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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

NAVEEN PRASAD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

RCG LOGISTICS LLC, a California Limited
Liability Company; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2023-00337623

*Assigned for All Purposes to Hon. Jill Talley,
Department 23*

CLASS ACTION

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

Reservation No. A-337623-001

Date: February 9, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: April 7, 2023

FAC Filed: July 12, 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 Naveen Prasad (“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 in this case were based on Plaintiff’s contention that
9 Defendant RCG Logistics LLC, (“Defendant”) violated California law by 1) failing to pay overtime
10 wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest
11 periods, 5) failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7)
12 violating Labor Code section 432.7, 8) violating Labor Code section 432.6, 9) failing to reimburse
13 employees for incurred expenses, and 10) engaging in unfair competition. Plaintiff also alleged
14 liability for civil penalties under the Private Attorneys General Act (“PAGA”). These claims were
15 based on allegations that Defendant violated California law by 1) failing to incorporate the value of
16 nondiscretionary incentive based compensation into Plaintiff’s and putative class members’ regular
17 rates of pay for the purpose of calculating premium wages owed, 2) failing to provide meal and rest
18 periods in compliance with California law, 3) encouraging Plaintiff and putative class members to edit
19 their time records to reflect timely meal periods being taken when, in fact, they had not been taken, 3)
20 refusing to provide all paid sick leave available, 4) failing to reimburse Plaintiff and putative class
21 members for use of their personal cell phone for work purposes, and 5) maintaining a criminal
22 conviction policy that unlawfully required disclosure of arrests not resulting in conviction. The PAGA,
23 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
24 violations.

25 3. Plaintiff is the only named representative in this matter. From our initial investigations
26 of Plaintiff’s wage and hour claims and documents relating thereto, we believed these claims had merit
27 and could be maintained as a class action. We filed the action on or about April 7, 2023. Plaintiff
28 exhausted administrative remedies through the Labor and Workforce Development Agency (“LWDA”)

1 prior to amending the Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on
2 April 5, 2023, setting forth the facts and theories of liability. A true and correct copy of the notice filed
3 with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to
4 Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There
5 was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice
6 for more than 65 days. As such, Plaintiff became authorized to commence a civil action under the
7 PAGA and filed a First Amended Complaint on July 12, 2023. A true and correct copy of Plaintiff's
8 operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to
9 the LWDA on August 15, 2023, after we received an endorsed copy back from Court.

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

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

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

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

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

1 8. Throughout this litigation our office has had numerous communications with Defendant's
2 Counsel discussing our respective positions. Although we did not file the case until April 7, 2023, our
3 pre-filing investigation of the wage and hour claims and interviews began in January 2023, including
4 reviewing documents and seeking out potential witnesses to interview. This investigation and compiling
5 of supporting facts and documents continued up to and through the April filing date. Prior to agreeing to
6 engage in mediation, our office prepared written discovery to go out and start the formal discovery
7 process. However, prior to the formal written discovery being served, the parties were able to begin
8 discussing the possibility of mediation and utilizing informal discovery exchanges instead of formal
9 discovery. The parties engaged in mediation on July 19, 2023, using an experienced mediator, Jeffery
10 Owensby, Esq. The parties entered into a Memorandum of Understanding ("MOU") containing all
11 material terms for resolving the wage and hour class and PAGA claims on July 19, 2023. The MOU
12 explicitly stated it was enforceable as a final agreement regardless of whether a long form agreement
13 was entered into. Notwithstanding that, the parties continued towards drafting the Agreement,
14 containing additional terms relevant to certification, class notification procedures and due process, and
15 settlement approval proceedings. Plaintiff's individual disability discrimination, reasonable
16 accommodation, and failure to prevent discrimination claims were not discussed or negotiated until after
17 the MOU was fully executed. The final individual settlement agreement and the Agreement were
18 finalized and fully executed by the parties on November 20, 2023. The negotiations were at all times
19 contentious and adversarial, though still professional in nature.

20 9. The following represents the potential maximum recovery for each of Plaintiff's claims
21 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,
22 including a sample of time and payroll records for Class Members. There were 9,572 workweeks in the
23 Class Period, 2,675 PAGA pay periods, an average base hourly rate of \$17.42, and an average overtime
24 rate of \$26.13, which resulted in the following damages calculations:

- 25 a) Unpaid Minimum Wages: This claim is based on allegations that Defendant
26 failed to pay Plaintiff and Class Members for all hours worked due to Class
27 Members working during times they were clocked out for meal periods and
28 Defendant's encouragement of Class Members to edit the timing of their meal

1 periods. Additionally, the claim was based on allegations that Defendant simply
2 failed to pay at least the applicable minimum wage rate for certain periods of
3 time. Based on our investigations and analysis of the informal production of
4 payroll records, Plaintiff contended that Class Members experienced an average
5 of approximately 15 minutes of unpaid time per week. The average minimum
6 wage rate during the applicable claim period was approximately \$13.90. This
7 resulted in a maximum of \$33,262.70 in liquidated damages for unpaid minimum
8 wages due to off-the-clock work during meal periods. This is composed of
9 entirely liquidated damages to avoid double recovery for the same unpaid time
10 because Plaintiff assumed that all this unpaid time would also be considered
11 overtime. Thus, the actual substantive loss is accounted for in Plaintiff's
12 overtime calculations, detailed below. Additionally, approximately 0.7% of
13 workweeks were affected by the failure to pay at least the minimum wage, with
14 the average underpayment for these instances being approximately \$4.00 per
15 hour, resulting in a maximum of \$8,868.65 in unpaid minimum wages and an
16 additional \$8,868.65 in liquidated damages for these unpaid wages. These
17 amounts do not take into account any potential risks associated with the claim.
18 For example, Defendant heavily disputed any practice or policy of encouraging
19 Class Members to alter time records or work off-the-clock. Defendant contended
20 Plaintiff and Class Members were instructed to accurately record their hours
21 worked, including time spent on meal periods, and that the timecards filled out
22 by Class Members had spaces for them to notate any missed or late breaks, so
23 Class Members could be appropriately compensated. Furthermore, the average
24 unpaid hours worked per week was relatively small such that they only amounted
25 to 15 minutes per week. A small amount of unpaid hours per week such as this
26 creates substantial risk because even minute differences by a fact finder for what
27 the unpaid hours were, if any, can have a large impact on the total damages. A
28 difference of 5 minutes per week could reduce the amount of total damages for

1 this theory of liability by a third. Similarly, the small number of instances of not
2 paying the correct minimum wage (0.7% of workweeks) could cause risks for
3 establishing numerosity if certification ultimately had to be sought through
4 subclasses on a claim-by-claim basis. Furthermore, the small frequency rate
5 creates a risk that the Court could agree with Defendant's arguments of
6 inadvertent error despite prophylactic policies, potentially eliminating liquidated
7 damages for this theory of liability as well. See Cal. Lab. Code § 1194.2(b) (a
8 good faith dispute as to liability can avoid imposition of liquidated damages).
9 Taking these factors into account, the more realistic range of recovery for this
10 claim is between \$0 to \$8,868.65;

11 b) Unpaid Overtime: There are two bases for this claim. First, Defendant failed to
12 pay Plaintiff and Class Members for all hours worked due to Class Members
13 working during times they were clocked out for meal periods and Defendant's
14 encouragement of Class Members to edit the timing of their meal periods. Based
15 on the payroll records and Plaintiff's investigations, the maximum amount of
16 damages for this theory of liability is approximately \$62,529.09. This theory of
17 liability is based on the same facts supporting the minimum wage claim
18 discussed above and, therefore, is subject to the same risks. The second theory
19 of liability for the overtime claim is that Defendant failed to properly calculate
20 the regular rate of pay by failing to incorporate the value of nondiscretionary
21 incentive-based compensation into the regular rate when paying overtime
22 premiums. Approximately 50.7% of all workweeks were affected by this claim,
23 *i.e.* the incentive compensation was earned in the same workweek that overtime
24 hours were worked. The average weekly value of the incentive compensation
25 attributable to weeks in which overtime was worked is approximately \$131.22,
26 the average regular weekly hours worked was approximately 35.81, and the
27 average amount of overtime worked per week was 0.99 hours. This equated to
28 approximately \$1.77 in unpaid overtime per week for those weeks affected, for a

1 maximum of \$8,589.82 in total damages under this theory of liability. Although
2 this theory of liability for overtime was not without its risks, this is a relatively
3 small amount of damages at issue. For purposes of the *Kullar* analysis, we are
4 assuming we would be successful in certification, on the merits, and prove
5 damages in exactly the amount calculated based on the sample. Based on the
6 risks associated with the overtime claim as a whole, a more realistic range of
7 recovery is between \$8,589.82 and \$31,264.55;

8 c) Meal Periods: This claim is based on the allegations that Defendant regularly
9 failed to provide meal periods owed to Plaintiff and Class Members due to high
10 workloads and nature of the work. Plaintiff contended that Defendant effectively
11 discouraged and prevent breaks from occurring because employees were rated
12 against their ability to coordinate cargo loads that created a net profit based on
13 the difference between the quoted cost to the carrier and the amount a driver
14 actually agreed to haul the load for. Plaintiff contended these coordination
15 discussions were regularly at their peak during the times that employees would
16 otherwise need to take their breaks. Plaintiff contended that employees were
17 encouraged by supervisors to always take calls and/or not to end calls to
18 coordinate the loads because failure to do so often resulted in being unable to
19 effectively place the load with a driver for a net profit. Plaintiff contended the
20 payroll records demonstrated approximately 15.7% of shifts had a unique meal
21 period violation, *i.e.* no meal period recorded for work over five hours, no
22 second meal period for work over ten hours, and untimely meal periods. Based
23 on an average of approximately four shifts per week of at least five hours, this
24 resulted in a maximum of approximately \$104,715.38 in unpaid meal period
25 premiums. This amount does not take into account any potential risks associated
26 with this claim, which was heavily disputed. For example, the timecards filled
27 out by Class Members had spaces for them to notate any missed or late breaks,
28 so Class Members could be appropriately compensated. Despite the time records

1 showing presumptive violations, several entries also included statements by the
2 Class Member as to why a meal period was missed. Defendant contended that
3 these statements demonstrated that any missed meal period was a personal
4 choice by the Class Member. Plaintiff contended that any such information was
5 written as a result of supervisor instruction to make it appear that there was no
6 violation when, in fact, the employee was working through their breaks at the
7 direction of their supervisor to coordinate cargo loads. This dispute created a
8 very substantial risk to Plaintiff's ability to certify the class and establish
9 liability. Even to the extent Plaintiff established liability, these facts created a
10 substantial risk that any damages would be greatly reduced based on how many
11 instances a fact finder determined were the result of a personal choice to forgo a
12 meal period. While Plaintiff also contended that Defendant's meal period policy
13 was facially unlawful, this related to the failure to authorize second meal periods,
14 not meal periods in general. Of the 15.7% violation rate Plaintiff contends was
15 demonstrated by the payroll records alone, only approximately 1% of these were
16 based on instances of a failure to provide a second meal period. Taking these
17 factors into account, a more realistic range of recovery for this claim is between
18 \$6,669.77 and \$52,357.69;

19 d) Rest Breaks: This claim was based on the same allegations as the meal period
20 claim. Plaintiff contended that Class members were not provided with lawful
21 rest periods approximately 40% of the time. Based on Plaintiff's investigations
22 and the payroll records, this equates to a maximum exposure of approximately
23 \$266,790.78. However, this does not account for the risk associated with this
24 claim. Because this claim is based on the same factual basis as the meal period
25 claims, it is also subject to the same risks as detailed above. Additionally, while
26 Plaintiff also contended Defendant's rest period policy was unlawful due to the
27 failure to include "*major fraction thereof*" authorizing language, less than 5% of
28 shifts were of a length that would equate to a violation under this theory of

liability, *i.e.* shifts between 3.5 and 4 hours, between 6 and 8 hours, and between 10 and 12 hours. Additionally, this claim does not benefit from any presumptive violation based on time records under the law like meal period claims do.

Taking these factors into account, a more realistic range of recovery for this claim would be between \$0 to \$33,348.85;

e) Reimbursement: This claim was based on Plaintiff's contention that he and Class Members were required to communicate with managers, supervisors, and other employees using their personal cell phones via Microsoft Teams. Also, Plaintiff and Class Members used their personal cell phones to lock and unlock doors of their office, access payroll data via accessing Gusto website, and clocking in and out using their cell phones. The maximum exposure for this claim is \$100,061.54, which is based on a monthly cell phone bill of approximately \$100 and 50% work usage rate. This amount does not take into account any potential risks associated with this claim. Defendant heavily disputed whether use of personal cell phones was required given the presence of company computers and phones available on premises. Defendant contended that the use of any applications on a personal device was, at most, a personal choice of convenience by Class Members. Furthermore, it is unlikely that Class Members all had their own standalone cell phone plans as opposed to being billed as additional lines on a pre-existing plan. In my experience there has always been a range of individuals whose cell phone plans are \$30-\$60 per month as additional lines on a pre-existing plan. Thus, it is unlikely that the full amount of damages Plaintiff calculated would be established even if Plaintiff was successful in certifying the class and establishing liability. Based on these risks, I believe a more realistic range of recovery for this claim would be between As a result, a realistic range of recovery for this claim would be between \$33,126.48 to \$80,062.42;

f) Wage Statement Violations: This claim is derivative of Plaintiffs' overtime, minimum wage, and meal and rest period claims. The maximum exposure for

1 this claim is \$133,750, which is calculated based on an initial violation of \$50
2 per pay period per employee. Based on our research, we did not find any prior
3 Labor Commissioner or court decisions that stated Defendant's practices and/or
4 policies were improper. As such, a "subsequent violation" may not be found for
5 penalty calculation purposes and the exposure analysis here is based on an
6 "initial violation" valuation being adopted by any fact finder if this matter went
7 to trial. This amount does not take into account the potential risks associated
8 with this claim and assumes a violation in every pay period. Because this claim
9 is derivative of Plaintiff's other claims, the same risks identified above for
10 Plaintiff's minimum wages, overtime, meal period, and rest period claims
11 equally apply here, substantially affecting the potential value of this claim.
12 Taking these factors into account and the more realistic violation frequency rates
13 at issue, a more realistic range of recovery for this claim is between \$33,437.50
14 to \$66,875;

15 g) Waiting Time Penalties: This claim is derivative of the minimum wage,
16 overtime and meal and rest period claims above. The maximum exposure for
17 this claim is \$572,769.60. However, this amount assumes that every former
18 employee within the statute of limitations would be found to have unpaid wages
19 owed to them and does not take into account the potential risks associated with
20 this claim. Plaintiff's strongest claim for waiting time penalties was the failure
21 to properly calculate the regular rate of pay for overtime premiums. However,
22 this did not affect everyone within the waiting time penalty statute of limitations
23 because not all Class Members earned incentive-based compensation over the
24 same workweek as overtime hours were worked. Approximately only half of
25 Class Members were affected under this theory of liability. Similar to the
26 liquidated damages for minimum wage violations, there is a potential good faith
27 dispute defense to waiting time penalty claims. *See Diaz v. Grill Concepts*
28 *Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Based on the disputes over every

1 other theory of liability, I believe a more realistic recovery for this claim would
2 be \$286,384.80;

3 h) Unlawful Criminal Conviction and Disclosure of Criminal Records: This claim
4 was based on Plaintiff's contention that Defendant unlawfully required the
5 disclosure of criminal convictions and criminal records. After further review of
6 the applicable law, I believe the likely value of this claim is \$0. As phrased,
7 Labor Code section 432.7 has been found to only apply to applicants, not
8 employees. *See Faria v. San Jacinto Unified School Dist.*, 50 Cal.App.4th 1939,
9 1947 (1996). Plaintiff's claim for violation of Labor Code 432.6 is predicated on
10 Labor Code section 432.7 and section 432.6 is similarly framed in relation to *an*
11 *applicant* not *an employee*. Thus, it is subject to the same analysis applied in
12 *Faria* that found Labor Code section 432.7 inapplicable to employees;

13 i) PAGA: The applicable civil penalties for PAGA claims varies depending on
14 whether the statute already has an associated civil penalty or whether the default
15 penalty structure of \$100 for "initial violations" and \$200 for "subsequent
16 violations" of the PAGA is used. *See* Cal. Lab. Code § 2699(f). Regardless of
17 whether a specified or default penalty structure is used, an employer may only be
18 liable utilizing "initial violation" valuations unless there is prior notice, through
19 Court or administrative decision, that its practices are unlawful. *See Amaral v.*
20 *Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). As noted above,
21 based on our research, we did not find any prior Labor Commissioner or court
22 decisions that stated Defendant's practices and/or policies at issue were improper
23 or unlawful. As such, a "subsequent violation" may not be found for penalty
24 calculation purposes, and the exposure analysis here is based on an "initial
25 violation" valuation being adopted by any fact finder if this matter went to trial.
26 Additionally, this claim is derivative of the Labor Code violations identified
27 above and would be subject to all the same risks as the underlying claims it is
28 based on. Based on Settlement Class Members' payroll data, applicable civil

1 penalty amounts for an initial violation of each statute, the maximum recovery
2 for this claim is \$1,711,610.40. After accounting for the risks each claim has as
3 stated above, the more realistic upper range of recovery for the PAGA claim is
4 \$761,960.90. In addition to the risks on the merits, I believe the Court may
5 exercise its discretion to reduce PAGA penalties in this case. Courts are
6 statutorily authorized to use their discretion to reduce penalties and the range of
7 discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt.,*
8 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien,*
9 *Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
10 The 82% reduction equates to roughly \$9-\$50 worth of civil penalties per pay
11 period per employee depending on the total potential value of the civil penalty
12 (*i.e.* \$50-\$200), which is more in line with actual awards based on my experience
13 and review of awards in other cases. Thus, the total exposure may be cut to
14 approximately \$137,152.96 (82% reduction) to \$533,372.63 (30% reduction). It
15 is important to note that this discretionary reduction is completely separate and in
16 addition to any risks on the merits. Allocating \$20,000 to the PAGA claims in
17 this case is appropriate, especially in light of amounts that Courts have approved
18 as reasonable valuations in other cases. *See Nordstrom Com. Cases*, 186
19 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA
20 claims based on their being disputed and being part of a class settlement which
21 was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med.*
22 *Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting
23 cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open*
24 *Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving
25 settlement of PAGA claims at 0.6% of total estimated value due to risk of no
26 recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016)
27 (approving \$10,00 PAGA settlement allocation where total PAGA penalty
28 exposure was approximately \$5.2 million, or 0.2% of total estimated value);

1 *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1
2 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000
3 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D.
4 Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
5 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist.
6 LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in
7 \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist.
8 LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
9 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS
10 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000
11 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D.
12 Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement
13 even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total
14 estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS
15 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a
16 \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at
17 *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
18 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal.
19 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9
20 million common-fund settlement).

21 10. In summary, Plaintiff's gross recovery of \$492,500 under the Agreement equals
22 approximately 16.4% of the maximum value of the claims in this matter and between 45% and 97.5%
23 of the more realistic range of recovery. After deducting from the Gross Settlement Amount the
24 proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class
25 Representative, Settlement Administrator Costs, and the PAGA Payment to the LWDA, the net
26 recovery under the Agreement, \$270,125, represents approximately 9% of the maximum value of the
27 claims in this matter. The net recovery also represents between 24.7% and 53.5% of the more realistic
28 range of recovery. The average net award is approximately \$1,324.14. I believe the Agreement

1 represents a reasonable compromise of claims based on the legal and factual disputes in this case. The
2 ability to secure a guaranteed settlement now and ensure Class Members receive some compensation,
3 rather than proceed to further litigation and potentially recover nothing, was a motivating factor in
4 reaching this Agreement.

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

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

27 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
28 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.

1 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
2 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
3 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
4 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
5 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
6 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
7 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
8 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
9 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County
10 Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a
11 Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the
12 Sacramento County Bar Association Labor and Employment Law Section's executive committee in
13 2019 and was the Chair of the executive committee for 2022. I have also been a member of the
14 Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August
15 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA
16 claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the
17 complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently
18 litigating, including the instant case, includes, but is not limited to, the following:

- 19 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 20 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 21 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 22 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 23 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
24 (San Joaquin Sup. Ct.);
- 25 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 26 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 27 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
28 Sup. Ct.);

- 1 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
2 Ct.);
- 3 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 4 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
5 00271174 (Sac. Sup. Ct.);
- 6 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
7 Ct.);
- 8 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
9 Ct.);
- 10 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
11 Sup. Ct.);
- 12 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 13 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
14 Ct.);
- 15 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 16 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
17 00209613 (Sac. Sup. Ct.);
- 18 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 19 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
20 00222101 (Sac. Sup. Ct.);
- 21 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 22 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 23 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 24 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 25 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 26 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
27 Ct.);
- 28 • *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 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento

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

9 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
10 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
11 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
12 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
13 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
14 Federal Courts, including up to certification, settlement, preliminary and final approval, and
15 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
16 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
17 include the following:

- 18 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 19 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 20 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 21 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 22 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 23 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 24 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 25 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 26 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
27 Sup. Ct.);
- 28 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);

- 1 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 2 Ct.);
- 3 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 4 Ct.);
- 5 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 6 Sup. Ct.);
- 7 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 8 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 9 Ct.);
- 10 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 11 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 12 00209613 (Sac. Sup. Ct.);
- 13 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 14 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 15 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 16 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 17 (San Joaquin Sup. Ct.);
- 18 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 19 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 20 Sup. Ct.);
- 21 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 22 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 23 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac.
- 24 Sup. Ct.);
- 25 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 26 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 27 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 28 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);

- *Hernandez v. Snair, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

4 18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
5 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
6 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
7 individual and class action cases, including those involving wage and hour claims, Private Attorney
8 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and
9 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
10 as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in
11 September 2022. Mr. Konini has worked on the written and oral discovery, including defending a
12 PAGA representative's deposition, drafting special interrogatories and request for production of
13 documents, calculating class-wide damages, communicating with class representatives, drafting
14 mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages
15 calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other
16 class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and*
17 *Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment*
18 *Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case
19 No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No.
20 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-
21 00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's*
22 *Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium,*
23 *Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-
24 00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-
25 OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.),
26 *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*
27 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris*
28 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*

1 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
2 revolves around wage and hour matters, including PAGA claims.

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

20 20. I and others from my office regularly solicit bids from several class action settlement
21 administrators to compare the relative cost and value each provides in relation to settlement
22 administration needs. As a result, I am aware of the typical range of costs charged by class action
23 settlement administrators, including for the range of services required by the Agreement in this case. I
24 have used several class action settlement administrators in the wage and hour class actions I have
25 resolved in the past and believe ILYM Group, Inc. will provide the best service to administer the
26 proposed class settlement in this case. ILYM Group, Inc. has provided a quote for the estimated
27 maximum cost of administering the class settlement of approximately \$6,350. A true and correct copy
28 of the bid package and cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit

1 D. This is only an estimate, and final pricing may vary depending on the issues, if any, that arise during
2 the administration of the settlement. However, the difference between the actual, lesser costs and
3 \$15,000, if any, will be paid to the Participating Class Members on a pro rata basis.

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

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

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

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

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

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

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

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

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

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

26 30. I have volunteered for both organizations numerous times over the past several years,
27 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students
28 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB’s advisory

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

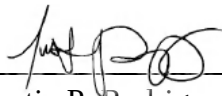
6 31. Brittany V. Berzin has never done any work, volunteer or otherwise, with CPB. During
7 law school, Ms. Berzin was a student volunteer for the CFWR for two summers. Since graduating law
8 school, she has volunteered for the CFWR approximately one to two times per year, assisting in the
9 advice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

17 32. Galen T. Shimoda has volunteered for both organizations on and off over the past several
18 years through either presenting wage and hour seminars to law students who staff the free advice clinics
19 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
20 work with either organization since approximately March 2020. Mr. Shimoda has never received
21 payment or compensation of any kind in connection with any work he's done with either of the proposed
22 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
23 Bono, Inc. or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor
24 Mr. Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as
25 *cy pres* beneficiaries or in connection with any of the volunteer work we have done with the
26 organizations.

27 33. In order to ensure there was no conflict when negotiating Plaintiff's individual disability
28 and discrimination claims versus the class and PAGA wage and hour claims, we made sure to not

1 discuss or negotiate those individual claims until all material terms for any class settlement were agreed
2 on. This includes the scope of the class, the gross settlement amount, the scope of the release and
3 waiver of claims, timing of payment, and the payment allocations from the gross settlement amount for
4 things like settlement administrator costs, the PAGA payment, etc. This was done through the MOU the
5 parties entered into as a result of mediation. Based on his hourly rate and historical performance in
6 earning incentive-based compensation, Plaintiff's annual wage loss would be approximately \$46,945.50.
7 Plaintiff also had health benefits and PTO benefits, which are typically valued at approximately 20% of
8 an employee's annual earnings, for a total wage loss of approximately \$56,334.60 per year. Given the
9 facts of the individual claims and potential wage loss, I believe a reasonable valuation of Plaintiff's
10 individual claims would be approximately \$112,669.20 for an estimated two years of lost wages and an
11 equivalent amount to approximate the reasonable estimated value of claimed emotional distress. Thus, a
12 total reasonable value of Plaintiff's individual claims would be \$225,338.40. Plaintiff resolved his
13 individual claims for \$35,000, representing a compromise of 84.5%. The fact that this is a larger
14 compromise than what Plaintiff agreed to for the class and PAGA claims demonstrates that both the
15 individual and class and PAGA claims were fairly valued and no inappropriate preferential treatment
16 was given to Plaintiff's individual claims. Finally, the settlement of the individual claims was not
17 contingent on Plaintiff's entering into, or the Court's approval, of the class and PAGA settlement.

18
19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct. Executed on January 16, 2024, in Elk Grove, California.

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Justin P. Rodriguez
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