour claims,
21 including certification issues, merits issues, damages, the scope and configuration of Class Members, the
22 content and implementation of the wage and hour policies at issue, issues relating to manageability
23 concerns at trial, among other relevant areas. From this production we were able to determine
24 information critical to a reliable damages analysis such as the average hourly rate, average daily hours
25 worked, average number of workweeks and pay periods that had potential violations based on the
26 asserted claims, the frequency with which violations occurred in a given week and/or pay period, and the
27 number of former employees. This information allowed my office to assess both liability and damages
28 and create an accurate damages model. Plaintiff assisted in all aspects of this litigation including

1 providing factual information relating to Plaintiff's and Class Members' employment conditions,
2 providing a substantial number of documents, and answering questions regarding Defendants' factual
3 contentions in this matter. This was important because it directly related to our ability to maintain this
4 case as a class action and our ability to obtain a favorable settlement for the class.

5 8. Throughout this litigation our office had numerous communications with Defendants'
6 Counsel discussing our respective positions. The parties engaged in mediation on September 18, 2023,
7 using an experienced mediator, Brandon McKelvey. The parties accepted a mediator's proposal on
8 September 18, 2023, covering the essential terms of the settlement. The parties thereafter continued to
9 negotiate the details of the long form Agreement, covering additional terms relating to the
10 administration and notice provisions of the settlement. Ultimately on January 19, 2024, the Parties were
11 able to finalize and fully execute the Agreement after months of extensive, arm's length negotiations.
12 The negotiations were at all times contentious and adversarial, though still professional in nature.

13 9. The parties reviewed and analyzed substantial amounts of data regarding the class
14 claims. Based on our analysis and review of all relevant documents, Class Member workweek, payroll,
15 and sample data, and the information and argument presented by Defendants in this matter, I have
16 determined that the maximum damages for the asserted class and PAGA claims is approximately
17 \$2,841,432.60. The maximum exposure for PAGA penalties is approximately \$935,168.00 based on
18 the counts alleged to the LWDA and the class data. Based on our research, we did not find any prior
19 Labor Commissioner or court decisions that stated Defendants' practices and/or policies were
20 improper. As such, a "subsequent violation" may not be found for penalty calculation purposes and the
21 exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if
22 this matter went to trial.

23 10. However, I believe the PAGA penalties in this case may be reduced due to the fact that
24 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
25 are based on violations due to technical non-compliance with the Labor Code. Furthermore,
26 Defendants produced a substantial number of documents and arguments that a Court may find
27 demonstrates a good faith attempt at compliance that merits the reduction of civil penalties. Courts
28 regularly cut civil penalties on PAGA claims where statutory penalties for the same violations are

1 assessed as well. Courts are statutorily authorized to use discretion to reduce penalties and the range of
2 discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th
3 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9
4 (C.D. Cal. 2011) (82% reduction). Thus, civil penalties may be cut to approximately \$168,330.24
5 (82% reduction) or lower given the derivative recovery. Taking this into account, the more likely
6 maximum recovery if Plaintiff was successful at trial on proving 100% of the substantive class
7 damages plus civil penalties after an anticipated discretionary Court reduction of the PAGA penalties
8 would be approximately \$2,074,594.84. Taking this into account, Plaintiff's \$200,000 gross recovery
9 under the Agreement represents approximately 10% of the maximum likely value in this matter. After
10 deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs,
11 any Enhancement Payment to the Class Representatives, Settlement Administrator Costs, and the 75%
12 portion of the PAGA Payment to the LWDA, the net recovery under the Agreement represents
13 approximately 5% of the maximum likely value in this matter. It is important to note that this does not
14 account for any risk in obtaining certification, proving liability, or proving damages. For example, if
15 the Court were to find a good faith dispute as to liability under either California Labor Code § 1194.2
16 or for waiting time penalties, this would eliminate those categories of damages entirely. *See Diaz v.*
17 *Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Such a finding would cause the maximum
18 likely damages to drop from \$2,074,594.84 to \$1,268,035.24. Such risk and variability in the range of
19 possible outcomes demonstrates the value of the settlement as a reasonable compromise. Additionally,
20 the average net award is approximately \$543.55. I believe the Agreement represents a reasonable
21 compromise of claims based on the legal and factual disputes in this case. The ability to secure a
22 guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed
23 to further litigation and potentially recover nothing, was a motivating factor in reaching this
24 Agreement.

25 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office
26 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
27 settlement or judgment should we recover a monetary amount. We took a risk that we would not
28 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case

1 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
2 make sure employees are able to find affordable representation in order to ensure that employers are
3 complying with all their legal obligations towards employees and paying employees all their hard-
4 earned wages.

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

19 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
20 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
21 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
22 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
23 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
24 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
25 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
26 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
27 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
28 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.

2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);

- Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
 - *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
 - *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
 - *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
 - *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
 - *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
 - *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
 - *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
 - *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
 - *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
 - *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
 - *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);

- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

15. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda

1 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a
2 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the
3 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He
4 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and
5 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of
6 employment law articles for journals and our firm regularly publishes articles on our firm's website.
7 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
8 Employment Review seminars from 2014 to the present. His speaking engagements include the
9 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
10 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
11 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
12 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
13 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
14 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
15 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
16 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
17 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
18 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
19 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
20 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
21 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
22 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
23 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
24 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
25 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
26 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
27 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
28 as a Super Lawyer from 2014 to present.

1 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
2 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
3 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
4 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
5 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
6 Federal Courts, including up to certification, settlement, preliminary and final approval, and
7 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
8 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
9 include the following:

- 10 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 11 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 12 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 13 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 14 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 15 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 16 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 17 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 18 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
19 Sup. Ct.);
- 20 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 21 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
22 Ct.);
- 23 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
24 Ct.);
- 25 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
26 Sup. Ct.);
- 27 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 28 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.

- Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
 - *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
 - *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
 - *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
 - *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
 - *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
 - *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
 - *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
 - *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
 - *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
 - *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);

- 1 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
2 Sup. Ct.);
- 3 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 4 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 5 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 6 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 7 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 8 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
9 00082201 (Sac Sup. Ct.);
- 10 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
11 Sup. Ct.);
- 12 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 13 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 14 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 15 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
16 Sup. Ct.);
- 17 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 18 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 19 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 20 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

24 18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
25 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
26 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
27 individual and class action cases, including those involving wage and hour claims, Private Attorney
28 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and

1 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
2 as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in
3 September 2022. Mr. Konini has worked on the written and oral discovery, including defending a
4 PAGA representative's deposition, drafting special interrogatories and request for production of
5 documents, calculating class-wide damages, communicating with class representatives, drafting
6 mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages
7 calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other
8 class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and*
9 *Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment*
10 *Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case
11 No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No.
12 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-
13 00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's*
14 *Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium,*
15 *Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-
16 00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-
17 OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.),
18 *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*
19 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris*
20 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*
21 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
22 revolves around wage and hour matters, including PAGA claims.

23 19. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
24 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
25 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
26 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
27 identifiable benefit on behalf of the class and equity counsels that the cost of the representation should
28 be borne equally amongst all class members receiving these benefits. The settlement recovery provides

1 an excellent result and is the product of substantial time and effort in analyzing the facts and law
2 applicable to this case. I agreed to take this case on a contingency basis and as a class action with the
3 possibility that I would not receive any compensation for my time and efforts due to issues regarding
4 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
5 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
6 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
7 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to
8 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own
9 firm and working with several other firms has been that the typical percentage negotiated between
10 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
11 factors. I have also reviewed several recent Federal District Court Cases where the Court has approved
12 common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp.
13 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-
14 cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green,*
15 *et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et*
16 *al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
17 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern
18 District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and
19 Authorities. I believe my request of \$70,000 (approximately 35%) for attorneys' fees is justified given
20 the results obtained on behalf of the class. The expected total costs through final approval by Class
21 Counsel are not expected to exceed \$15,000. Filed with this Motion as Exhibit E is a true and correct
22 copy of the costs (\$9,850.25) incurred to date and expected to be incurred through the completion of
23 this case by Shimoda & Rodriguez Law, PC. Any difference in the actual costs and the maximum
24 amount allocated under the Agreement will be added to the Net Settlement Amount.

25 20. I have used several class action administrator companies in the wage and hour class
26 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
27 administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated
28 maximum cost of administering the class settlement of approximately \$6,550. A true and correct copy

1 of a cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. This is only an
2 estimate, and final pricing may vary depending on the issues, if any, that arise during the administration
3 of the settlement. However, the difference between the actual, lesser costs and \$15,000, if any, will be
4 paid to the Participating Class Members on a pro rata basis.

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

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

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

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

24 25. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
25 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
26 their current or former employment. This assistance regularly includes, but is not limited to, free legal
27 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
28 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal

1 forms, and direct representation in administrative hearings, including administrative hearings in front of
2 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
3 who provide assistance, along with experienced employment law attorney volunteers. These services
4 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
5 and continuing through today under CPB.

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

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

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

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

27 30. I have volunteered for both organizations numerous times over the past several years,
28 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students

1 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory
2 committee. These organizations are non-profits that assist low-income workers throughout California,
3 giving free legal advice regarding employment law issues and representing employees with wage claims
4 before the California Labor Commissioner. I have witnessed firsthand the quality service and attention
5 these entities provide to individuals in need of employment law advice and representation at the
6 California Labor Commissioner.

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

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

25 33. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor Mr. Shimoda have ever received
26 any compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in
27 connection with any of the volunteer work we have done with the organizations.
28

1 34. Plaintiff has entered into a separate individual settlement agreement resolving her
2 individual claims under the Tenth and Eleventh Causes of Action for the alleged violation of Labor
3 Code section 1102 and Wrongful Termination/Retaliation in exchange for a waiver of all her claims
4 other than those wage and hour claims resolved by the Agreement. The amount of the individual
5 settlement is \$35,000, which is separate and apart from the Gross Settlement Amount. Based on her
6 hourly rate and the value of benefits and wages earned Plaintiff earned as compensation on a standard 40
7 hour workweek, her annual earnings were approximately \$44,641.60. Although Plaintiff was able to
8 mitigate her damages by finding another job after several months of unemployment, it did not provide
9 the same level of pay or hours, resulting in a continued loss of approximately \$569.99 per week. By the
10 time of trial (approximately two years from the initial claim filing), this would equate to approximately
11 \$59,278.96 in lost wages. Given the facts of the individual claims and potential wage loss, I believe a
12 reasonable valuation of Plaintiff's individual claims would be approximately \$148,562.16, representing
13 the lost wages up to the estimated trial date and the equivalent of two years' worth of lost wages to
14 approximate the reasonable estimated value of claimed emotional distress. Plaintiff resolving her claim
15 for approximately 23.5% of its estimated worth is a substantial compromise. I believe that compromise
16 is in line with the compromises made for the class claims, especially since her individual claims are not
17 subject to such broad and categorical defenses like class claims for waiting time penalties or liquidated
18 damages on unpaid minimum wages are. Furthermore, the individual settlement is not contingent on
19 Plaintiff's approval of the class and PAGA settlement in any way. There no inappropriate preferential
20 treatment for Plaintiff's individual claims over the class and PAGA claims in any way.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on February 2, 2024, in Sacramento, California.

23
24 
25 Justin B. Rodriguez
26
27
28