

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD  
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**

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION AND PAGA SETTLEMENT**

Date: September 6, 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 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 6, 2024, at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard in Department 23 of the above-entitled Court, Plaintiff Naveen Prasad, individually  
4 and on behalf of all other similarly situated individuals, hereby moves for entry of an Order for the  
5 following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Naveen Prasad as class representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorneys General Act settlement, in the  
10 amount of \$552,795.23, which is incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of  
12 \$193,478.33;
- 13 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of  
14 \$7,107.99;
- 15 7. Approving the Class Representative Enhancement Payment of \$10,000 to Plaintiff Naveen  
16 Prasad;
- 17 8. Approving the appointment of ILYM Group, Inc. as the Settlement Administrator and for  
18 payment to ILYM Group, Inc. for administering said class action settlement in the amount  
19 \$6,350;
- 20 9. Approving the settlement of claims under the Private Attorney's General Act for the total  
21 amount of \$20,000, 75% of which will be paid to the Labor and Workforce Development  
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Determining that the class notification procedure and process complied with Class Members'  
24 due process rights;
- 25 11. Directing that any amount from settlement checks that were not cashed by the check cashing  
26 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers  
27 Rights under the doctrine of *cy pres*;
- 28

12. Approving and adopting the Proposed Order and its implementation schedule, which is filed herewith and incorporated by reference.

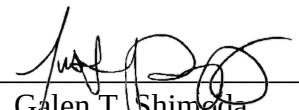
This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action and Private Attorney's General Act settlement is fair, reasonable, and adequate as to all Class Members and should be approved by the Court. This motion will be based on the notice of motion, memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Naveen Prasad, the Declaration of Garvin Brown, exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the hearing of this motion.

**Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.**

Dated: August 12, 2024

**Shimoda & Rodriguez Law, PC**

By: \_\_\_\_\_

  
Galen T. Shimoda  
Justin P. Rodriguez  
Renald Konini  
Attorneys for Plaintiff

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

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**MEMORANDUM OF POINTS & AUTHORITIES  
IN SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

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1           **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2           Plaintiff Naveen Prasad (“Plaintiff”) seeks final approval of a wage and hour class action and  
3 Private Attorney’s General Act (“PAGA”) settlement in the gross amount of \$552,795.23. *See generally*  
4 Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]);  
5 *see also id.* at ¶¶ 5.1, 10.1; Declaration of Garvin Brown (“Decl. Brown”), ¶ 5.<sup>1</sup> Plaintiff brought the  
6 wage and hour class action on behalf of himself and similarly situated employees who worked for  
7 Defendant RCG Logistics LLC, (“Defendant”) (Plaintiff and Defendant sometimes collectively referred  
8 to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately  
9 225 Class Members.

10           Plaintiff has alleged that Defendant violated California wage and hour law by 1) failing to pay  
11 overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to  
12 provide rest periods, 5) failing to provide accurate wage statements, 6) failing to timely pay all final  
13 wages, 7) violating Labor Code section 432.7, 8) violating Labor Code section 432.6, 9) failing to  
14 reimburse employees for incurred expenses, and 10) engaging in unfair competition. Plaintiff also  
15 alleged liability for civil penalties under the PAGA for these violations. *See generally* Exhibit B; *see*  
16 *also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9-10; Exhibit C (Plaintiff’s Ltr. to  
17 the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has  
18 denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See*  
19 Decl. Rodriguez, ¶ 5. Defendant has also denied that this case is appropriate for class certification  
20 other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have  
21 been able to compromise and settle all asserted claims as a result of extensive investigations, document  
22 and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe  
23 the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery,  
24 employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl.  
25 Rodriguez, ¶¶ 6-10; Declaration of Naveen Prasad (“Decl. Prasad”), ¶ 10.

26           The reaction of Class Members to the preliminarily approved Agreement has been  
27

28           <sup>1</sup> As set forth more fully below, while the stated Gross Settlement Amount under the Agreement is \$492,500, the Agreement’s escalator clause was triggered, causing a proportional increase to the Gross Settlement Amount to \$552,795.23.

overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations therein being fair, reasonable, and adequate. Zero Class Members opted out of the settlement and there have been zero objections to the Agreement. *See* Decl. Brown, ¶¶ 11-12. It is well within the discretion of this Court to grant final approval of the proposed settlement, which satisfies all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3) find that the procedures used to notify Class Members complied with due process; (4) Grant Plaintiff's request for attorney's fees and costs, the Enhancement payment to the Class Representative, and Settlement Administrator Costs; and (5) approve and adopt the proposed order granting final approval, which is filed concurrently herewith.

## **II. PROCEDURAL AND LITIGATION HISTORY**

Plaintiff filed this lawsuit on approximately April 7, 2023, in Sacramento County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately July 12, 2023, to include the PAGA claim. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

## **III. INVESTIGATION AND DISCOVERY CONDUCTED**

Plaintiff thoroughly investigated issues affecting certification, the merits of the class and PAGA claims, and potential damages for such claims. Decl. Rodriguez, ¶¶ 3, 6-10; Decl. Prasad, ¶¶ 5-7. Plaintiff worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Prasad, ¶¶ 2-3, 5-7. 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 asserted claims. The discovery covered all aspects of the asserted wage and hour 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. *See* Decl. Rodriguez, ¶¶ 6-7, 9-10. The information allowed Plaintiff

1 to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and  
2 create an accurate damages model to assess the reasonableness of any settlement. *See id.*

#### 3 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

##### 4 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

5 The final settlement occurred only after extended investigations and arm's length negotiations.  
6 Plaintiff has been investigating the wage and hour claims and marshalling facts in support thereof since  
7 January 2023. *See id.* at ¶ 8. Plaintiff has discussed the merits of the claims and issues present in this  
8 case with Defendant's counsel repeatedly over the course of the litigation. *See id.* at ¶¶ 5-8. The  
9 Parties exchanged substantial amounts of information and legal analysis in connection with these  
10 discussions. *See id.* It was only after these extended discussions, investigations, and negotiations,  
11 which included a full day of mediation with Jeffery Owensby, Esq., that the Parties were able enter into  
12 the fully executed Agreement on November 20, 2023. *See id.* at ¶ 8.

##### 13 **b. The Terms of the Agreement**

14 1. The following groups of individuals are covered by the Agreement: (a) Class Members,  
15 which include all individuals who have worked, or continue to work, for Defendant in California as a  
16 non-exempt employee at any time between April 5, 2019, up to January 27, 2024; and (b) Aggrieved  
17 Employees, which include all individuals who have worked, or continue to work, for Defendant in  
18 California as a non-exempt employee at any time between April 5, 2022, up to January 27, 2024. *See*  
19 Exhibit A, ¶¶ 1.2, 1.5. There are approximately 225 Class Members and 120 Aggrieved Employees.  
20 *See id.*

21 2. Defendant will pay the Gross Settlement Amount of \$552,795.23, which is exclusive of  
22 the employer's share of payroll taxes. *See id.* at ¶¶ 5.1; 10.1 Decl. Brown, ¶ 5. No portion of the Gross  
23 Settlement Amount will revert to Defendant. *See* Exhibit A, ¶ 5.6. Aggrieved Employees will still be  
24 paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See*  
25 *id.* at ¶¶ 7.5.1, 7.8.3.

26 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will  
27 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at  
28 ¶¶ 1.13, 5.4.

1           4.       Subject to Court approval, the Parties have selected ILYM Group, Inc. (“ILYM”) to act  
2 as the Settlement Administrator, whose final costs are \$6,350. *See* Decl. Brown, ¶ 15; Exhibit A, ¶  
3 1.33; Decl. Rodriguez, ¶ 23. Although ILYM has multiple security and administrative protocols in  
4 place to prevent any issues, it is also sufficiently insured in the event of a data breach or mishandling of  
5 settlement funds.

6           5.       The Parties agree that \$20,000 of the Gross Settlement Amount shall be allocated to  
7 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to  
8 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶  
9 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts  
10 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely  
11 be deemed good faith disputes, and the Court’s discretion to reduce any penalty award, Plaintiff  
12 believes the \$20,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring  
13 non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-10; *see also Nordstrom Com.*  
14 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims  
15 based on their being disputed and being part of a class settlement which was evaluated based on the  
16 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at \*8 n.2  
17 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*  
18 *Open Door Marketing, LLC*, 2018 WL 4773057, \*9 (N.D. Cal. 2018) (approving settlement of PAGA  
19 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016  
20 WL 5462451, \*7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA  
21 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*  
22 *Commc’ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, \*1 (S.D. Cal. 2017) (preliminarily  
23 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int’l, LLC*, 2014 U.S.  
24 Dist. LEXIS 8358, \*5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys’ fees award  
25 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, \*6 (S.D.  
26 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*  
27 *& Co.*, 2010 U.S. Dist. LEXIS 53416, \*2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in  
28 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, \*9 (N.D. Cal.

2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, \*34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at \*7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at \*14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at \*1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The Parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount (\$193,478.33) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. See *id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs in the amount of \$7,107.99. See Exhibit D (Plaintiff's Counsel's Itemized Costs).

7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class Representative Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata basis as set forth in the Agreement. See Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. See Exhibit A, ¶¶ 5.1-5.5.

8. Class Members who fail to timely opt-out of this settlement will waive all Released Class Claims as set forth in the Agreement. See Exhibit A, ¶¶ 1.5, 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. See *id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 180 calendar days of issuance, that remaining amount shall be donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. See Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that

1 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See*  
2 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly  
3 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-  
4 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,  
5 including providing representation for employees in wage claims before the California Labor  
6 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 25-33.

7 **c. Allocation of Settlement Funds**

8 Payment to Participating Class Members and Aggrieved Employees will not require the  
9 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the  
10 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class  
11 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by  
12 the Court. Each Class Member's share will be determined by dividing their total weeks worked within  
13 the Class Period by the total weeks worked by all Class Members within the Class Period. That  
14 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's  
15 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion  
16 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA  
17 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.  
18 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the  
19 Aggrieved Employee's individual share. *See* Exhibit A, at ¶¶ 1.17, 1.29, 5.5, 5.8.

20 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**  
21 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

22 Plaintiff's motion for preliminary approval of the class action settlement was approved by the  
23 Court, in its entirety, on March 5, 2024. To comply with the class members' due process rights, the  
24 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide  
25 notice to the class. The parties provided the class action administrator the names, last known address,  
26 and social security numbers for the class. The class action administrator then updated this information  
27 by doing an address trace for each individual using this information. *See* Decl. Brown, ¶¶ 5-6. Prior to  
28 the Notice Packet being mailed, the Settlement Administrator advised the Parties that the Agreement's

1 escalator clause had been triggered due to an increase in Qualifying Workweeks during the Class  
2 Period beyond the threshold provided for in Paragraph 10.1 of the Agreement. *See* Decl. Brown, ¶ 5.  
3 The Parties met and conferred regarding the increase in Qualifying Workweeks over several weeks,  
4 ultimately confirming the proportional increase to the Gross Settlement Amount of \$60,295.23, which  
5 resulted in a new total Gross Settlement Amount of \$552,795.23. *See id.* The Notice Packet and  
6 estimated Individual Settlement Amounts were updated to reflect the increase to the Gross Settlement  
7 Amount prior to mailing. *See* Exh. A to Decl. Brown. If the Notice Packets were returned as  
8 undeliverable, further investigation was performed and they were re-mailed using updated information.  
9 *See* Decl. Brown, ¶ 8. Of the 225 Notice Packets mailed, only 12 were undeliverable after use of these  
10 methods. *See id.* at ¶¶ 8-10. The Notice Packets included information regarding the requested  
11 attorneys' fees, costs, payment to the LWDA, administration costs, and tax allocations. *See* Exh. A to  
12 Decl. Brown. The average distribution to participating class members is approximately \$1,426.04, the  
13 maximum distribution is approximately \$6,821.40. *See id.* at ¶ 14. No objections to the preliminarily  
14 approved settlement have been made and no Class Members opted out. *See* Decl. Brown, ¶¶ 11-12.

15       It is not required that Class Members be given actual notice of a class settlement; instead, the  
16 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d  
17 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);  
18 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at \*12-14 (N.D. Cal. 2017); *Wright v.*  
19 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.  
20 1994), the Court rejected a class member's argument that he had not received due process because he  
21 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is  
22 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of  
23 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*  
24 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable notices in this case, the  
25 Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not  
26 receive actual notice due to their mailings being deemed undeliverable were still properly held to be  
27 part of the class settlement because they received the best notice practicable under the circumstances.  
28 *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-

1 984 (2019), the California Supreme Court noted that California has adopted a similar approach  
2 regarding providing notice to class members.

3 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice  
4 of Settlement contains all information necessary for a Class Member to assess the litigation, the  
5 settlement, and whether they wanted to participate, object, or opt-out. See Exh. A to Decl. Brown. The  
6 Settlement Administrator utilized a national change of address database, forwarding notices, and skip  
7 tracing in an effort to ensure that all reasonable means were exhausted in attempting to provide Class  
8 Members notice of this settlement. See Decl. Brown, ¶¶ 6-10. Additionally, the entire motion for  
9 preliminary approval, the Notice, and all filings in this matter were available, free of charge, online and  
10 accessible to all Class Members and identified on the class notice. See Exh. A to Dec. Brown, pg. 4. The  
11 content of the notice provided and the manner in which it was provided to Class Members was the best  
12 practicable notice to satisfy due process.

13 **VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE,**  
14 **AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE FACTS OF THIS**  
15 **CASE**

16 A class action may not be dismissed, compromised, or settled without Court approval and the  
17 decision to approve or reject a settlement is committed to the Court's sound discretion. See Cal. Rules  
18 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)<sup>2</sup>; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th  
19 224, 234-35 (2001); see also Cal. Lab. Code §§ 2699(l)(2). However, "[d]ue regard should be given to  
20 what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to  
21 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
22 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,  
23 is fair, reasonable and adequate to all concerned.'" See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,  
24 1801 (1996); see also *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2009); *In re*  
25 *Microsoft I-V Cases*, 135 Cal.App.4th at 723; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581. The law  
26 favors settlement of lawsuits, particularly class actions and other complex cases where substantial  
27 resources can be conserved by avoiding the time, expense, and rigors of formal litigation. See

28 <sup>2</sup>The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. See *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 *Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1117-1118; *In re Microsoft I-V Cases*, 135  
2 Cal.App.4th at 723 n.14; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581; *see also Neary v. Regents of*  
3 *Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992).

4 **a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

5 The purpose of the Court’s final evaluation of a proposed class action settlement is to determine  
6 only whether it is within the proposed settlement is within the range of reasonableness. *See Wershba*,  
7 91 Cal.App.4th at 234-35. If the Court finds a proposed settlement falls within “the range of  
8 reasonableness,” it should grant final approval of the class action settlement. *See, e.g., North County*  
9 *Contr.’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-90 (1994); *Kullar v. Foot*  
10 *Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). Factors to consider in determining whether the  
11 settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense,  
12 complexity and likely duration of further litigation, the risk of maintaining class action status through  
13 trial, the amount offered in settlement, the extent of discovery completed and the stage of the  
14 proceedings, the experience and views of counsel, the presence of a governmental participant, and the  
15 reaction of the class members to the proposed settlement. *See Dunk*, 48 Cal.App.4th at 1801.  
16 However, this Court should begin its analysis with a presumption that the proposed settlement is fair.  
17 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining;  
18 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)  
19 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802;  
20 *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at \*10 (C.D. Cal. 2005) (“It is established that  
21 the absence of a large number of objectors to a proposed class action settlement raises a strong  
22 presumption that the terms of a proposed class settlement action are favorable to the class members”).

23 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**  
24 **Negotiations Between the Parties**

25 Settlement of this case was reached only after substantial investigation and extensive arm’s  
26 length negotiations, which included a full day of mediation. *See Decl. Rodriguez*, ¶¶ 5-8. At all times,  
27 the negotiations were adversarial, although still professional in nature. *See id.*

1                   **ii. The Extent of Investigation and Discovery Completed Provided Ample**  
2                   **Information to Enter Into an Informed and Reasonable Settlement**

3           The Parties were in possession of all necessary information during the negotiations. The Parties  
4 engaged in substantial informal discovery, which included all necessary components for evaluating the  
5 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was in possession of  
6 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to  
7 make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the  
8 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of  
9 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*  
10 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

11                   **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

12           Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA  
13 actions. *See Decl. Rodriguez*, ¶¶ 12-18. Thus, Plaintiff’s counsel are qualified to evaluate the class  
14 claims, the value of settlement versus moving forward with litigation, and viability of possible  
15 affirmative defenses. Plaintiff’s counsel believe that the Agreement is fair, reasonable, and adequate in  
16 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured  
17 benefit to Class Members. *See id.* at ¶ 10.

18                   **iv. No Class Members Objected or Opted Out**

19           The reaction by Class Members to the Agreement and all the terms and allocations stated  
20 therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement  
21 and zero have opted out. *See Decl. Brown*, ¶¶ 11-12. This provides strong evidence that the settlement  
22 is fair, reasonable, and adequate. *See In re Heritage Bond Litig.*, 2005 WL 1594403, at \*10 (“It is  
23 established that the absence of a large number of objectors to a proposed class action settlement raises a  
24 strong presumption that the terms of a proposed class settlement action are favorable to the class  
25 members”); *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal.  
26 2004) (“That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the  
27 Proposed Settlement is fair, just, reasonable, and adequate”).  
28

1                   **v. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**  
2                   **Plaintiff's Case and the Risks and Costs of Further Litigation**

3           Plaintiff's claims and the ability to obtain and maintain certification all the way through trial  
4           were heavily disputed by Defendant. *See* Decl. Rodriguez, ¶¶ 5-9. Based on the records and facts of  
5           this case, Plaintiff has secured a gross recovery of approximately 16.4% of the maximum value of the  
6           claims in this matter and between 45% and 97.5% of the more realistic range of recovery. *See* Decl.  
7           Rodriguez, ¶¶ 9-10. The net recovery represents approximately 10.5% of the maximum value of the  
8           claims in this matter and between 28.9% and 62.5% of the more realistic range of recovery. The  
9           average net award is \$1,426.04, and the maximum award is \$6,821.40. *See* Decl. Brown, ¶ 14.

10          This settlement is a reasonable compromise of the class and PAGA claims, and is within the  
11          percentile ranges of the total available damages that have been approved in other class settlements. *See*  
12          *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139  
13          (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*  
14          *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in  
15          settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than  
16          median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from  
17          2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)  
18          (approving a settlement where the net recovery to class members was approximately 7.5% of the  
19          projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS  
20          130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected  
21          maximum damages available and a net recovery of approximately 6.7% of the projected maximum  
22          recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a  
23          settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);  
24          *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at \*48 (E.D. Cal. 2012) ("Class  
25          Members will receive an average of approximately \$198.70, with the highest payment to a Class  
26          Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is  
27          highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees  
28          requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, at \*18 (S.D. Cal. 2012) ("the

1 results achieved in this case were very favorable. Class members are provided with immediate  
2 monetary relief, with an average award of around several hundred dollars and a minimum award of  
3 \$50”).

4 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

5 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional  
6 information be presented in class action settlements “to ensure that the recovery represents a reasonable  
7 compromise, given the magnitude and apparent merit of the claims being released, discounted by the  
8 risks and expenses of attempting to establish and collect on those claims by pursuing the  
9 litigation . . . .” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399  
10 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure  
11 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*  
12 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff  
13 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that  
14 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

15 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the  
16 data points relied upon in reaching these ranges. See Decl. Rodriguez ¶¶ 9-10. The record  
17 demonstrates that the compromises made by Plaintiff were reasonable and have resulted in a settlement  
18 with recovery percentage well within the range of what has been found to be sufficient in several other  
19 cases. See, *supra*, Section VI.a.v; see also *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th  
20 Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery  
21 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be  
22 disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no  
23 reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a  
24 thousandth part of a single percent of the potential recovery”).

25 **b. Certification of the Class is Appropriate**

26 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-  
27 defined community of interest in the questions of law and fact involved affecting the parties to be  
28 represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three

factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the Court conditionally certified the settlement class on March 5, 2024, and nothing has happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*, 2017 WL 363257 \*4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, \*4 (N.D. Cal. 2017). Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

**i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

The proposed settlement class is ascertainable because all putative Class Members can be readily identified through employee personnel and payroll files. *See Noel*, 7 Cal.5th at 980; *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal.App.4th 1325, 1334 (2008). The numerosity requirement is met because there are 225 Participating Class Members, which makes joinder of all members impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

**ii. The Commonality, Predominance, and Typicality Requirements are Met**

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.<sup>3</sup> *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though

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<sup>3</sup>When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal.App.3d 27, 46-47  
2 (1983).

3 The common questions of law and fact in this case stem from Plaintiff’s contention that  
4 Defendant violated California law by 1) failing to incorporate the value of nondiscretionary incentive  
5 based compensation into Plaintiff’s and putative class members’ regular rates of pay for the purpose of  
6 calculating premium wages owed, 2) failing to provide meal and rest periods in compliance with  
7 California law, 3) encouraging Plaintiff and putative class members to edit their time records to reflect  
8 timely meal periods being taken when, in fact, they had not been taken, 3) refusing to provide all paid  
9 sick leave available, 4) failing to reimburse Plaintiff and putative class members for use of their  
10 personal cell phone for work purposes, and 5) maintaining a criminal conviction policy that unlawfully  
11 required disclosure of arrests not resulting in conviction. *See* Exhibit B. The waiting time penalties,  
12 unfair competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class  
13 Members seek the same remedies under state law. Under these specific circumstances, the  
14 commonality and predominance requirements are satisfied. Regarding the typicality requirement,  
15 Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class  
16 Members did, will request the same remedies, and will rely on the same methods of proof to establish  
17 liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

18 **iii. The Adequacy Requirement is Met**

19 The adequacy of representation requirement is met if the named representative and counsel have  
20 no interests adverse to those of the putative class members and are committed to vigorously prosecuting  
21 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60  
22 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,  
23 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the  
24 number of workweeks they worked for Defendant. *See* Exhibit A. Finally, any settlement class  
25 member who wished to opt-out of the settlement was able to do so, and he or she was also able dispute  
26 the number of workweeks stated in the Notice of Settlement. There is no conflict of interest between  
27 Plaintiff and Class Members. Plaintiff and Plaintiff’s counsel have pursued the class and PAGA wage  
28 and hour claims made in the operative Complaint vigorously on behalf of the class. Although Plaintiff

1 also brought individual claims, they were not negotiated or settled until all material terms of the class  
2 and PAGA settlement were agreed to through an enforceable Memorandum of Understanding. *See*  
3 Decl. Rodriguez, ¶¶ 8, 34; Decl. Prasad, ¶ 9. Additionally, the facts demonstrate that there was no  
4 inappropriate preferential treatment of Plaintiff's individual claims. While the class has secured  
5 approximately 45% and 97.5% of the realistic range of recovery, Plaintiff's individual settlement is  
6 only approximately 16.5% the estimated range of recovery for his individual claims. *See id.* Plaintiff's  
7 counsel has investigated the wage and hour claims and engaged Defendant's counsel in settlement  
8 discussions since January 2023. Moreover, Plaintiff's counsel has experience defending and bringing  
9 wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class  
10 Members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

11 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS, AN**  
12 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND**  
13 **SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE**  
14 **APPROVED**

15 The Notice of Settlement sent to Class Members specifically identified the allocations for  
16 attorney's fees and costs, the Enhancement Payment, and Settlement Administrator Costs. *See* Exh. A  
17 to Decl. Brown. The reaction of Class Members to these requested amounts provides useful evidence  
18 of whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403, at \*21 ("The  
19 absence of objections or disapproval by class members to Class Counsel's fee request further supports  
20 finding the fee request reasonable"). As noted above, there were no objections raised to the Agreement  
21 or any term or allocation therein whatsoever. *See* Decl. Brown, ¶ 12. In addition to Class Members'  
22 reactions supporting the requested amount, the facts and applicable case law also support awarding  
23 these amounts in full.

24 An award of attorney's fees should include compensation for all hours reasonably spent. *See*  
25 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431  
26 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client).  
27 California has not adopted any "benchmark" percentage utilized by several federal courts. *See Emmons*  
28 *v. Quest Diagnostics Clinical Labs, Inc.*, 2017 WL 749018, at \*7 (E.D. Cal. 2017) ("Notably, while  
the California Supreme Court recognized the Ninth Circuit's 25 percent benchmark for percentage

awards in common fund cases, it did not adopt such a benchmark for California cases”). Instead, “[t]he benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61 Cal.App.5th 734, 744 (2021).

a. **A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within the Ranges Historically Approved by Courts in Class Settlements and a Lodestar Cross Check Validates the Proposed Fee**

An award of attorney’s fees under the common fund doctrine is appropriate in this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”). The requested fee, 35% of the common fund, is within ranges awarded in other cases. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, \*22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement).

To the extent there may be some Courts that have granted fees at a percentage less than 35%, that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the treatises or cases discussing these percentages are relying on federal decisions guided by a “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See Emmons*, 2017 WL 749018, at \*7. This artificially lowers the average percentage of fees awarded. Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement fund to begin with, which will generally correspond to a lower percentage of fees being deemed reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of

1 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on  
2 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as  
3 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,  
4 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular  
5 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference  
6 to all the circumstances of the case”).

7 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the  
8 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of  
9 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at  
10 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind  
11 normally billed to a fee-paying client). Class Counsel will have spent approximately 354.4 hours  
12 performing tasks that would normally be billed to any fee playing client in complex litigation after  
13 monitoring the disbursement of all funds and compliance hearing(s). *See Decl. Rodriguez*, ¶ 20;  
14 Exhibit F; *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) (“Because time records are  
15 not required under California law ... , there is no required level of detail that counsel must achieve.”)  
16 (internal quotations omitted). At the prevailing market rates for Class Counsel’s level of experience  
17 and this type of complex litigation, this equates to a lodestar of approximately \$205,770. *See Decl.*  
18 *Rodriguez*, ¶¶ 19-21; *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting  
19 rates were reasonable where they were “within the range of reasonable rates charged by and judicially  
20 awarded comparable attorneys for comparable work”).

21 The reasonableness of Class Counsel’s fee request is also demonstrated by the fact that the  
22 amount requested would not require any multiplier of the lodestar. Multipliers are typically awarded in  
23 contingent fee litigation to compensate counsel for the risk of non-payment:

24 It is an established practice in the private legal market to reward attorneys  
25 for taking the risk of non-payment by paying them a premium over their  
26 normal hourly rates for winning contingency cases. *See Richard Posner*,  
27 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent  
28 fees that may far exceed the market value of the services if rendered on a  
non-contingent basis are accepted in the legal profession as a legitimate  
way of assuring competent representation for Plaintiff who could not  
afford to pay on an hourly basis regardless whether they win or lose.

1 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th  
2 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their  
3 winning the case, must make up in compensation in the cases they win for the lack of compensation in  
4 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the  
5 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive  
6 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither  
7 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or  
8 even higher”). Yet, Class Counsel’s requested fee of \$193,478.33 would actually result in a negative  
9 multiplier. As a result, a lodestar cross check validates the common fund percentage requested and the  
10 Court should grant Plaintiff’s Counsel’s fee request. *See Decl. Rodriguez*, ¶¶ 19-21.

11 **b. Class Counsel’s Expenses and Costs Were Necessarily Incurred to Achieve the Benefit**  
12 **Obtained**

13 The appropriate analysis in determining whether particular costs are compensable is whether  
14 they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*  
15 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees  
16 those out-of pocket expenses that ‘would normally be charged to a fee paying client’”); *Abrams v.*  
17 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8  
18 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek  
19 reimbursement here are categories normally charged to hourly clients and, therefore, should be  
20 reimbursed out of the common fund. *See Decl. Rodriguez*, ¶ 22; Exhibit D.

21 **c. Class Counsel’s Request for A Class Representative Enhancement Payment Is**  
22 **Justified In Light of The Results Achieved for the Class**

23 A service payment to a named plaintiff is intended to recognize their time and effort on behalf  
24 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the  
25 services they provide and the risks they incurred during the course of the class action litigation. *See*  
26 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved  
27 incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to  
28 the class by responding to discovery, participating in the mediation process, and taking the risk of

1 stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*,  
2 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone*  
3 *Termination Fee Cases*, 186 Cal.App.4th at 1393 (approving \$10,000 awards to each of the four (4)  
4 named plaintiffs).

5 In this case, Plaintiff spent approximately 80-90 hours providing substantial support in helping  
6 to secure payment to Class Members. Plaintiff provided and explained a substantial number of  
7 documents critical to helping establish important facts central to this case and participated in substantial  
8 amount of informal discovery. *See Decl. Prasad*, ¶¶ 5-7. Payment of \$10,000.00 to Plaintiff is  
9 appropriate given the risk, assistance, time required, and burden experienced in bringing and resolving  
10 this case, especially since this amount was identified in the Notice of Settlement and no objections to it  
11 have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at \*7-\*8, \*12,  
12 \*27 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class members  
13 were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement); *Dent v. ITC*  
14 *Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at \*9-\*10, \*15-\*16 (D. Nev. 2013) (awarding a \$15,000  
15 representative enhancement out of a \$150,000 settlement for approximately 530 class members).

16 **d. The Court Should Approve the Payment of Settlement Administrator Costs**

17 Since being preliminarily approved as the Settlement Administrator, ILYM Group, Inc., has  
18 carried out its duties as set forth in the Court's order and the Agreement. *See generally See Decl.*  
19 *Brown*. Under the Agreement, a maximum of \$15,000 was set aside for potential Settlement  
20 Administrator Costs. ILYM Group, Inc.'s, final costs are \$6,350.00, well under the potential maximum  
21 Class Members were given notice of. Plaintiff requests that the Court approve payment to the  
22 Settlement Administrator in the amount of \$6,350.00 to compensate it for the costs of administration as  
23 part of the final order approving the Settlement.

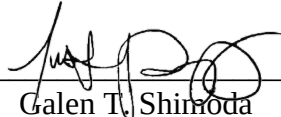
24 **VIII. CONCLUSION**

25 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class  
26 for settlement purposes; grant final approval of the proposed settlement, including the Enhancement  
27 Payment, the payment to the LWDA under PAGA, payment of Settlement Administrator Costs, and  
28 Class Counsel's application for reasonable attorneys' fees and costs; find that the Notice of Settlement,

1 and administration process satisfied Class Members' due process rights; and approve the proposed  
2 order submitted concurrently herewith.

3  
4 **Shimoda & Rodriguez Law, PC**

5  
6 Dated: August 12, 2024

By: 

Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

Attorneys for Plaintiff

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD  
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 FINAL  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

Date: September 6, 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 Final Approval of Class Action and PAGA Settlement (“Motion”). A true and correct copy  
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) in  
7 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 Timothy J. Long, and Michael A. Wertheim  
12 of Greenberg Traurig, LLP. From the beginning, Defendant has contested the merits of the wage and  
13 hour claims, the suitability of the case for class action or representative treatment, the manageability of  
14 the case at trial, and Plaintiff's ability to prove a violation in each pay period for each employee among  
15 other defenses and contentions they made challenging the propriety of this action. Defendant further  
16 contended, even assuming there was a finding supporting the imposition of PAGA penalties, that the  
17 Court would likely exercise its discretion to substantially reduce any such penalties owed based on  
18 evidence of good faith attempts to comply with California Labor Code obligations by Defendant.  
19 Notwithstanding its agreement to settle this matter, Defendant believe the practices Plaintiff is  
20 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state  
21 and federal employment laws with respect to Plaintiff and Class Members. Also, Defendant has  
22 contended that this matter is not appropriate for class certification outside of this proposed class  
23 settlement.

24 6. Based on the expected testimony from Plaintiff and Class Members, a review of  
25 Defendant's policies and procedures and other documents relating to the alleged claims, information on  
26 the number of Class Members, Class Members' dates of employment, and a representative sample of  
27 Class Members' time and payroll data, the scope of the potential damages to Plaintiff and Class  
28 Members in light of the claims alleged, the uncertainty in the law with regard to certification, and the

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

13         7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our  
14 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the wage  
15 and hour claims and potential damages for such claims. The parties engaged in informal discovery and  
16 exchange of documents, including a representative sampling of employee data, covering timecard data,  
17 paystubs, payroll data and relevant handbooks, bulletins, and memoranda containing Defendant's  
18 policies for the entirety of the statute of limitations applicable to the alleged wage and hour claims. The  
19 discovery covered all aspects of these claims, including certification issues, merits issues, damages, the  
20 scope and configuration of Class Members, the content and implementation of the wage and hour  
21 policies at issue, issues relating to manageability concerns at trial, among other relevant areas. From  
22 this production we were able to determine information critical to a reliable damages analysis such as the  
23 average hourly rate, average daily hours worked, shifts eligible for meal and rest periods and the number  
24 of potential shifts that may correspond to liability under our theories of liability, the average number of  
25 workweeks and pay periods that had potential violations based on the asserted claims, the frequency  
26 with which violations occurred in a given week and/or pay period, and the number of former employees.  
27 This information allowed my office to assess both liability and damages and create an accurate damages  
28 model. Plaintiff assisted in all aspects of this litigation including providing factual information relating

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

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

24 9. The following represents the potential maximum recovery for each of Plaintiff's claims  
25 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,  
26 including a sample of time and payroll records for Class Members. At the time of mediation when the  
27 claims were being negotiated and settled, there were 9,572 workweeks in the Class Period, 2,675  
28

1 PAGA pay periods, an average base hourly rate of \$17.42, and an average overtime rate of \$26.13,  
2 which resulted in the following damages calculations:

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

1 Class Members could be appropriately compensated. Furthermore, the average  
2 unpaid hours worked per week was relatively small such that they only amounted  
3 to 15 minutes per week. A small amount of unpaid hours per week such as this  
4 creates substantial risk because even minute differences by a fact finder for what  
5 the unpaid hours were, if any, can have a large impact on the total damages. A  
6 difference of 5 minutes per week could reduce the amount of total damages for  
7 this theory of liability by a third. Similarly, the small number of instances of not  
8 paying the correct minimum wage (0.7% of workweeks) could cause risks for  
9 establishing numerosity if certification ultimately had to be sought through  
10 subclasses on a claim-by-claim basis. Furthermore, the small frequency rate  
11 creates a risk that the Court could agree with Defendant's arguments of  
12 inadvertent error despite prophylactic policies, potentially eliminating liquidated  
13 damages for this theory of liability as well. See Cal. Lab. Code § 1194.2(b) (a  
14 good faith dispute as to liability can avoid imposition of liquidated damages).  
15 Taking these factors into account, the more realistic range of recovery for this  
16 claim is between \$0 to \$8,868.65;

17 b) Unpaid Overtime: There are two bases for this claim. First, Defendant failed to  
18 pay Plaintiff and Class Members for all hours worked due to Class Members  
19 working during times they were clocked out for meal periods and Defendant's  
20 encouragement of Class Members to edit the timing of their meal periods. Based  
21 on the payroll records and Plaintiff's investigations, the maximum amount of  
22 damages for this theory of liability is approximately \$62,529.09. This theory of  
23 liability is based on the same facts supporting the minimum wage claim  
24 discussed above and, therefore, is subject to the same risks. The second theory  
25 of liability for the overtime claim is that Defendant failed to properly calculate  
26 the regular rate of pay by failing to incorporate the value of nondiscretionary  
27 incentive-based compensation into the regular rate when paying overtime  
28 premiums. Approximately 50.7% of all workweeks were affected by this claim,

1 *i.e.* the incentive compensation was earned in the same workweek that overtime  
2 hours were worked. The average weekly value of the incentive compensation  
3 attributable to weeks in which overtime was worked is approximately \$131.22,  
4 the average regular weekly hours worked was approximately 35.81, and the  
5 average amount of overtime worked per week was 0.99 hours. This equated to  
6 approximately \$1.77 in unpaid overtime per week for those weeks affected, for a  
7 maximum of \$8,589.82 in total damages under this theory of liability. Although  
8 this theory of liability for overtime was not without its risks, this is a relatively  
9 small amount of damages at issue. For purposes of the *Kullar* analysis, we are  
10 assuming we would be successful in certification, on the merits, and prove  
11 damages in exactly the amount calculated based on the sample. Based on the  
12 risks associated with the overtime claim as a whole, a more realistic range of  
13 recovery is between \$8,589.82 and \$31,264.55;

14 c) Meal Periods: This claim is based on the allegations that Defendant regularly  
15 failed to provide meal periods owed to Plaintiff and Class Members due to high  
16 workloads and nature of the work. Plaintiff contended that Defendant effectively  
17 discouraged and prevent breaks from occurring because employees were rated  
18 against their ability to coordinate cargo loads that created a net profit based on  
19 the difference between the quoted cost to the carrier and the amount a driver  
20 actually agreed to haul the load for. Plaintiff contended these coordination  
21 discussions were regularly at their peak during the times that employees would  
22 otherwise need to take their breaks. Plaintiff contended that employees were  
23 encouraged by supervisors to always take calls and/or not to end calls to  
24 coordinate the loads because failure to do so often resulted in being unable to  
25 effectively place the load with a driver for a net profit. Plaintiff contended the  
26 payroll records demonstrated approximately 15.7% of shifts had a unique meal  
27 period violation, *i.e.* no meal period recorded for work over five hours, no  
28 second meal period for work over ten hours, and untimely meal periods. Based

on an average of approximately four shifts per week of at least five hours, this resulted in a maximum of approximately \$104,715.38 in unpaid meal period premiums. This amount does not take into account any potential risks associated with this claim, which was heavily disputed. For example, the timecards filled out by Class Members had spaces for them to notate any missed or late breaks, so Class Members could be appropriately compensated. Despite the time records showing presumptive violations, several entries also included statements by the Class Member as to why a meal period was missed. Defendant contended that these statements demonstrated that any missed meal period was a personal choice by the Class Member. Plaintiff contended that any such information was written as a result of supervisor instruction to make it appear that there was no violation when, in fact, the employee was working through their breaks at the direction of their supervisor to coordinate cargo loads. This dispute created a very substantial risk to Plaintiff's ability to certify the class and establish liability. Even to the extent Plaintiff established liability, these facts created a substantial risk that any damages would be greatly reduced based on how many instances a fact finder determined were the result of a personal choice to forgo a meal period. While Plaintiff also contended that Defendant's meal period policy was facially unlawful, this related to the failure to authorize second meal periods, not meal periods in general. Of the 15.7% violation rate Plaintiff contends was demonstrated by the payroll records alone, only approximately 1% of these were based on instances of a failure to provide a second meal period. Taking these factors into account, a more realistic range of recovery for this claim is between \$6,669.77 and \$52,357.69;

d) Rest Breaks: This claim was based on the same allegations as the meal period claim. Plaintiff contended that Class members were not provided with lawful rest periods approximately 40% of the time. Based on Plaintiff's investigations and the payroll records, this equates to a maximum exposure of approximately

1 \$266,790.78. However, this does not account for the risk associated with this  
2 claim. Because this claim is based on the same factual basis as the meal period  
3 claims, it is also subject to the same risks as detailed above. Additionally, while  
4 Plaintiff also contended Defendant's rest period policy was unlawful due to the  
5 failure to include "*major fraction thereof*" authorizing language, less than 5% of  
6 shifts were of a length that would equate to a violation under this theory of  
7 liability, *i.e.* shifts between 3.5 and 4 hours, between 6 and 8 hours, and between  
8 10 and 12 hours. Additionally, this claim does not benefit from any presumptive  
9 violation based on time records under the law like meal period claims do.  
10 Taking these factors into account, a more realistic range of recovery for this  
11 claim would be between \$0 to \$33,348.85;

12 e) Reimbursement: This claim was based on Plaintiff's contention that he and Class  
13 Members were required to communicate with managers, supervisors, and other  
14 employees using their personal cell phones via Microsoft Teams. Also, Plaintiff  
15 and Class Members used their personal cell phones to lock and unlock doors of  
16 their office, access payroll data via accessing Gusto website, and clocking in and  
17 out using their cell phones. The maximum exposure for this claim is  
18 \$100,061.54, which is based on a monthly cell phone bill of approximately \$100  
19 and 50% work usage rate. This amount does not take into account any potential  
20 risks associated with this claim. Defendant heavily disputed whether use of  
21 personal cell phones was required given the presence of company computers and  
22 phones available on premises. Defendant contended that the use of any  
23 applications on a personal device was, at most, a personal choice of convenience  
24 by Class Members. Furthermore, it is unlikely that Class Members all had their  
25 own standalone cell phone plans as opposed to being billed as additional lines on  
26 a pre-existing plan. In my experience there has always been a range of  
27 individuals whose cell phone plans are \$30-\$60 per month as additional lines on  
28 a pre-existing plan. Thus, it is unlikely that the full amount of damages Plaintiff

1 calculated would be established even if Plaintiff was successful in certifying the  
2 class and establishing liability. Based on these risks, I believe a more realistic  
3 range of recovery for this claim would be between As a result, a realistic range  
4 of recovery for this claim would be between \$33,126.48 to \$80,062.42;

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

21 g) Waiting Time Penalties: This claim is derivative of the minimum wage,  
22 overtime and meal and rest period claims above. The maximum exposure for  
23 this claim is \$572,769.60. However, this amount assumes that every former  
24 employee within the statute of limitations would be found to have unpaid wages  
25 owed to them and does not take into account the potential risks associated with  
26 this claim. Plaintiff's strongest claim for waiting time penalties was the failure  
27 to properly calculate the regular rate of pay for overtime premiums. However,  
28 this did not affect everyone within the waiting time penalty statute of limitations

1 because not all Class Members earned incentive-based compensation over the  
2 same workweek as overtime hours were worked. Approximately only half of  
3 Class Members were affected under this theory of liability. Similar to the  
4 liquidated damages for minimum wage violations, there is a potential good faith  
5 dispute defense to waiting time penalty claims. *See Diaz v. Grill Concepts*  
6 *Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Based on the disputes over every  
7 other theory of liability, I believe a more realistic recovery for this claim would  
8 be \$286,384.80;

- 9 h) Unlawful Criminal Conviction and Disclosure of Criminal Records: This claim  
10 was based on Plaintiff's contention that Defendant unlawfully required the  
11 disclosure of criminal convictions and criminal records. After further review of  
12 the applicable law, I believe the likely value of this claim is \$0. As phrased,  
13 Labor Code section 432.7 has been found to only apply to applicants, not  
14 employees. *See Faria v. San Jacinto Unified School Dist.*, 50 Cal.App.4th 1939,  
15 1947 (1996). Plaintiff's claim for violation of Labor Code 432.6 is predicated on  
16 Labor Code section 432.7 and section 432.6 is similarly framed in relation to *an*  
17 *applicant* not *an employee*. Thus, it is subject to the same analysis applied in  
18 *Faria* that found Labor Code section 432.7 inapplicable to employees;
- 19 i) PAGA: The applicable civil penalties for PAGA claims varies depending on  
20 whether the statute already has an associated civil penalty or whether the default  
21 penalty structure of \$100 for "initial violations" and \$200 for "subsequent  
22 violations" of the PAGA is used. *See Cal. Lab. Code § 2699(f)*. Regardless of  
23 whether a specified or default penalty structure is used, an employer may only be  
24 liable utilizing "initial violation" valuations unless there is prior notice, through  
25 Court or administrative decision, that its practices are unlawful. *See Amaral v.*  
26 *Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). As noted above,  
27 based on our research, we did not find any prior Labor Commissioner or court  
28 decisions that stated Defendant's practices and/or policies at issue were improper

1 or unlawful. As such, a “subsequent violation” may not be found for penalty  
2 calculation purposes, and the exposure analysis here is based on an “initial  
3 violation” valuation being adopted by any fact finder if this matter went to trial.  
4 Additionally, this claim is derivative of the Labor Code violations identified  
5 above and would be subject to all the same risks as the underlying claims it is  
6 based on. Based on Settlement Class Members’ payroll data, applicable civil  
7 penalty amounts for an initial violation of each statute, the maximum recovery  
8 for this claim is \$1,711,610.40. After accounting for the risks each claim has as  
9 stated above, the more realistic upper range of recovery for the PAGA claim is  
10 \$761,960.90. In addition to the risks on the merits, I believe the Court may  
11 exercise its discretion to reduce PAGA penalties in this case. Courts are  
12 statutorily authorized to use their discretion to reduce penalties and the range of  
13 discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt.,*  
14 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien,*  
15 *Inc.*, 2011 U.S. DIST. LEXIS 154590, \*9 (C.D. Cal. 2011) (82% reduction).  
16 The 82% reduction equates to roughly \$9-\$50 worth of civil penalties per pay  
17 period per employee depending on the total potential value of the civil penalty  
18 (*i.e.* \$50-\$200), which is more in line with actual awards based on my experience  
19 and review of awards in other cases. Thus, the total exposure may be cut to  
20 approximately \$137,152.96 (82% reduction) to \$533,372.63 (30% reduction). It  
21 is important to note that this discretionary reduction is completely separate and in  
22 addition to any risks on the merits. Allocating \$20,000 to the PAGA claims in  
23 this case is appropriate, especially in light of amounts that Courts have approved  
24 as reasonable valuations in other cases. *See Nordstrom Com. Cases*, 186  
25 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA  
26 claims based on their being disputed and being part of a class settlement which  
27 was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med.*  
28 *Staffing Sols., Inc.*, 2022 WL 2318173, at \*8 n.2 (E.D. Cal. 2022) (collecting

1 cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open*  
2 *Door Marketing, LLC*, 2018 WL 4773057, \*9 (N.D. Cal. 2018) (approving  
3 settlement of PAGA claims at 0.6% of total estimated value due to risk of no  
4 recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, \*7 (N.D. Cal. 2016)  
5 (approving \$10,00 PAGA settlement allocation where total PAGA penalty  
6 exposure was approximately \$5.2 million, or 0.2% of total estimated value);  
7 *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, \*1  
8 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000  
9 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, \*5 (S.D.  
10 Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award  
11 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist.  
12 LEXIS 118764, \*6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in  
13 \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist.  
14 LEXIS 53416, \*2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in  
15 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS  
16 33900, \*9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000  
17 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, \*34-35 (E.D.  
18 Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement  
19 even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total  
20 estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS  
21 160052, at \*7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a  
22 \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at  
23 \*14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement  
24 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at \*1 (N.D. Cal.  
25 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9  
26 million common-fund settlement).

27 10. In summary, the original Gross Settlement Amount of \$492,500 equals approximately  
28 16.4% of the maximum value of the claims in this matter and between 45% and 97.5% of the more

1 realistic range of recovery. Although the total Qualifying Workweeks have increased and caused the  
2 total Gross Settlement Amount to increase to \$552,795.23, the relative percentage value of the  
3 Settlement will remain the same because the increase in the Gross Settlement Amount is directly  
4 proportional to the increase in Qualifying Workweeks. After accounting for the increase to the Gross  
5 Settlement Amount due to the escalator clause and deducting the proposed allocations for attorneys'  
6 fees and costs, any Enhancement Payment to the Class Representative, Settlement Administrator Costs,  
7 and the PAGA Payment to the LWDA, the net recovery under the Agreement, \$315,858.91, represents  
8 approximately 10.5% of the maximum value of the claims in this matter. The net recovery also  
9 represents between 28.9% and 62.5% of the more realistic range of recovery. The average net award is  
10 approximately \$1,426.04. I believe the Agreement represents a reasonable compromise of claims based  
11 on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and  
12 ensure Class Members receive some compensation, rather than proceed to further litigation and  
13 potentially recover nothing, was a motivating factor in reaching this Agreement.

14 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office  
15 agreed to take this case on a contingency basis, meaning that we would take a percentage of any  
16 settlement or judgment should we recover a monetary amount. We took a risk that we would not  
17 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case  
18 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to  
19 make sure employees are able to find affordable representation in order to ensure that employers are  
20 complying with all their legal obligations towards employees and paying employees all their hard-  
21 earned wages. We rely on attorneys' fee awards in order to continue working to ensure California  
22 wage and hour protections are enforced. Recovery of our full lodestar plus an appropriate multiplier is  
23 necessary to compensate for the risk undertaken. Otherwise, we could not continue to represent  
24 employees who are denied wages, but whose cases may be time-consuming and difficult to prove.  
25 There have been many class cases we have litigated where ultimately, we get zero for our time because  
26 we are unable to meet certification requirements or the company becomes financially insolvent.  
27 Additionally, there are occasions, where the fee recovered actually results in a negative multiplier of  
28 our lodestar.

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

13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number of seminars covering issues in wage and hour litigation in general and complex class and PAGA litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in

2019 and was the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act (“FLSA”) claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

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

- 1 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 2 Ct.);
- 3 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 4 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 5 00209613 (Sac. Sup. Ct.);
- 6 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 7 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 8 00222101 (Sac. Sup. Ct.);
- 9 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 10 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 11 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 12 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 13 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 14 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 15 Ct.);
- 16 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 17 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 18 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 19 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 20 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 21 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 22 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 23 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 24 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 25 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 26 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 27 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 28 • *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. Ovations 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 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association - PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is

1 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and  
2 Federal Courts, including up to certification, settlement, preliminary and final approval, and  
3 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.  
4 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel  
5 include the following:

- 6 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 7 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 8 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 9 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 10 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 11 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 12 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 13 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 14 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.  
15 Sup. Ct.);
- 16 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 17 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.  
18 Ct.);
- 19 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.  
20 Ct.);
- 21 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.  
22 Sup. Ct.);
- 23 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 24 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.  
25 Ct.);
- 26 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 27 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-  
28 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. 34-2007-300000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);

- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on the written and oral discovery, including defending a PAGA representative's deposition, drafting special interrogatories and request for production of

documents, calculating class-wide damages, communicating with class representatives, drafting mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely revolves around wage and hour matters, including PAGA claims.

19. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant to *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiff and Plaintiff's Counsel have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides a good result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. There was substantial risk in agreeing to take this case on a contingency basis and as a class action with the possibility that our firm would not receive any compensation their time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. In my experience, the

attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically approved in wage and hour class action litigation. This includes awards in Sacramento County Superior Court. Moreover, in November 2022, this Court approved a fee request of 35% and the same hourly rates for Mr. Shimoda and myself, in connection with a motion for final approval of a wage and hour class action settlement in *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.).

20. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this case. The total lodestar is approximately \$205,770 based on approximately 354.4 hours, which includes approximately 10 hours of time for myself preparing for and attending the final approval hearing, ensuring compliance and the disbursement of funds consistent with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Konini and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. A true and correct copy of the summary chart is being filed with this Motion as Exhibit F. These hours do not include any time associated with Plaintiff's non-wage and hour individual claims as those hours were excluded from the totals during our review of billing entries. In reviewing the entries, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

| <u><b>Timekeeper</b></u> | <u><b>Hours</b></u> | <u><b>Rate</b></u> | <u><b>Lodestar</b></u> |
|--------------------------|---------------------|--------------------|------------------------|
| Galen T. Shimoda         | 85.1                | \$725              | \$61,697.50            |
| Justin P. Rodriguez      | 148.1               | \$625              | \$92,562.50            |
| Renald Konini            | 121.2               | \$425              | \$51,510.00            |
| <b>Total:</b>            | <b>354.4</b>        | <b>--</b>          | <b>\$205,770.00</b>    |

1           21.     I believe the requested rates are within the prevailing market rates for Sacramento  
2 County and elsewhere. Mr. Konini, myself, and Mr. Shimoda have approximately 8 years, 12 years,  
3 and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions.  
4 Again, this Court approved these rates for myself and Mr. Shimoda in November 2022. *See Strawn v.*  
5 *Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). Mr. Konini was  
6 approved at the requested rate in connection with a wage and hour class action in Sacramento County  
7 Superior Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A*  
8 *Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Awarding fees at the  
9 hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. *See*  
10 *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the  
11 request of \$193,478.33 (35%) for attorneys' fees is justified given the results obtained on behalf of the  
12 class.

13           22.     Although the Agreement set out a maximum of \$10,000.00 for potential attorney's costs,  
14 the total costs incurred through a compliance hearing by Class Counsel is \$7,107.99. A true and correct  
15 copy of my firm's itemized costs incurred prior to the filing of this Motion and the expected costs  
16 incurred through the final approval and compliance hearings is attached to this declaration as Exhibit D.  
17 The difference in the actual costs and the maximum amount allocated under the Agreement will be  
18 added to the Net Settlement Amount and disbursed to Participating Class Members.

19           23.     I have used several class action administrator companies in the wage and hour class  
20 actions I have resolved in the past and believe ILYM Group, Inc will provide the best service to  
21 administer the proposed class settlement. ILYM Group, Inc. has procedures in place to protect the  
22 security of class data as well as insurance. Under the settlement the difference between the originally  
23 allocated \$15,000 and the actual administration costs of \$6,350 will be paid to Participating Class  
24 Members on a pro rata basis.

25           24.     A copy of the Agreement and the entire Motion was submitted to the LWDA for review  
26 at the same time the Motion was submitted to the Court pursuant to California Labor Code section  
27 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were  
28

provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

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

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

27. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to their current or former employment. This assistance regularly includes, but is not limited to, free legal advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal forms, and direct representation in administrative hearings, including administrative hearings in front of the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator who provide assistance, along with experienced employment law attorney volunteers. These services have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP and continuing through today under CPB.

28. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-on-one legal consultations for low-wage workers. The CFWR discusses employment issues with

workers and advises them as to the available legal remedies. In addition to individual counseling on employment issues, the CFWR educates workers, unions, and community members about workplace laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

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

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

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

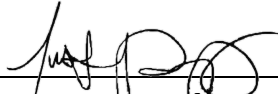
32. I have volunteered for both organizations numerous times over the past several years, either directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB’s advisory committee. These organizations are non-profits that assist low-income workers throughout California, giving free legal advice regarding employment law issues and representing employees with wage claims before the California Labor Commissioner. I have witnessed firsthand the quality service and attention these entities provide to individuals in need of employment law advice and representation at the California Labor Commissioner.

33. Galen T. Shimoda has volunteered for both organizations on and off over the past several years through either presenting wage and hour seminars to law students who staff the free advice clinics or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer

1 work with either organization since approximately March 2020. Mr. Shimoda has never received  
2 payment or compensation of any kind in connection with any work he's done with either of the proposed  
3 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro  
4 Bono, Inc. or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, nor Mr. Shimoda  
5 have ever received any compensation, direct or indirect, for designating CFWR or CPB as *cy pres*  
6 beneficiaries or in connection with any of the volunteer work we have done with the organizations.

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

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
2 true and correct. Executed on August 12, 2024, in Elk Grove, California.

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5 Justin P. Rodriguez  
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Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD  
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 GARVIN BROWN OF  
ILYM GROUP, INC., IN SUPPORT OF  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

Date: September 6, 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, Garvin Brown, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am a Case  
3 Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional settlement  
4 services provider who has been retained by the Parties’ Counsel and subsequently appointed by the  
5 Court to serve as the Claims Administrator for the above captioned *Prasad vs. RCG Logistics LLC*,  
6 matter. I am authorized to make this declaration on behalf of ILYM Group and myself. I have personal  
7 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to  
8 such facts.

9 2. ILYM Group has extensive experience in administering Class Action Settlements,  
10 including direct mail services, database management, claims processing and settlement fund  
11 distribution services for Class Actions ranging in size from 26 to 4.5 million Settlement Class  
12 Members.

13 3. ILYM Group was engaged by the Parties’ Counsel and subsequently approved and  
14 appointed by the Court to provide notification services and claims administration, pursuant to the terms  
15 of the Settlement, in the above referenced Action. Duties performed to-date and to be performed after  
16 Final Approval of the Settlement is granted, include: (a) printing and mailing the *Notice of Proposed*  
17 *Class Action and PAGA Settlement, and Hearing Date For Final Court Approval of Settlement*  
18 (collectively referred to as “Notice Packet”); (b) receiving and processing requests for exclusion; (c)  
19 resolving Settlement Class Members’ disputes over the number of workweeks Defendants have record  
20 of them working during the Class Period, which was pre-printed on their individualized Notice Packet;  
21 (d) calculating individual settlement award amounts; (e) processing and mailing settlement award  
22 checks; (f) handling tax withholdings as required by the Settlement and the law; (g) preparing, issuing  
23 and filing tax returns and other applicable tax forms; (h) handling the distribution of any unclaimed  
24 funds pursuant to the terms of the Settlement; and (i) performing other tasks as the Parties mutually  
25 agree to and/or the Court orders ILYM Group to perform.

26 4. On March 5, 2024, ILYM Group received the Court approved text for the Notice Packet  
27 from Counsel for Plaintiff. ILYM Group prepared a draft of the formatted Notice Packet, which was  
28 approved by the Parties’ Counsel prior to mailing.

1           5.       On March 19, 2024, ILYM Group received the class data file from Counsel for  
2 Defendants, which contained the name, social security number, last known mailing address, last known  
3 telephone number, and employment dates for each Settlement Class Member. The data file was  
4 uploaded to our database and checked for duplicates and other possible discrepancies. The Class List  
5 contained 225 individuals who worked 10,743.87 workweeks. Following the transmission of the class  
6 data file, ILYM Group informed the Parties that the Escalator Clause of the Settlement Agreement had  
7 been triggered. Specifically, the Escalator Clause provides that if the number of workweeks is more  
8 than 10% over 9,572, then the Gross Settlement Amount shall increase commensurate with the increase  
9 in the size of the workweeks. Due to the Escalator Clause being triggered, ILYM Group calculated the  
10 additional amount owed to be \$60,295.23, increasing the Gross Settlement amount to \$552,795.23 On  
11 or about May 9, 2024, all Parties confirmed the increase to the Gross Settlement Amount.

12           6.       As part of the preparation for mailing, all 225 names and addresses contained in the  
13 Class List were then processed against the National Change of Address (“NCOA”) database,  
14 maintained by the United States Postal Service (“USPS”), for purposes of updating and confirming the  
15 mailing addresses of the Settlement Class Members before mailing of the Notice Packet. The NCOA  
16 contains requested change of addresses filed with the USPS. To the extent that an updated address was  
17 found in the NCOA database, the updated address was used for the mailing of the Notice Packet. To  
18 the extent that no updated address was found in the NCOA database, the original address provided by  
19 Counsel for Defendants was used for the mailing of the Notice Packet.

20           7.       On May 17, 2024, the Notice Packet was mailed, via U.S First Class Mail, to all 225  
21 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct copy of the  
22 mailed Notice Packet.

23           8.       As of the date of this declaration, 28 Notice Packets have been returned to our office as  
24 undeliverable. ILYM Group performed a computerized skip trace on the 28 returned Notice Packets  
25 that did not have a forwarding address in an effort to obtain an updated address for the purpose of re-  
26 mailing the Notice Packet. As a result of this skip trace, 16 updated addresses were obtained and the  
27 Notice Packets were promptly re-mailed to those Settlement Class Members, via U.S First Class Mail.

28 ///

9. As of the date of this declaration, a total of 16 Notice Packets have been re-mailed. Specifically, 16 have been re-mailed as a result of ILYM Group's skip tracing efforts.

10. As of the date of this declaration, a total of 12 Notice Packets have been deemed undeliverable as no updated address was found, notwithstanding the skip tracing.

11. As of the date of this declaration, ILYM Group has not received any requests for exclusion. The deadline to request exclusion from the Settlement was July 16, 2024.

12. As of the date of this declaration, ILYM Group has not received any objections to the Settlement. The deadline to file an objection to the Settlement was July 16, 2024.

13. As of the date of this declaration, ILYM Group will report a total of 225 Participating Class Members, representing 100% of the 225 Settlement Class Members.

14. Participating Class Members will receive a proportional share of the Net Settlement Fund through individual settlement payments, calculated by a pro-rata formula, based on the number of workweeks worked by Class Members during the Class Period. The Net Settlement Fund is the amount remaining after deduction of the Court-approved payments from the Gross Settlement Fund for Class Counsel Fees and Litigation Costs, the Class Representative Enhancement Award, Claims Administration Fees to ILYM Group, LWDA and the PAGA allocation, e.g.,

|                                   |                     |
|-----------------------------------|---------------------|
| <b>Gross Settlement Amount</b>    | <b>\$552,795.23</b> |
| Class Counsel Fees                | \$193,478.33        |
| Class Counsel Costs/ Expenses     | \$7,107.99          |
| Enhancement Award - Naveen Prasad | \$10,000.00         |
| ILYM Group Fees                   | \$6,350.00          |
| LWDA                              | \$15,000.00         |
| PAGA Allocation                   | \$5,000.00          |
| <b>Net Settlement Fund</b>        | <b>\$315,858.91</b> |

To determine a Participating Class Member's individual settlement award payment, the Net Settlement Fund will be divided by the total number of workweeks worked by all Participating Settlement Class Members during the Class Period, multiplied by the number of workweeks worked by that Participating

1 Class Members. Based on these calculations, the Participating Class Members will receive an estimated  
2 average gross payment of \$1,426.04, with the estimated highest gross payment being \$6,821.40.

3 15. ILYM Group's total fees and costs for services in connection with the administration of  
4 this Settlement, which includes fees and costs incurred to date, as well as anticipated fees and costs for  
5 completion of the settlement administration, are \$6,350.00. ILYM Group's work in connection with this  
6 matter will continue with the calculation of the settlement award payments, issuance and mailing of the  
7 settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that  
8 the Parties mutually agree to and/or the Court orders ILYM Group to perform.

9 I declare under penalty of perjury under the laws of the State of California and the United States  
10 that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed  
11 this 9<sup>th</sup> day of August 2024, at Tustin, California.

12 *Garvin Brown*

13 \_\_\_\_\_  
14 GARVIN BROWN  
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# **EXHIBIT “A”**

**CALIFORNIA SUPERIOR COURT  
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,

Defendant.

Case No. **34-2023-00337623**

**NOTICE OF PROPOSED CLASS ACTION AND  
PAGA SETTLEMENT, AND HEARING DATE FOR  
FINAL COURT APPROVAL OF SETTLEMENT**

**ATTENTION:** All individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between April 5, 2019, to January 27, 2024 (the “Class Members”).

**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.**

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Naveen Prasad (“Plaintiff” or “Class Representative”), and Defendant RCG LOGISTICS LLC (“Defendant”) on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked «MERGED\_ClassWW\_CALC» weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be \$«MERGED\_EstClassAmnt\_CALC». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

**I. BACKGROUND OF THE CASE**

On April 7, 2023, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2023-00337623. The Class Period is between April 5, 2019, to January 27, 2024 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premium in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to pay final wages, 7)

failing to pay reimbursements for expenses, 8) failing to maintain accurate records, 9) failing to provide paid sick leave, 10) failing to provide commission contracts in writing, 10) failing to comply with limitations on employers regarding inquiring into criminal history and waivers relating thereto, 11) engaging in unfair competition, 12) retaliating and disability discrimination in violation of Fair Employment and Housing Act ('FEHA'), 13) failing to accommodate and engage in the interactive process, 14) failing to prevent discrimination, and 15) committing PAGA violations. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between April 5, 2019, to January 27, 2024. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between April 5, 2022, to January 27, 2024. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

### **A. The Amount of the Settlement**

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Five Hundred Fifty-Two Thousand Seven Hundred Ninety-Five Dollars and Twenty-Three Cents (\$552,795.23) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$15,000, Class Representative's Enhancement Payment of Ten Thousand Dollars (\$10,000), and \$20,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

### **B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees**

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks

worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined April 5, 2022, up to January 27, 2024. Defendant's records indicate that you worked «MERGED\_PAGAWW\_CALC» weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be \$«MERGED\_EstPAGAAmnt\_CALC». This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

**C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes**

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than July 16, 2024. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

**D. Release of Claims**

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, as well as each of Defendant's affiliated entities, related companies, former and present owners, officers, shareholders or directors, direct and indirect parent companies, subsidiaries, successors, assigns, executives, employees, agents, attorneys, predecessors, payroll processing providers, payroll funding companies, or insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

**III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER**

**A. Participating in the Settlement as a Class Member**

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

**B. Excluding Yourself from the Settlement as a Class Member**

The Court will exclude you from being a Class Member if you request this by July 16, 2024. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Prasad v. RCG Logistics, LLC*, 34-2023-00337623); (d) be signed; and (e) be post-marked no later than July 16, 2024. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

Prasad v. RCG Logistics, LLC  
c/oILYM Group, Inc.  
P.O. Box 2031  
Tustin, CA 92781

If you submit a request to opt out which is not postmarked by July 16, 2024, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

**C. Objection to Settlement**

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* *Prasad v. RCG Logistics, LLC*, 34-2023-00337623); (e) be signed; and (f) be post-marked no later than July 16, 2024. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

In addition to submitting a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

**IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS**

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at its Public Portal (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=Home>). Follow the prompts to create your free online account, click “Search,” then click “Case Number Search.” Enter the case number, 34-2023-00337623, and select “unlimited civil” for case type in the appropriate fields. This search will result in a clickable link taking you to the register of actions and all filed documents in this case. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

**V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in Department 23, Gordon D. Schaber Superior Court, 720 9<sup>th</sup> Street, Sacramento, CA 95814, on September 6, 2024, at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and costs, the Settlement Administrator Costs, and the Class Representative’s Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

You may appear remotely at the final approval hearing using the following access information:

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>.  
To join by phone: (833) 568-8864 / ID: 16108301121.

**VI. ADDITIONAL INFORMATION**

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Public Portal web address identified in Section IV above. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda  
Justin P. Rodriguez  
Renald Konini  
Shimoda & Rodriguez Law, PC  
9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733  
***On behalf of Plaintiff***

Timothy J. Long  
Michael A. Wertheim  
Greenberg Traurig, LLP  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814  
Phone: 916-868-0600  
Fax: 916-448-1709  
***On behalf of Defendant***

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888) 250-6810  
BY ORDER OF THE COURT**

**Prasad vs. RCG Logistics LLC**

c/o ILYM Group, Inc.

P.O. Box 2031

Tustin, CA 92781

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VMIT

ILYM ID: «ILYMID» «Piece\_Number»

«First\_Name» «Last\_Name»

«Address\_1»

«City», «State» «Zip\_Code»

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD  
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 NAVEEN PRASAD IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
AND PAGA SETTLEMENT**

Date: September 6, 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, Naveen Prasad, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this  
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support  
4 of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant RCG Logistics LLC ("Defendant") from April 20, 2021, to  
6 January 6, 2023, as a non-exempt employee. I was subject to all of Defendant's wage and hour policies  
7 and practices that have been alleged as unlawful in the Complaint and the notice sent to the Labor and  
8 Workforce Development Agency, including the following: failure to pay overtime, failure to pay  
9 minimum wages, failure to provide accurate wage statements, failure to maintain accurate records,  
10 failure to timely pay final wages, failure to provide meal and rest periods or pay premiums in lieu  
11 thereof, failure to reimburse expenses, failure to provide written commission agreements, failure to pay  
12 all sick leave wages owed, violation of Labor Code Section 432.7, and violation of Labor Code section  
13 432.6.

14 3. I have actively participated in the litigation of this case and pursued the wage and hour  
15 claims for the benefit of all Class Members and Aggrieved Employees. Prior to obtaining an attorney, I  
16 researched the potential wage and hour claims, so I could discuss the relevant issues and the facts I  
17 believed supported the claims. I believe this also helped me have a better understanding of the  
18 litigation process and improved my ability to understand and monitor the case developments. I believe  
19 this was important because it assisted me in making sure the wage and hour claims were moving  
20 forward for the benefit of all class members. After securing Shimoda & Rodriguez Law, PC, I  
21 continued to be actively involved in the case to help ensure a positive outcome.

22 4. My attorneys explained to me the risks and benefits of bringing a class action and a  
23 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a  
24 class and PAGA action meant that it would take substantially longer than pursuing the wage and hour  
25 claims individually, whether in Court or with the California Labor Commissioner, and that I risked  
26 getting nothing in the end, but I believed it was important to make sure that Defendant followed the law  
27 for everyone. I understood that I took on the risk, both professionally and financially, in pursuing the  
28

1 wage and hour case as a class and PAGA action rather than pursuing these claims individually, including  
2 the risk of having to pay Defendant's costs if we were unsuccessful in bringing our claims.

3 5. During the course of this litigation, I have given detailed accounts of all the facts related  
4 to my employment. Although these discussions did include going over facts relevant to only the  
5 individual discrimination and wrongful termination claims I asserted on an individual basis, the vast  
6 majority of my time spent on this case was going over facts and issues related to the class and PAGA  
7 wage and hour claims. I provided my attorneys with extensive documentation that I believe supported  
8 the wage and hour claims brought against Defendant, including emails, employer policies, payroll  
9 records, and numerous text messages regarding the wage and hour issues raised in the litigation. I met  
10 with and assisted my attorneys in understanding these documents and providing context for  
11 Defendant's payroll process as it applied to me and how I believed it applied to Defendant's other  
12 employees. I Worked there for a considerable amount of time and in several different areas of the  
13 office, so I was able to discuss the similarities of the wage and hour policies and practices among all  
14 Class Members.

15 6. The work I performed for this case included an extensive review of documents and  
16 payroll practices to show and explain to my attorneys what was happening and why I thought it was  
17 unlawful. For example, I searched for and reviewed many documents and work-related documents to  
18 show and explain to my attorneys what was happening and why I believed certain practices were  
19 unlawful. I helped review and explain to my attorney's different documents such as paystubs and time  
20 records, payroll polices, bonus policies, meal and rest period policies, employee handbooks, and  
21 timesheets. I also went through each document to describe how they all fit into the typical workday,  
22 the claims, potential witnesses to corroborate each issue, and other ways in w

23  
24 riting and very complex. I believe going through the various elements of the bonus plan  
25 to support our contention that it was non-discretionary was very important to the claims because it had  
26 an impact for all the derivative claims like wage statement violations, waiting time penalties, and  
27 PAGA penalties. Going over the differing ways any such bonuses could be earned, conversations  
28 regarding the terms that I had with management and supervisors, and the factual circumstances

1 surrounding each paid bonus was critical. I went through my pay history with my attorneys to explain  
2 how the payments were documented on our paystubs and what other indicators they could look for in  
3 the records to demonstrate the type of bonuses paid and circumstances surrounding the bonus. The  
4 review became even more detailed when my attorneys asked me questions about the payroll data  
5 sample that was produced as part of informal discovery to engage in mediation. I also spent a  
6 substantial amount of time identifying and speaking to potential witnesses who could speak to my  
7 attorneys to give their own insights and provide declarations. Overall, I have spent an enormous  
8 amount of time assisting in the prosecution of the wage and hour claims in this case. I estimate that I  
9 spent about 80-90 hours assisting with this case.

10 7. I participated in the negotiations and settlement discussions in this case, including  
11 participating in mediation via zoom, speaking with my attorneys to answer questions, provide any  
12 additional information needed to assist the negotiations, and discussing the potential terms of the  
13 Agreement to evaluate its adequacy. Throughout the course of this litigation I have asked questions  
14 when I needed clarification about various aspects of this case to make sure there were continually steps  
15 taken to advance the interests of Class Members.

16 8. I have experienced substantial burdens as a result of filing the wage and hour class and  
17 PAGA claims that other Class Members were not subject to. For example, in bringing the lawsuit, I  
18 assumed the risk of having to pay Defendant's costs if the Court or jury rules against us on the claims.  
19 My understanding is that this is a substantial risk because the costs associated with litigation, in  
20 general, are very high and this cost is multiplied many times over in complex litigation like class  
21 actions. I have spent a substantial amount of time in this case, securing a monetary benefit for many  
22 individuals who have not had to do anything whatsoever to have the opportunity to receive it. I have  
23 also experienced a great amount of stress and anxiety arising from this litigation for which I have been  
24 prescribed medications.

25 9. I have entered into a settlement agreement with Defendant to resolve the individual  
26 claims I brought in this matter. The individual settlement was for \$35,000 in exchange for a release of  
27 all claims except for the class and PAGA wage and hour claims. We did not discuss or negotiate the  
28 individual claims until after a Memorandum of Understanding ("MOU") was entered into resolve the

1 class and PAGA wage and hour claims. The MOU covered all material terms of the class and PAGA  
2 settlement and was explicitly stated it was fully enforceable regardless of whether a long form  
3 agreement was entered into. My individual settlement was not contingent on my approval of the class  
4 and PAGA settlement in any way. Given what I experienced, I believe the \$35,000 is a reasonable  
5 compromise to resolve my individual claims.

6 10. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and  
7 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe  
8 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

9 11. I understand that any Class Representative Enhancement Payment I may receive is for  
10 my participation as a Class Representative and it is not contingent on my support or approval of the  
11 Agreement.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
13 true and correct. Executed on August 9, 2024 in Carmichael, California.

14  
15  
16 Naveen Prasad

Naveen Prasad (Aug 9, 2024 12:44 PDT)

17 Naveen Prasad  
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Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD  
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**

**EXHIBIT LIST AND EXHIBITS IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
AND PAGA SETTLEMENT**

Date: September 6, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill Talley

Filed: April 7, 2023

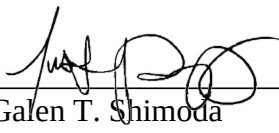
FAC Filed: July 12, 2023

Trial Date: None Set

| <b><u>EXHIBIT</u></b> | <b><u>DESCRIPTION</u></b>                                                |
|-----------------------|--------------------------------------------------------------------------|
| <b>A</b>              | Joint Stipulation Regarding Class Action and PAGA Settlement and Release |
| <b>B</b>              | Plaintiff's Operative Complaint                                          |
| <b>C</b>              | Plaintiff's Letter to the LWDA Regarding PAGA Claims                     |
| <b>D</b>              | Plaintiff's Itemized Costs                                               |
| <b>E</b>              | Proof of Submission of Proposed Settlement Agreement to LWDA             |
| <b>F</b>              | Summary of Plaintiff's Counsel's Hours                                   |

Dated: August 12, 2024

**Shimoda & Rodriguez Law, PC**

By:   
 Galen T. Shimoda  
 Justin P. Rodriguez  
 Renald Konini  
 Attorneys for Plaintiff

# Exhibit A

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)

**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD individually  
and on behalf of similarly situated employees

Timothy J. Long  
Michael A. Wertheim  
Greenberg Traurig, LLP  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814  
Phone: 916-868-0600  
Fax: 916-448-1709

Attorneys for RCG LOGISTICS LLC

**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,

Defendant.

Case No.: 34-2023-00337623

**JOINT STIPULATION REGARDING CLASS  
ACTION AND PAGA SETTLEMENT AND  
RELEASE**

Filed: April 7, 2023  
FAC Filed: July 12, 2023  
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and  
2 entered into between the Plaintiff Naveen Prasad (“Plaintiff”), on behalf of himself, the Labor and  
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant RCG  
4 Logistics LLC, (“Defendant”). This Agreement is subject to the terms and conditions set forth below and  
5 the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Prasad v. RCG Logistics LLC*, Sacramento  
9 County Superior Court, Case No. 34-2023-00337623, filed April 7, 2023.

10 1.2 “Aggrieved Employee(s)” means all Individuals who have worked, or continue to work, for  
11 Defendant in California as a non-exempt employee at any time between April 5, 2022, up to either (1) the  
12 date a signed order preliminarily approving the settlement is filed by the Court, or (2) sixty (60) days after  
13 this Agreement is signed, whichever is earlier. The estimated number of Aggrieved Employees is 98.

14 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation  
15 Regarding Class Action and PAGA Settlement and Release.

16 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of  
17 Shimoda & Rodriguez Law, PC.

18 1.5 “Class Member(s)” means all individuals who have worked, or continue to work, for  
19 Defendant in California as a non-exempt employee at any time between April 5, 2019, up to either (1) the  
20 date a signed order preliminarily approving the class settlement is filed by the Court, or (2) sixty (60) days  
21 after this Agreement is signed, whichever is earlier. The estimated number of Class Members is 204.

22 1.6 “Class Period” means April 5, 2019, up to either (1) the date a signed order preliminarily  
23 approving the class settlement is filed by the Court, or (2) sixty (60) days after this Agreement is signed,  
24 whichever is earlier.

25 1.7 “Class Representative” means Plaintiff Naveen Prasad .

26 1.8 “Class Representative’s Released Claims” means all claims arising from, could have been  
27 asserted, or related in any way to the Class Representative’s employment with Defendant, under federal,  
28 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether

1 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common  
2 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,  
3 unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable  
4 relief or other similar relief or claims. The Class Representative's Released Claims exclude claims for  
5 workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a  
6 matter of law. Further, the Class Representative's Released Claims exclude all individual claims made in  
7 the Action by Plaintiff for (1) Retaliation/Disability Discrimination in Violation of FEHA (Cause of Action  
8 11), (2) Failure to Accommodate and Engage in the Interactive Process (Cause of Action 12), and (3)  
9 Failure to Prevent Discrimination (Cause of Action 13).

10 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

11 1.10 "Court" means the Sacramento County Superior Court.

12 1.11 "Defendant" means RCG Logistics LLC.

13 1.12 "Defendant's Counsel" means Greenberg Traurig, LLP.

14 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class  
15 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit  
16 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class  
17 Representative as a Participating Class Member.

18 1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged  
19 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day  
20 after a signed order approving this settlement has been filed provided no appellate proceeding having been  
21 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been  
22 finally dismissed with no material change to the terms of this settlement and there is no right to pursue  
23 further remedies or relief, whichever is later.

24 1.15 "Final Approval Date" means the date a signed order granting final approval of this  
25 Agreement is filed with the Court.

26 1.16 "Gross Settlement Amount" is the sum of Four Hundred Ninety Two Thousand Five  
27 Hundred Dollars (\$492,500).

1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.19, 1.23, 5.5, and 5.8.

1.18 “LWDA” means the California Labor and Workforce Development Agency.

1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.20 “Notice of Settlement” means the document substantially in the form attached hereto as Exhibit 1.

1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.22 “PAGA” means Private Attorneys General Act.

1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.24 “PAGA Claim Period” means April 5, 2022, up to either (1) the date a signed order preliminarily approving the settlement is filed, or (2) sixty (60) days after this Agreement is signed, whichever is earlier, whichever is earlier.

1.25 “Parties” mean Defendant and Plaintiff.

1.26 “Participating Class Member” means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.

1           1.29   “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved  
2 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class  
3 Members, workweeks shall be defined as the total length of service (in days) in California during the Class  
4 Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of  
5 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class  
6 Member’s and/or Aggrieved Employee’s workweeks and a determination as to whether a Class Member  
7 and/or Aggrieved Employee was actively employed in California in a particular workweek shall be  
8 construed from Defendant’s records.

9           1.30   “Released Class Claims” means any and all class claims that are alleged in the Complaint,  
10 and any additional wage and hour claims that could have been brought based on the facts alleged in the  
11 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.  
12 The Released Class Claims exclude claims for workers’ compensation or unemployment insurance  
13 benefits. This release will cover all Class Members who do not opt out.

14           1.31   “Released PAGA Claims” means any and all claims that were brought under the Private  
15 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage  
16 and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during  
17 the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

18           1.32   “Released Parties” means Defendant, as well as each of Defendant’s affiliated entities,  
19 related companies, former and present owners, officers, shareholders or directors, direct and indirect parent  
20 companies, subsidiaries, successors, assigns, executives, employees, agents, attorneys, predecessors,  
21 payroll processing providers, payroll funding companies, or insurers.

22           1.33   “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity  
23 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator  
24 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The  
25 Parties each represent that they do not have any financial interest in the Settlement Administrator.

26           1.34   “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the  
27 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,  
28 and shall include all costs of administering the Agreement, including, but not limited to, all tax document

preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

## **2. DESCRIPTION OF THE LITIGATION**

2.1 On or about April 5, 2023, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premium in Lieu Thereof, (5) Failure to Provide Accurate Wage Statements, (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursements for Expenses, (8) Failure to Maintain Accurate Records, (9) Failure to Provide Paid Sick Leave, (10) Failure to Provide Commission Contracts in Writing, (11) Failure to Comply with Limitations on Employers Regarding Inquiring Into Criminal History and Waivers Relating Thereto. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 On or about April 7, 2023, Plaintiff filed a class action Complaint in Sacramento County Superior Court on behalf of himself and Class Members alleging claims for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premium in Lieu Thereof, (5) Failure to Provide Accurate Wage Statements, (6) Failure to Pay Final Wages, (7) Violation of Labor Code Section 432.7, (8) Violation of Labor Code Section 432.6, (9) Failure to Pay Reimbursements for Expenses, (10) Unfair

1 Competition, (11) Retaliation/Disability Discrimination in Violation of FEHA, (12) Failure to  
2 Accommodate and Engage in the Interactive Process, and (13) Failure to Prevent Discrimination. Plaintiff  
3 filed a First Amended Complaint on approximately July 12, 2023 to add a PAGA cause of action based on  
4 the violations alleged in the April 5, 2023 notice to the LWDA on behalf of himself and Aggrieved  
5 Employees.

6 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel  
7 with copies of all applicable versions of its policies and procedures, employee handbooks, information on  
8 Class Members including, but not limited to, Class Members' workweeks, dates of employment, total  
9 number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports  
10 for a randomly selected 10% sample of Class Members.

11 2.4 After Class Counsel received the data, the Parties engaged in informal settlement  
12 negotiations, but were not able to come to a resolution. On July 19, 2023, the Parties participated in a  
13 lengthy mediation with private mediator Jeffery Owensby, Esq. At the conclusion of the mediation, the  
14 Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-  
15 collusive, adversarial, and at arm's length.

16 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document  
17 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the  
18 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative  
19 merits of the claims and the defenses to those claims.

20 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to  
21 incorporate the value of nondiscretionary incentive based compensation into Plaintiff's and putative class  
22 members' regular rates of pay for the purpose of calculating premium wages owed, 2) failing to provide  
23 meal and rest periods in compliance with California law, 3) encouraging Plaintiff and putative class  
24 members to edit their time records to reflect timely meal periods being taken when, in fact, they had not  
25 been taken, 4) refusing to provide all paid sick leave available, 5) failing to reimburse Plaintiff and putative  
26 class members for use of their personal cell phone for work purposes, 6) maintaining a criminal conviction  
27 policy that unlawfully required disclosure of arrests not resulting in conviction, 7) failing to accommodate  
28 and engage in retaliation and disability discrimination by terminating Plaintiff who asked for

1 accommodations related to his autism spectrum disorder. Plaintiff contends Defendant's violations of  
2 California law also resulted in derivative wage statement and waiting time penalty violations. Defendant  
3 has denied each of Plaintiff's claims and Defendant has denied that this Action is appropriate for class  
4 certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was  
5 reached after evaluating the Parties' theories of potential exposure for the underlying claims and the class  
6 data supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate  
7 discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

8       2.7     The Parties agree that the above-described investigation and evaluation, as well as discovery  
9 and the information exchanged to date, are more than sufficient to assess the merits of the respective  
10 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,  
11 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a  
12 manner and upon such terms and conditions set forth herein in order to avoid further expense,  
13 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the  
14 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.  
15 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the  
16 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and  
17 circumstances.

### 18     **3.       THE CONDITIONAL NATURE OF THIS AGREEMENT**

19       3.1     This Agreement and all associated exhibits or attachments are made for the sole purpose of  
20 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed  
21 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final  
22 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a  
23 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is  
24 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall  
25 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and  
26 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California  
27 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of  
28 evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

#### **4. SCOPE OF THE CLASS**

4.1 The scope of the class of individuals encompassed under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under this Agreement.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request to the Settlement Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendant ended; (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant review its records.

1           4.4     If Defendant agrees that the person listed in a data request is a Class Member and/or  
2 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the  
3 person who submitted the data request, at the address designated for that purpose in the data request. All  
4 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent  
5 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement  
6 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved  
7 Employee for all other purposes.

8           4.5     If Defendant does not agree that the person listed in a data request is a Class Member and/or  
9 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in  
10 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request  
11 dispute. Defendant's records shall control unless the individual submitting the data request provides  
12 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's  
13 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The  
14 Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve  
15 the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7)  
16 calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement  
17 Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject  
18 to Court review.

## 19     **5.     TERMS OF THE SETTLEMENT**

20           The Parties agree as follows:

21           5.1     Gross Settlement Amount: In consideration and exchange for the releases described in  
22 Section 6, Defendant shall pay the Gross Settlement Amount (\$492,500). Funding of the Gross Settlement  
23 Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF by the  
24 Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class  
25 Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action  
26 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering  
27 the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement,  
28 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to

1 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)  
2 on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement  
3 Amount.

4       5.2     Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%  
5 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has  
6 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%  
7 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to  
8 exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not  
9 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not  
10 exceed the \$10,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099  
11 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than  
12 the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class  
13 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on  
14 a pro rata basis.

15       5.3     Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the  
16 Gross Settlement Amount and shall not exceed \$15,000. The difference between any actual costs and the  
17 allocated \$15,000 shall be added to the Net Settlement Amount to be distributed to Participating Class  
18 Members on a pro rata basis.

19       5.4     Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for  
20 an Enhancement Payment to the Class Representative in an amount not to exceed \$10,000 (Ten Thousand  
21 Dollars) to compensate for the risks, time, and expense of his involvement in the Action and securing the  
22 benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual  
23 Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member.  
24 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so  
25 long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a  
26 non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than  
27 the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the  
28

1 Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class  
2 Members on a pro rata basis.

3       5.5    PAGA Payment: Twenty Thousand Dollars (\$20,000) of the Gross Settlement Amount  
4 shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment  
5 will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro  
6 rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated  
7 PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class  
8 Members on a pro rata basis.

9       5.6    Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA  
10 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by  
11 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be  
12 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine  
13 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

14       5.7    No Additional Benefits Contributions: All Individual Settlement Amounts paid to  
15 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in  
16 which such amounts were actually received. It is expressly understood and agreed that the receipt of such  
17 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to  
18 any new or additional compensation or benefits under any company bonus or other compensation or benefit  
19 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating  
20 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching  
21 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement  
22 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating  
23 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any  
24 contrary language or agreement in any benefit or compensation plan document that might have been in  
25 effect during the period covered by this Agreement).

26       5.8    Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved  
27 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net  
28 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for

1 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement  
2 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by  
3 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of  
4 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the  
5 Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members  
6 under this formula who timely opt out of the Settlement will be redistributed to Participating Class  
7 Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing  
8 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all  
9 Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to  
10 arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved  
11 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total  
12 Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all  
13 Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25%  
14 portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

15       5.9    Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to  
16 Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed  
17 penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes  
18 on the amounts paid to Participating Class Members as wages as well as calculating all required  
19 withholdings and deductions from said wage payments. The characterization of Individual Settlement  
20 Amounts to Participating Class Members and Aggrieved Employees are as follows:

21               5.9.1   Twenty Percent (20%) of each Participating Class Members' Individual Settlement  
22 Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes.  
23 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual  
24 Settlement Amount.

25               5.9.2   Eighty Percent (80%) of each Participating Class Members' Individual Settlement  
26 Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted  
27 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for  
28 which the Participating Class Members shall receive an IRS Form 1099-MISC.

1           5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the  
2 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted  
3 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for  
4 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

5           5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the  
6 reporting and payment of their share of any federal, state and/or municipal income or other taxes on  
7 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's  
8 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,  
9 including the treatment of such payments as not subject to withholding or deduction for payroll and  
10 employment taxes. No party has made any representation to any of the other Parties as to the taxability of  
11 any payments pursuant to this Agreement, including the payments to Participating Class Members, the  
12 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class  
13 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or  
14 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax  
15 implications of any provision of this Agreement.

16           5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this  
17 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on  
18 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in  
19 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless  
20 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as  
21 described in Section 3 because the Court, in its independent determination, finds that the Agreement does  
22 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible  
23 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and  
24 the date of such event.

25           5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement  
26 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for  
27 establishing class certification have been met and are met.

1           5.13   Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes  
2 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and  
3 Aggrieved Employees.

4       **6.       RELEASE**

5           6.1   Release of Claims by Participating Class Members: Upon the Effective Date, all  
6 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims  
7 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their  
8 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released  
9 Class Claims against any of the Released Parties.

10          6.2   Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved  
11 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all  
12 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in  
13 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA  
14 Claims against any of the Released Parties.

15          6.3   Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and  
16 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released  
17 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest  
18 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,  
19 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.

20       **7.       SETTLEMENT ADMINISTRATION**

21          7.1   Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:  
22 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are  
23 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the  
24 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate  
25 any individual Class Members and Aggrieved Employee whose address or contact information as provided  
26 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class  
27 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as  
28 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in

consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and Aggrieved Employees: Defendant represents and warrants that Class Members and Aggrieved Employees are able to read and write in English such that no translation of the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how

1 to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying  
2 Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class  
3 Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed  
4 attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement  
5 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and  
6 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for  
7 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's  
8 and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will  
9 provide information on how to access electronic copies online of the Notice of Settlement, any motions for  
10 approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents  
11 as the Court directs.

12       7.3     Class Member Data and Mailing: No later than fourteen (14) calendar days after the  
13 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the name, last  
14 known mailing address, last known telephone number, Social Security Number, start and end date of  
15 employment (if any) of each Class Member and Aggrieved Employee, and any other information the  
16 Settlement Administrator needs to effectuate notice to Class Members and Aggrieved Employees as  
17 outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying  
18 Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days  
19 after receipt of such address information, the Settlement Administrator will perform a national change of  
20 address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the  
21 Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved  
22 Employee by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information  
23 received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall  
24 be able to review the breakdown of Qualified Workweeks and estimated Individual Settlement Amounts  
25 for Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal  
26 identifying information is redacted and/or omitted.

27       7.4     Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement  
28 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice

Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly attempt to determine a correct address using a skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within five (5) calendar days to any more recent address found as a result of the search. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases contained in Section 6.

**7.5 Responses to Notice of Settlement:**

**7.5.1 *Opt-Outs:*** The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (i.e. *Prasad v. RCG Logistics LLC*, Case No. 34-2023-00337623); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid and timely opt out request

1 will be specifically identified in any proposed order granting final approval. Class Members who fail to  
2 submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or  
3 final judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member,  
4 they will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this  
5 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

6           7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to  
7 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written  
8 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and  
9 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny  
10 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's  
11 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state  
12 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and  
13 number (*i.e. Prasad v. RCG Logistics LLC*, Case No. 34-2023-00337623) (e) be signed; and (f) be post-  
14 marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4.  
15 The Notice of Settlement will inform the Class Member that they should also file a notice of intent to  
16 appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to  
17 appear at the final approval hearing.

18           7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying  
19 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)  
20 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)  
21 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing  
22 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two  
23 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the  
24 dispute. Defendant's records shall presumptively control unless the Class Member can produce  
25 documentation evidencing other periods of employment worked. If Defendant agrees with submitted  
26 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with  
27 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that  
28 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,

Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

*7.5.4 Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever is later.

*7.6 Due Process Acknowledgement:* Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

*7.7 Settlement Administrator Declaration Regarding Notice Period:* Within fourteen (14) calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

*7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiff:* Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement

1 Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a  
2 QSF. Within seven (7) calendar days after Defendant fund the settlement, the Settlement Administrator  
3 shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to  
4 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,  
5 and payment to Participating Class Members and/or Aggrieved Employees as required under this  
6 Agreement and approved by Court.

7 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and  
8 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide  
9 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions  
10 after the Final Approval Date.

11 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved  
12 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is  
13 requested by Class Counsel.

14 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their  
15 Individual Settlement Amount.

16 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the  
17 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this  
18 Agreement. Defendant agree to reasonably cooperate with the Settlement Administrator to the extent  
19 necessary to determine the amount of the payroll tax payment required.

20 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall  
21 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the  
22 form of a check, which shall become null and void if not deposited within one hundred eighty (180)  
23 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be  
24 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The  
25 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check  
26 cashing deadline.

27 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement  
28 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members

and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

## **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

|                                                                                                                                                                                                                                                                                                             |                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information                                                                                                                                                                                             | Within 14 calendar days after the Preliminary Approval Date                                                                          |
| Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement                                                                                                                                                | Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant                    |
| Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests                                                                                                                                                                                                         | 60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later |
| Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics                                                                                                                                                                          | Within 14 calendar days after end of the Notice Period                                                                               |
| Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel | Within 7 calendar days after the Effective Date                                                                                      |

|                                                                                                                                                                                                                                                       |                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Last day for Defendant to fund settlement                                                                                                                                                                                                             | Within 21 calendar days after the Effective Date                                                  |
| Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees | Within 7 calendar days after Defendant has funded the settlement                                  |
| Last day for Participating Class Members and Aggrieved Employees to cash settlement checks                                                                                                                                                            | 180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees |
| Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries                                                                                                                                  | Within 14 calendar days after settlement check cashing deadline                                   |
| Last day for Settlement Administrator to provide Parties with compliance declaration                                                                                                                                                                  | Within 21 calendar days after settlement check cashing deadline                                   |

## 9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class

1 Counsel. With regard to the final approval documents, a similar two-week maximum review and response  
2 time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this  
3 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA  
4 Settlement.

5 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)  
6 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice  
7 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing  
8 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement  
9 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the  
10 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of  
11 reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)  
12 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally  
13 approved as fair, reasonable and adequate as to the Class Members.

14 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed  
15 Agreement.

16 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during  
17 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and  
18 appropriate to assure effective communication to individual Class Members of information about their  
19 rights and obligations under this Agreement.

20 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the  
21 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if  
22 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the  
23 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the  
24 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results  
25 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement  
26 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid  
27 request to opt out during the Notice Period.  
28

9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Agreement and the Court's orders.

9.2.2 Following entry of the Court's order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

## **10. MISCELLANEOUS TERMS**

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its

furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant has represented that there are no more than 9,572 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 10,529 (*i.e.*, greater than 10% more than 9,572), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 9,572, multiplied by the pay period value. For example, if there were 11,900 workweeks represented to exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek, Defendant would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks – 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT

1 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX  
2 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON  
3 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX  
4 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY  
5 THIS AGREEMENT.

6 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not  
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
8 any person or entity any portion of any liability, claim, demand, action, cause of action or right released  
9 and discharged in this Agreement.

10 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by  
11 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the  
12 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement  
13 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

14 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set  
15 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this  
16 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

17 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will  
18 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County  
19 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil  
20 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the  
21 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

22 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish  
23 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution  
24 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the  
25 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts  
26 contemplated by this Agreement and any other efforts that may become necessary by Court order, or  
27 otherwise, to effectuate this Agreement and the terms set forth herein.

1           10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of  
2 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to  
3 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the  
4 Complaint, the representative character of the Action, the validity of any of the claims that were or could  
5 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant  
6 in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant  
7 of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other  
8 person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward  
9 Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with  
10 the intention to avoid further disputes and litigation.

11           10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other  
12 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the  
13 third business day after mailing by United States certified mail, return receipt requested, addressed as  
14 follows:

15                   To Plaintiff and the Class:

16                   Galen T. Shimoda, Justin P. Rodriguez and Renald Konini  
17                   Shimoda & Rodriguez Law, PC  
18                   9401 East Stockton Blvd., Suite 120  
19                   Elk Grove, CA 95624

20                   To Defendant:

21                   Timothy J. Long  
22                   Michael A. Wertheim  
23                   Greenberg Traurig, LLP  
24                   400 Capitol Mall, Suite 2400  
25                   Sacramento, CA 95814

26           10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of  
27 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that  
28 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any  
party or its counsel participated in the drafting of this Agreement.

          10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys  
acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover

any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement.

10.12 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.

10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representative.

10.15 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and effect of originals.

10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of California without giving effect to that State's choice of law principles.

10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

1           10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be  
2 construed as retaliation against any Class Members for participating or seeking to participate in this class  
3 action settlement. The Parties will not discourage any class member from participating or seeking to  
4 participate in this class action settlement. This is a material term of the Agreement and non-breaching  
5 Parties will seek court intervention if this provision is breached.

6           10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the  
7 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.  
8 Each party acknowledges that there is no representation, inducement, promise or agreement which has been  
9 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which  
10 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the  
11 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

12           10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the  
13 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

14           10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the  
15 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with  
16 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

17           10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this  
18 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply  
19 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

20           10.23 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and  
21 counsel for Defendant separately agree that, until the Motion for Preliminary Approval of Settlement is  
22 filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another  
23 person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly,  
24 specifically or generally, to any person, corporation, association, government agency, or other entity  
25 except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this  
26 Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to  
27 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry  
28 or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each

other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and each counsel for Defendant separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members. Even after a Motion for Preliminary Approval has been filed, Class Counsel agrees that it while it may describe this case and/or settlement generally in its marketing materials or on its website, Class Counsel agrees it will not use Defendant’s name in any advertising on its website or in any marketing descriptions related to this case.

**10.24 Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator’s obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendant.

**10.25 Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

**For Plaintiff:**

Date: 11/2/2023

DocuSigned by:

*Naveen Prasad*

937E52A1A0574A0...

Naveen Prasad

**FOR Defendant:**

Date: 11/20/2023

DocuSigned by:

*Vick Kuzmenko*

917BCC6552654DB...

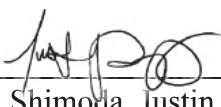
By:

For RCG LOGISTICS LLC

APPROVED AS TO FORM

**Shimoda & Rodriguez Law, PC**

Dated: 11/8/2023

By:   
Galen T. Shimoda, Justin P. Rodriguez and  
Renald Konini  
Attorneys for Plaintiff and Aggrieved  
Employees

APPROVED AS TO FORM

**GREENBERG TRAURIG, LLP**

Dated: 11/27/2023

By:   
Timothy J. Long  
Michael A. Wertheim  
Attorneys for Defendant

# Exhibit 1

CALIFORNIA SUPERIOR COURT  
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,

Defendant.

Case No. **34-2023-00337623**

**NOTICE OF PROPOSED CLASS ACTION  
AND PAGA SETTLEMENT, AND HEARING  
DATE FOR FINAL COURT APPROVAL OF  
SETTLEMENT**

**ATTENTION:** All individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between April 5, 2019, to [REDACTED] (the “Class Members”).

**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.**

You are receiving this notice pursuant to an order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Naveen Prasad (“Plaintiff” or “Class Representative”), and Defendant RCG LOGISTICS LLC (“Defendant”) on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

**I. BACKGROUND OF THE CASE**

On April 7, 2023, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2023-00337623. The Class Period is between April 5, 2019, to [REDACTED] (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premium in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to pay final wages, 7) failing to pay reimbursements for expenses, 8) failing to maintain accurate records, 9) failing to provide paid sick leave, 10) failing to provide commission contracts in writing, 10) failing to comply with limitations on employers regarding inquiring into criminal history and waivers relating thereto, 11) engaging in unfair competition, 12) retaliating and disability discrimination in violation of Fair Employment and Housing Act (“FEHA”), 13) failing to accommodate and engage in the interactive process, 14) failing to prevent

discrimination, and 15) committing PAGA violations. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between April 5, 2019, to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between April 5, 2022, to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

### **A. The Amount of the Settlement**

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Ninety-Two Thousand Five Hundred Dollars (\$492,500) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$15,000, Class Representative's Enhancement Payment of Ten Thousand Dollars (\$10,000), and \$20,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

### **B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees**

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 20% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined April 5, 2022, up to [REDACTED]. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the

PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

**C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes**

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

**D. Release of Claims**

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, as well as each of Defendant's affiliated entities, related companies, former and present owners, officers, shareholders or directors, direct and indirect parent companies, subsidiaries, successors, assigns, executives, employees, agents, attorneys, predecessors, payroll processing providers, payroll funding companies, or insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

**III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER**

**A. Participating in the Settlement as a Class Member**

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

**B. Excluding Yourself from the Settlement as a Class Member**

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Prasad v. RCG Logistics, LLC*, 34-2023-00337623); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

### **C. Objection to Settlement**

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* *Prasad v. RCG Logistics, LLC*, 34-2023-00337623); (e) be signed; and (f) be post-marked no later than [redacted]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

In addition to submitting a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

### **IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS**

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at its Public Portal (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=Home>). Follow the prompts to create your free online account, click “Search,” then click “Case Number Search.” Enter the case number, 34-2023-00337623, and select “unlimited civil” for case type in the appropriate fields. This search will result in a clickable link taking you to the register of actions and all filed documents in this case. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

### **V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in Department \_\_\_\_, [address] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel’s request for attorneys’ fees and costs, the Settlement Administrator Costs, and the Class Representative’s Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

You may appear remotely at the final approval hearing using the following access information:

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>.  
To join by phone: (833) 568-8864 / ID: 16108301121.

**VI. ADDITIONAL INFORMATION**

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Public Portal web address identified in Section IV above. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda  
Justin P. Rodriguez  
Renald Konini  
Shimoda & Rodriguez Law, PC  
9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733  
***On behalf of Plaintiff***

Timothy J. Long  
Michael A. Wertheim  
Greenberg Traurig, LLP  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814  
Phone: 916-868-0600  
Fax: 916-448-1709  
***On behalf of Defendant***

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]  
BY ORDER OF THE COURT**

# Exhibit B

**FILED/ENDORSED**

**JUL 12 2023**

By: A. Turner  
Deputy Clerk

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD,  
Individually and on behalf of all other 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

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Violation of Labor Code Section 432.7
8. Violation of Labor Code Section 432.6
9. Failure to Reimburse Expenses
10. Unfair Competition
11. Retaliation/Disability Discrimination in  
Violation of FEHA
12. Failure to Accommodate and  
Engage in the Interactive Process
13. Failure to Prevent Discrimination
14. Private Attorneys General Act

**DEMAND FOR JURY TRIAL**

Plaintiff NAVEEN PRASAD ("Plaintiff"), on behalf of himself and all other similarly  
situated employees, hereby files this First Amended Complaint against Defendants RCG

**FIRST AMENDED CLASS ACTION COMPLAINT**

**BY FAX**

1 LOGISTICS LLC, a California Limited Liability Company; and DOES 1 to 100, inclusive  
2 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege  
3 the following:

#### 4 INTRODUCTION

5 1. This is a class action, an individual, and a Private Attorneys General Act ("PAGA")  
6 lawsuit brought by Plaintiff for failure to provide overtime wages, minimum wages, meal and rest period  
7 violations, wage statement violations, waiting time penalties, failure to pay appropriate pay sick wages,  
8 unlawfully requiring the disclosure of criminal history, failure to reimburse expenses, unfair  
9 competition, retaliation and/or discrimination in violation of Fair Employment and Housing Act,  
10 Government Code section 12900 *et seq.* ("FEHA"), failure to accommodate and engage in the  
11 interactive process, failure to prevent discrimination, and wrongful termination in violation of public  
12 policy.

#### 13 JURISDICTION AND VENUE

14 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to  
15 California Code of Civil Procedure section 410.10 to determine alleged violations of the California  
16 Labor Code, California Business and Professions Code, Wage Order No. 4, Fair Employment and  
17 Housing Act ("FEHA"), and California common law.

18 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that  
19 Defendant resides in Sacramento County. In addition, some of the wrongful acts and violations of law  
20 asserted herein occurred within Sacramento County, and Defendant's obligation to pay wages arose in  
21 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414  
22 (1984).

23 4. For all causes of action falling within the Fair Employment and Housing Act,  
24 Government Code section 12900 *et seq.* ("FEHA"), Plaintiff has exhausted administrative remedies by  
25 filing a claim with the Civil Rights Department (previously known as Department of Fair Employment  
26 and Housing) against Defendants concerning all claims asserted against Defendants herein. Plaintiff  
27 received notice of the right to sue Defendants from the Department and is filing this lawsuit within one  
28 (1) year of receiving the right to sue notice.

1           5. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to  
2 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf  
3 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,  
4 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency  
5 ("LWDA") on approximately April 5, 2023. Plaintiff provided facts and legal bases for his claims  
6 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause  
7 of action. Plaintiff also submitted the \$75.00 filing fee. The April 5, 2023, notice was also sent via  
8 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to  
9 Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies  
10 pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself  
11 and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),  
12 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).  
13 Aggrieved Employees include, but is not limited to the following: all individuals who have worked, or  
14 continue to work, for Defendant in California as a non-exempt employee from April 5, 2022 to the  
15 present.

## 16 17 PARTIES

18           6. NAVEEN PRASAD is an individual over the age of eighteen (18) and is a resident of  
19 the State of California.

20           7. On information and belief, Plaintiff alleges, RCG LOGISTICS LLC, is now and/or at  
21 all times mentioned in this Complaint was a California Limited Liability Company and the owner  
22 and operator of an industry, business and/or facility doing business in the State of California.

23           8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and  
24 the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated  
25 in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege  
26 the true names and capacities of these DOE Defendants when they are ascertained.

27           9. At all times mentioned herein, each Defendant was the agent or employee of each of the  
28

1 other Defendants and was acting within the course and scope of such agency or employment. The  
2 Defendants are jointly and severally liable to Plaintiff.

3 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint  
4 were members of and/or engaged in a joint employment, joint venture, partnership and common  
5 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,  
6 joint venture, partnership and common enterprise.

7 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint  
8 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

9 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,  
10 wrongs, complaints, injuries and/or damages alleged in this Complaint.

### 11 CLASS ALLEGATIONS

12 13. Plaintiff brings the First through Tenth Causes of Action on behalf of himself and all  
13 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

14 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

15 All individuals who have worked, or continue to work, for Defendant in  
16 California as a non-exempt employee at any time between April 5, 2019,  
to the present.

17 14. This action has been brought and may be properly maintained as a class action, pursuant  
18 to the provision of California Code of Civil Procedure section 382, because there is a well-defined  
19 community of interests in the litigation and the proposed class is easily ascertainable.

- 20 (a) Numerosity: The putative class is so numerous that the individual joinder of all members  
21 is impracticable under the circumstances of this case. While the exact number of class  
22 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that  
23 Defendants have employed as many as one hundred (100) individuals falling within the  
24 above stated class definition throughout the State of California during the applicable  
25 statute of limitations, who were subjected to the policies and practices outlined in this  
26 Complaint. As such, joinder of all members of the putative class is not practicable.
- 27 (b) Common Questions Predominate: Common questions of law and fact exist as to all  
28 members of the putative class and predominate over questions that affect only individual

1 members of the class. These common questions of law and fact include, without  
2 limitation, the following:

- 3 (1) Whether Defendants maintained accurate payroll records;
- 4 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative  
5 class members were not paid all overtime wages owed;
- 6 (3) Whether Defendants failed to correctly calculate the regular rate of pay for  
7 premium wage purposes such as overtime, double time, meal and rest period  
8 premiums, and sick leave wages;
- 9 (4) Whether Defendants failed to pay meal and rest period premiums for meal and  
10 rest period violations;
- 11 (5) Whether as a result of Defendants' policies and practices Plaintiff's and putative  
12 class members received all wages, due and owing, at the time of their termination  
13 or separation; and
- 14 (6) Whether Defendants provided Plaintiff's and putative class members with wage  
15 statements that complied with Labor Code section 226.

- 16 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative  
17 class. The putative class also sustained damages arising out of Defendants' common  
18 course of conduct in violation of the law as complained of herein. Plaintiff and all  
19 members of the putative class were non-exempt employees who were not paid all  
20 overtime wages owed, meal and rest period premiums, as a result of Defendants' policies  
21 and practices resulting in inaccurate wage statements that did not itemize the accurate  
22 overtime wages owed, meal and rest period premiums, and sick leave wages.  
23 Additionally, Defendants issued Plaintiff and all members of the putative class wage  
24 statements that did not comply with Labor Code section 226. As a result, Plaintiff and  
25 each member of the putative class will have suffered the same type of harm and seek the  
26 same type of recovery based on the same legal theories.
- 27 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the  
28 putative class. For all relevant times, Plaintiff resided in California and worked for

1 Defendants in California. Moreover, Plaintiff is an adequate representative of the  
2 putative class as Plaintiff have no interests that are adverse to those of putative class  
3 members. Additionally, Plaintiff have retained counsel who has substantial experience in  
4 complex civil litigation and wage and hour matters.

- 5 (e) Superiority: A class action is superior to other available means for the fair and efficient  
6 adjudication of the controversy since individual joinder of all members of the putative  
7 class is impracticable. Class action treatment will permit a larger number of similarly  
8 situated persons to prosecute their common claims in a single forum simultaneously,  
9 efficiently, and without the unnecessary duplication of effort and expense that numerous  
10 individual actions would engender. Further, as damages suffered by each individual  
11 member of the class may be relatively small, the expenses and burden of the individual  
12 litigation would make it difficult or impossible for individual members of the class to  
13 redress the wrongs done to them, and an important public interest will be served by  
14 addressing the matter as a class action. The cost to the court system of adjudication of  
15 such individualized litigation would be substantial. Individualized litigation would also  
16 present the potential for inconsistent or contradictory judgments.

17 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the  
18 management of this action that would preclude its maintenance as a class action.

19 **GENERAL ALLEGATIONS**

20 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though  
21 fully set forth herein.

22 17. Plaintiff was employed with Defendants from April 20, 2021, to January 6, 2023, as a  
23 non-exempt employee. Plaintiff was paid eighteen dollars (\$18) per hour plus incentive commission  
24 payments. Plaintiff's duties included coordinating companies that needed cargo loads transported with  
25 truckers that needed cargo loads to transport. Plaintiff and similarly situated employees were paid  
26 commissions based on the profits they were able to generate for Defendants based on the difference  
27 between the quoted transport costs provided to companies actual the actual costs truckers agreed to  
28 transport the cargo loads for.

1           18. Defendants' incentive commission payment system was never provided to employees in  
2 writing. However, under the incentive commission payment system, Plaintiff and similarly situated  
3 employees received "ICP" points if they booked a load for certain percentage profit. For example, on a  
4 project Plaintiff worked on, a 10% profit yielded eight (8) ICP points to Plaintiff. If Plaintiff yielded a  
5 20% margin, then Plaintiff would receive additional points, which would amount to a higher  
6 commission. The required profit percentage required to earn points varied for each project, but the  
7 ultimate incentive commission payment made to Plaintiff and similarly situated employees was based on  
8 the amount of ICP points earned.

9           19. Plaintiff and similarly situated employees received incentive commission payments on a  
10 monthly basis for the ICP points earned in the month prior. Defendants paid these amounts on  
11 paychecks separate from their regular paychecks. However, Defendants failed to also pay the increased  
12 overtime premiums, meal and rest period premiums, and sick leave payments that were earning as a  
13 result of the increased regular rate of pay during the same periods.

14           20. Plaintiff and similarly situated employees regularly fielded, and were responsible for,  
15 taking phone calls to obtain quotes related to cargo loads. If Plaintiff or similarly situated employees  
16 were on a phone call, they could not abruptly end the call to take a meal or rest break. Plaintiff and  
17 similarly situated employees were encouraged to edit their time records to reflect timely meal periods  
18 being taken when, in fact, they had not been taken. Plaintiff and similarly situated employees regularly  
19 worked during the hours they were clocked out for meal periods. Furthermore, Defendants' timecards  
20 also reflected that Plaintiff and similarly situated employees were not able to take timely meal periods,  
21 yet Plaintiff and similarly situated employees did not receive any meal period premiums. Defendants  
22 did not accurately record Plaintiff and similarly situated employees' meal period times. Furthermore,  
23 Defendants' meal and rest period policies violated California law, authorizing only one meal period a  
24 day if employees worked longer than five (5) hours (*i.e.* no provision for a second meal period when  
25 working more than ten (10) hours), failing to authorize rest periods when employees worked between  
26 3.5-4 hours, and failing to authorize a third rest period when employees worked longer than ten (10)  
27 hours. Plaintiff and similarly situated employees were also interrupted by supervisors and cargo calls  
28

1 when attempting to take rest breaks. Defendants did not accurately record Plaintiff and similarly situated  
2 employees meal period times.

3 21. Additionally, Plaintiff and similarly situated employees were unable to take uninterrupted  
4 rest breaks. Indeed, a team lead, Leticia, yelled at Plaintiff while he was on break to return to work. On  
5 several occasions, Plaintiff was interrupted to return to work to take a phone call or finish miscellaneous  
6 tasks.

7 22. Defendants failed to provide Plaintiff and similarly situated employees with paid sick  
8 leave. Plaintiff became sick for a period of six (6) months from March 2022 to October 2022 and did  
9 not receive any paid sick days.

10 23. Defendants also did not have a policy to reimburse Plaintiff and similarly situated  
11 employees for use of their personal cell phones for work purposes. Plaintiff and similarly situated  
12 employees used their personal cell phones to communicate with managers, supervisors, and other  
13 aggrieved employees regarding work issues via Microsoft Teams. Also, Plaintiff and similarly situated  
14 employees used their personal cell phones to lock and unlock the door or doors of their office building.  
15 Defendants instructed Plaintiff and similarly situated employees to use a cell phone application named  
16 KISI that locked and unlocked doors. Furthermore, Defendants used an online payroll service named  
17 Gusto to enter and keep track of employee times. Plaintiff and similarly situated employees used their  
18 cell phones to access the Gusto website, to clock in and clock out, and to check their payroll data.

19 24. Defendants maintain a "Criminal Conviction Policy" that requires employees to disclose  
20 an arrest or conviction within three (3) days of the arrest or conviction to the employees' supervisor or to  
21 Human Resources. The policy further requires supervisors who are made of aware of an employee's  
22 arrest or conviction to disclose in accordance with the handbook procedures. The existence of, and/or  
23 failure to disclose, an arrest or conviction was used by Defendants as a factor for determining whether  
24 an employee would continue to be employed and the conditions under which that employment would  
25 occur.

26 25. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all  
27 overtime, sick leave wages, and meal and rest period premiums owed, the wage statements Defendants  
28 issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours

1 worked, the accurate rates of pay and overtime wages earned, the number of meal and rest period  
2 premiums owed, and the accurate gross and net wages earned.

3 26. As of this date of this letter, Defendants has not paid Plaintiff and similarly situated  
4 employees all overtime wages, meal and rest period premiums, and sick leave wages owed to them.

5 27. Plaintiff has been diagnosed by his medical provider with autism spectrum disorder  
6 which causes auditory sensitivity. This medical condition is triggered by repetitive noise, music or beats  
7 with certain harmonics or pitches, such as music with heavy base and high pitches. Also, music with  
8 extreme beats or sounds triggers his medical condition. In addition, because of his medical condition,  
9 Mr. Prasad is unable to ignore such sounds and focus on the task at hand. The more repetitive the music  
10 or beat is, the worse it gets for Mr. Prasad to cope with the sound. As a result, when certain music or  
11 sounds are played, Mr. Prasad starts feeling anxious, nervous, starts sweating, and starts having panic  
12 attacks. Moreover, his medical condition when triggered causes him to feel heart palpitations, pain in  
13 his jaw area, discomfort, vertigo like symptoms, and inability to focus or perform the task at hand. As a  
14 result, when certain music was played at Defendants' office building, he would not be able to function,  
15 work, or focus, due to his medical condition. Defendants knew about Plaintiff's medical condition as  
16 Plaintiff provided Defendants with a note from his physician in or around June 2021. Mr. Prasad  
17 provided the doctor's note to his manager at the time, Gabriel Miranda and explained to him the nature  
18 of his medical condition. Initially, Gabriel Miranda accommodated Mr. Prasad and provided access to  
19 the music controls so that Mr. Prasad could change a song that bothered or affected his medical  
20 condition. Plaintiff worked under Gabriel Melinda in Suite 190 for most of his employment. This  
21 accommodation by Defendants seemed to work fine and did not have any effect on the running of the  
22 business nor Plaintiff's performance or ability to perform his tasks.

23 28. However, Mr. Prasad's team was moved to work under a new manager, Marcus Allsmuth  
24 in Suite 110. Marcus liked to play rap songs that had heavy base, high pitches, and repetitive beats.  
25 Many of the songs that Marcus played at the Suite 110 were the type of songs and/or music that  
26 triggered Mr. Prasad's medical condition and anxiety, which led to Mr. Prasad being nervous, not being  
27 able to focus, panicking, and not being able to work. These songs greatly affected Mr. Prasad's medical  
28 condition.

1           29. Plaintiff informed Marcus of his medical condition and his prior accommodation which  
2 allowed Plaintiff to change the songs if they started to affect his medical condition. In fact, Marcus  
3 already knew of Plaintiff's medical condition prior to Plaintiff being assigned to Marcus' office. Yet,  
4 Marcus told Plaintiff "No you don't do that, you tell me and I will change the songs." At first, Marcus  
5 changed the songs when asked by Plaintiff, but when Marcus was away, Mr. Prasad was unable to  
6 change the songs or music that triggered his medical condition because he was not allowed to change  
7 them. Mr. Prasad explained to Marcus that this arrangement was not working for him and that he was  
8 experiencing a great amount of anxiety and panic attacks because of the heavy base, and high pitches of  
9 the songs. Mr. Prasad asked Marcus to allow him to change the songs or music when certain harmonics  
10 or pitches were being played when Marcus was away from his desk. Marcus told Plaintiff that he would  
11 have to clear it with Don, the Chief Operating Officer first.

12           30. Rather than have the accommodation approved, Mr. Prasad was moved to another suite,  
13 away from his team. However, Plaintiff's job involves talking to team members constantly, in a fast  
14 pace environment that requires making many calls to different truck drivers, multitasking,  
15 communicating with the team in real time in order to book truck routes as efficiently as possible, talking  
16 in the phone with multiple truck drivers while asking team members questions regarding the routes  
17 being booked, asking team members different questions and issues involving the truck loads, and  
18 relaying this information to truck drivers that were providing quotes for the routes/loads. As a result,  
19 Plaintiff expressed to Marcus that working away from his team in a separate office would not be  
20 effective for him and that he would like to work with his team. Communicating through Microsoft  
21 Teams was not effective because Plaintiff needed to talk to his team constantly in real time to make  
22 quick decisions regarding the booking of loads and trucks while being on the phone with different truck  
23 drivers, sometimes two truck drivers at a time.

24           31. Plaintiff was terminated one week after his conversation with Marcus. Defendants did  
25 not give a reason for Plaintiff's termination. Plaintiff was terminated in retaliation as a result of his  
26 request for disability accommodation. Defendants knew of Plaintiff's disability and prior  
27 accommodation due to his medical condition. However, Defendants retaliated and discriminated against  
28 Plaintiff because of his disability. Defendants failed to accommodate Plaintiff and engage in the

1 interactive process even though accommodating Plaintiff was not an impediment on Defendants'  
2 running of the business. Defendants could have easily accommodated Plaintiff. Plaintiff suffered great  
3 stress, anxiety, emotional, and financial hardship because of Defendants' lack of accommodation,  
4 disability discrimination, and termination of employment.

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**  
7 **FAILURE TO PAY OVERTIME WAGES**  
8 **(As to all Defendants)**

9 32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully  
10 set forth herein.

11 33. During the period Plaintiff was employed by Defendants, Defendants were required to  
12 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of  
13 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for  
14 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A);*  
15 Cal. Lab. Code §§ 510, 1194.

16 34. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day  
17 and/or forty (40) hours per week on several occasions while employed by Defendants. However,  
18 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours  
19 worked at their regular rate of pay.

20 35. Plaintiff and similarly situated employees were not exempt from overtime protections  
21 employees under the California Wage Orders and Labor Code.

22 36. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
23 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to  
24 the extent pertinent as if set forth here in full.

25 **SECOND CAUSE OF ACTION**  
26 **FAILURE TO PAY MINIMUM WAGES**  
27 **(As to all Defendants)**

28 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully  
set forth herein.

38. For the period preceding the filing of this Complaint, Defendants were required to

1 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for  
2 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code §  
3 1194.

4 39. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of  
5 their obligation to pay the minimum wage for each hour worked but failed to do so.

6 40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to  
8 the extent pertinent as if set forth here in full.

9 **THIRD CAUSE OF ACTION**  
10 **MEAL PERIOD VIOLATIONS**  
11 **(As to all Defendants)**

12 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully  
13 set forth herein.

14 42. An employer must provide an employee a meal period in accordance with the applicable  
15 Wage Order, and California Labor Code sections 226.7 and 512.

16 43. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section  
17 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes  
18 for each work period of more than five (5) hours.

19 44. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide  
20 that employers may not employ employees for a work period for more than ten (10) hours per day  
21 without providing the employee with a second meal period of at least thirty (30) minutes. However, if  
22 the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long  
23 as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their  
24 regular rate of compensation for each meal period not provided.

25 45. Defendants employed Plaintiff and similarly situated employees for periods of more than  
26 five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at  
27 least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10)  
28 hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their  
first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and

1 similarly situated employees to take their second meal period before the completion of their tenth hour  
2 of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods  
3 throughout their employment.

4 46. Defendants further failed to pay Plaintiff and similarly situated employees the applicable  
5 meal period premiums for any such missed meal breaks.

6 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to  
8 the extent pertinent as if set forth here in full.

9 **FOURTH CAUSE OF ACTION**  
10 **REST PERIOD VIOLATIONS**  
11 **(As to all Defendants)**

12 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully  
13 set forth herein.

14 49. An employer must provide an employee a rest period in accordance with the applicable  
15 Wage Order and California Labor Code section 226.7.

16 50. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an  
17 employer to provide a rest period of not less than ten (10) minutes for each work period of more than  
18 four (4) hours or a major fraction thereof.

19 51. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly  
20 situated employees to take paid rest periods of at least ten (10) minutes for each work period that they  
21 worked more than four (4) hours or a major fraction thereof.

22 52. Defendants further failed to pay Plaintiff and similarly situated employees the applicable  
23 rest period premiums for any such missed rest periods.

24 53. As a proximate result of Defendants' conduct, Plaintiff and similarly situated  
25 employees have been damaged as stated in the section below entitled "DAMAGES," which is  
26 incorporated here to the extent pertinent as if set forth here in full.

27 //

28 //

**FIFTH CAUSE OF ACTION  
WAGE STATEMENT VIOLATIONS  
(As to all Defendants)**

54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully set forth herein.

55. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

*(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.*

56. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all hours worked, all applicable hourly rates in effect during the pay period, and gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly and easily determine the required information from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**SIXTH CAUSE OF ACTION**  
**WAITING TIME PENALTIES**  
**(As to all Defendants)**

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

60. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

61. Plaintiff and similarly situated employees did not receive all wages owed, including unpaid commissions, overtime wages, meal and rest period premiums, and all sick leave pay owed at their termination or within the required time after their separation from employment.

62. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

63. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid all overtime wages, as well as meal and rest period premiums, and sick leave wages because Defendants authorized the violating practices to occur in the first place. Defendants knew that Plaintiff was not paid the ICP bonus for the months of November 2022 and December 2022 prior to being terminated. Defendants refused to pay Plaintiff the December 2022 ICP bonus even after Plaintiff's termination. Moreover, knew that Plaintiff and similarly situated employees were receiving ICP bonuses and that these remunerations were not being calculated properly into Plaintiff's and similarly situated employees' regular rate of pay for purposes of overtime premium pay, meal and rest premium pay, and sick leave pay. However, Defendants did not pay at the time of Plaintiff's termination the correct amount of wages owed for overtime premiums, meal and rest period

1 premiums and sick leave pay. Further, Defendants knew that Plaintiff and similarly situated employees  
2 were not provided with compliant meal periods because Defendants authorized Plaintiff and similarly  
3 situated employees to falsely change the timecards to show that the meal periods were taken on time.  
4 Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation,  
5 yet Defendants still refused to pay the remaining wages owed.

6 64. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
7 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by  
8 thirty (30) days for Defendants' failure to pay all wages due.

9  
10 **SEVENTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE SECTION 432.7**  
11 **(As to all Defendants)**

12 65. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully  
13 set forth herein.

14 66. California Labor Code section 432.7(a)(1) makes it unlawful for an employer to ask an  
15 Applicant or employee to disclose information "concerning a conviction that has been judicially  
16 dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a,  
17 1203.425, 1203.45, and 1210.1 of the Penal Code."

18 67. Labor Code section 432.7 provides that "an employer shall not seek from any source  
19 whatsoever or utilize as a factor in determining any condition of employment including hiring,  
20 promotion, termination, or any apprenticeship training program or any other training program leading to  
21 employment, any record of arrest or detention that did not result in conviction...."

22 68. Defendants' Employee Handbook includes a Criminal Conviction Policy that requires  
23 employees to disclose an arrest or conviction within three (3) days of the arrest or conviction to the  
24 employees' supervisor or to Human Resources. The policy further requires supervisors who are made of  
25 aware of an employee's arrest or conviction to disclose in accordance with the handbook procedures.  
26 Failure to disclose by either the supervising employee or employee who was arrested or convicted could  
27 result in disciplinary action, up to and including termination of employment. After disclosing an arrest  
28 conviction, the policy provides that continued employment depends on a variety of factors surrounding

1 nature of the arrest or conviction and the employee's completeness in disclosure. As a result, the  
2 disclosure of conviction or arrest becomes a factor in determining termination of employee.

3 69. Defendants' policy and request to Plaintiff and similarly situated employees to disclose  
4 any arrest or convictions within three days of occurrence without any exceptions, is too broad and is not  
5 specific enough to inquire only about Plaintiff's relevant conviction history. Defendants' failure to  
6 narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily  
7 eradicated pursuant to law are not to be disclosed violates the statute given the broadness of the  
8 question. Also, Defendants' policy uses the disclosure of a conviction as a factor to determine if  
9 employee would be terminated. Thus, this was in violation of the law.

10 70. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
11 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to  
12 the extent pertinent as if set forth here in full.

13 **EIGHTH CAUSE OF ACTION**  
14 **VIOLATION OF LABOR CODE SECTION 432.6**  
**(As to all Defendants)**

15 71. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 70 as though fully  
16 set forth herein.

17 72. California Labor Code section 432.6 provides that "[a] person shall not, as a condition of  
18 employment, continued employment, or the receipt of any employment-related benefit, require any  
19 applicant for employment or any employee to waive any right, forum, or procedure for a violation of any  
20 provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section  
21 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and  
22 pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor,  
23 law enforcement agency, or any court or other governmental entity of any alleged violation."

24 73. California Labor Code section 432.6 (b) provides that "[a]n employer shall not threaten,  
25 retaliate or discriminate against, or terminate any applicant for employment or any employee because of  
26 the refusal to consent to the waiver of any right, forum, or procedure for a violation of the California  
27 Fair Employment and Housing Act or this code, including the right to file and pursue a civil action or a  
28

1 complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency,  
2 or any court or other governmental entity of any alleged violation.”

3 74. The prohibition against waivers found in California Labor Code section 432.6 includes  
4 those found in California Government Code section 12952, which prohibits inquiry into any information  
5 related to an individual’s criminal history directly in an application or through other means directed at  
6 discovering criminal history. *See* Cal. Code Regs., tit. 2, § 11017.1(4).

7 75. Defendants inquire in Plaintiff’s and similarly situated employees’ criminal history by  
8 means of their policies and by making it mandatory to disclose any type of arrest or criminal conviction  
9 within three (3) days of its occurrence. Defendants’ Employee Handbook describes such policy.  
10 Defendants’ policy and request to Plaintiff and similarly situated employees to disclose any arrest or  
11 convictions within three days of occurrence without any exceptions, is too broad and is not specific  
12 enough to inquire only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its  
13 questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated  
14 pursuant to law are not to be disclosed violates the statute given the broadness of the question.  
15 Defendants did not provide an option for employees to refuse to comply with Defendants’ policy. Thus,  
16 this was in violation of the law.

17 76. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees  
18 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to  
19 the extent pertinent as if set forth here in full.

20  
21 **NINTH CAUSE OF ACTION**  
**FAILURE TO REIMBURSE EXPENSES**  
**(As to all Defendants)**

22 77. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 76 as though fully  
23 set forth herein.

24 78. California Labor Code section 2802(a) states that “An employer shall indemnify his or  
25 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
26 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
27  
28

1 though unlawful, unless the employee, at the time of obeying the directions, believed them to be  
2 unlawful.”

3 79. Defendants required Plaintiff and similarly situated employees to use their personal cell  
4 phones for work purposes but failed to reimburse them for such use.

5 80. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees  
6 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to  
7 the extent pertinent as if set forth here in full.

8 **TENTH CAUSE OF ACTION**  
9 **UNFAIR COMPETITION**  
10 **(As to all and DOES 1 to 100)**

11 81. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 80 as though fully  
12 set forth herein.

13 82. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act  
14 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1  
15 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*  
16 California Business and Professions (“B&P”) Code § 17200.

17 83. Plaintiff and similarly situated employees were not paid all wages owed, including  
18 overtime wages, and meal and rest period premiums during their employment or any time thereafter.  
19 Moreover, through Defendants conduct Plaintiff and similarly situated employees were denied statutory  
20 protections regarding meal and rest periods.

21 84. Plaintiff further alleges that such actions and/or conduct constitute a violation of the  
22 California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to  
23 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

24 85. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the  
25 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to  
26 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code  
27 sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 510, 512, and  
28 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing  
of this Action.

**ELEVENTH CAUSE OF ACTION**  
**DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**  
**(As to all Defendants)**

86. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 85 as though fully set forth herein.

87. Defendants are “employers” in the State of California, as defined in the Cal. Gov’t Code § 12926(d). Plaintiff was an “employee” as defined by the FEHA. *See* Cal. Gov’t Code § 12926(c).

88. Under the FEHA, it is unlawful “for an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition ... of any person, ... to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.” *Green v. State of California*, 42 Cal. 4th 254, 262, (2007). “The plain meaning of the language used in the FEHA’s definition of mental disability, and the absence of any potential absurd result from following the plain language, require us to follow the Legislature’s language and give a broader meaning to mental disability than to physical disability.” *Jensen v. Wells Fargo Bank*, 85 Cal. App. 4th 245, 257, (2000). “A qualifying “mental disability” under FEHA includes “any mental or psychological disorder ..., such as ... emotional or mental illness” that “limits a major life activity.” (§ 12926, subd. (j)(1).)” “The term “major life activity” is broadly construed and includes physical, mental and social activities, and working (§ 12926, subd. (j)(1)(C)); “limits” means the achievement of a major life activity is made difficult (id., subd. (j)(1)(A) & (B)).” *Higgins-Williams v. Sutter Med. Found.*, 237 Cal. App. 4th 78, 83–84, (2015).

89. Plaintiff had a disability or was perceived as having a disability while employed by Defendants. Mr. Prasad suffered a mental disability evidenced by his DSM-5 diagnosis and doctor’s note provided to Defendants. Prasad would have anxiety attacks when he would hear certain songs music with certain harmonics, heavy base, and high pitches. Such songs would trigger his medical condition and cause him great anxiety, nervousness, sweating, heart palpitations, pain his jaw area, vertigo like symptoms, and loss of focus and the ability to work on the task at hand. He would start panicking when such music was being played. As a result, he would not be able to function or work

1 when music with high pitches and heavy base was being played. This limited his ability to work as said  
2 songs and music caused him to have anxiety attacks while at work.

3 90. Based on Plaintiff's actual or perceived disability, Defendants, through their agents and  
4 employees, engaged in a pattern and practice of unlawful disability discrimination in violation of the  
5 FEHA in connection with the terms and conditions of Plaintiff's employment. Defendants' manager  
6 Marcus Allsmuth was hostile to Plaintiff's request for an accommodation, Defendants took away  
7 Plaintiff's accommodation, and ultimately terminated Plaintiff after Plaintiff engaged Marus Allsmuth  
8 about his accommodation. Defendants failed to engage in the interactive process with Plaintiff as  
9 Defendants' manager Marcus Allsmuth took away Plaintiff's accommodation and told Plaintiff that he  
10 was the only one who could change the music that affected Plaintiff's medical condition and disability.

11 91. As a direct and proximate result of the willful, knowing, and intentional discrimination  
12 against Plaintiff, and the failure to act by Defendants, Plaintiff has suffered mental distress, anguish, and  
13 indignation. Plaintiff suffered damages legally caused by the Defendants' acts as stated in the section  
14 below entitled "DAMAGES," which is incorporated herein to the extent pertinent as if set forth here in  
15 full.

16 92. Defendants' acts, alleged herein, including terminating her instead of accommodating her  
17 disability, are malicious, oppressive, despicable, and in conscious disregard of Plaintiff's rights. As  
18 such, punitive damages are warranted against Defendants in order to punish and make an example of  
19 their actions.

20 **TWELFTH CAUSE OF ACTION**  
21 **FAILURE TO ACCOMMODATE AND ENGAGE IN THE INTERACTIVE PROCESS**  
(As to all Defendants)

22 93. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 92 as though fully  
23 set forth herein.

24 94. "Under FEHA, an employer's "fail[ure] to make reasonable accommodation for the  
25 known physical or mental disability of an applicant or employee' is an unlawful employment practice. (§  
26 12926, subd. (m).” *Swanson v. Morongo Unified Sch. Dist.*, 232 Cal. App. 4th 954, 968–69, as modified  
27 on denial of reh'g (Dec. 23, 2014). “A reasonable accommodation is any modification or adjustment to  
28 the workplace that enables the employee to perform the essential functions of the job held or desired.”

1 *Id.* "An employer has an "affirmative duty" to reasonably accommodate a disabled employee and that  
2 duty is a continuing one that is not exhausted by one effort." *Humphrey v. Memorial Hospitals Assn.*  
3 (9th Cir. 2001) 239 F.3d 1128, 1138; *Swanson v. Morongo Unified Sch. Dist.*, 232 Cal. App. 4th 954,  
4 969, (2014), as modified on denial of reh'g (Dec. 23, 2014). "Reasonable accommodations include "job  
5 restructuring, part-time or modified work schedules, *reassignment to a vacant position*, ... and other  
6 similar accommodations for individuals with disabilities." *Swanson v. Morongo Unified Sch. Dist.*, 232  
7 Cal. App. 4th 954, 969, as modified on denial of reh'g (Dec. 23, 2014). "The elements of a failure to  
8 accommodate claim are "(1) the plaintiff has a disability under the FEHA, (2) the plaintiff is qualified to  
9 perform the essential functions of the position, and (3) the employer failed to reasonably accommodate  
10 the plaintiff's disability." *Scotch v. The Art Institute of California-Orange County.*, 173 Cal. App. 3d  
11 779, 783 (May 6, 2009); *Swanson v. Morongo Unified Sch. Dist.*, 232 Cal. App. 4th 954, 969, as  
12 modified on denial of reh'g (Dec. 23, 2014).

13 95. Defendants, at all times material herein, were an employer subject to the requirements of  
14 the FEHA and had a duty to reasonably accommodate qualified individuals with disabilities.

15 96. Plaintiff is and was, at all times material herein, a qualified individual with a disability  
16 and with a record of disability under the FEHA who, with reasonable accommodation, could perform the  
17 essential functions of positions within Defendants' business, without undue hardship to Defendants and  
18 without endangering the health or safety of herself or others.

19 97. Defendants failed to accommodate Plaintiff's actual or perceived disability and his  
20 request for accommodation based on his disability. Defendants became aware, or at a minimum  
21 perceived, that Plaintiff was a qualified individual with a disability and with a record of such disability  
22 who, with reasonable accommodation, could perform the essential functions of his position without  
23 undue hardship to Defendants. However, in violation of the FEHA, Defendants did not make sufficient,  
24 timely, good faith efforts to engage in an interactive process to identify and make a reasonable  
25 accommodation for Plaintiff's disability. Instead, Defendants took away Plaintiff's accommodation and  
26 refused to engage in the interactive process with him. In fact, Defendants terminated Plaintiff after  
27 Plaintiff complained about the lack of proper accommodation for his disability.

28 98. Plaintiff suffered damages which were the direct and proximate result of Defendants'

1 failure to reasonably accommodate Plaintiff's disability and engage in the interactive process as stated in  
2 the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth  
3 here in full.

4 99. Defendants' aforementioned acts in failing to reasonably accommodate Plaintiff's  
5 disability and timely engage in the interactive process were wanton, willful, intentional, malicious, and  
6 showed a reckless disregard for the rights and sensibilities of Plaintiff. As such, punitive damages are  
7 warranted against Defendants in order to punish and make an example of its actions.

8  
9 **THIRTEENTH CAUSE OF ACTION**  
**FAILURE TO PREVENT DISCRIMINATION**  
10 **(As to all Defendants)**

11 100. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 99 as  
12 though  
13 fully set forth herein. Defendants were obligated pursuant to the FEHA to "take all reasonable steps  
14 necessary to prevent discrimination and harassment from occurring." See Cal. Gov't Code § 12940(k).

15 101. Plaintiff attempted to engage in the interactive process and sought an accommodation for  
16 his disability, but instead Defendants only accommodated Plaintiff initially, and then later refused to  
17 engage in the interactive process and accommodate Plaintiff. As a result, Defendants not only failed to  
18 prevent disability discrimination, but they also actively participated in it.

19 102. Plaintiff suffered damages proximately caused by Defendants, and each of their agent's  
20 acts as stated in the section below entitled "DAMAGES," which is incorporated here to the extent  
21 pertinent as if set forth here in full.

22 103. Defendants' aforesaid acts ratifying the violations were wanton, willful, intentional,  
23 malicious, and betrayed a reckless disregard for the rights and sensibilities of Plaintiff. As such,  
24 punitive damages are warranted against Defendants in order to punish and make an example of their  
25 actions.

26 **FOURTEENTH CAUSE OF ACTION**  
**PRIVATE ATTORNEYS GENERAL ACT**  
27 **(As to all Defendants)**

28 104. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 103 as though  
fully set forth herein.

1           105. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the  
2 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated  
3 current and former employees:

- 4           • Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime  
5 Wages)
- 6           • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay  
7 Minimum Wages)
- 8           • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B)  
9 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 10          • Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest  
11 Periods or Pay Premiums in Lieu Thereof)
- 12          • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 13          • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 14          • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 15          • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of  
16 Work in Any Industrial Welfare Commission Order)
- 17          • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 18          • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- 19          • Violation of Labor Code § 2751 (Commission Contracts)
- 20          • Violation of Labor Code §§ 432.6, 432.7, 432.8 (Limitations on Employers Regarding  
21 Inquiring Into Criminal History and Waivers Relating Thereto)

22           106. Plaintiff seeks civil penalties against Defendants as provided in the California Labor  
23 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section  
24 2699(f)(2).

25           107. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code  
26 sections 2699(a) and 2699.3.

27           108. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees  
28

1 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to  
2 the extent pertinent as if set forth here in full.

3  
4 **DAMAGES**

5 WHEREFORE Plaintiff requests relief as follows:

- 6 1. A jury trial;
- 7 2. As to the First Cause of Action:
  - 8 a. Wages in an amount to be proven at trial;
  - 9 b. Interest for the wages due pursuant to California Labor Code section 1194;
  - 10 c. For reasonable attorney's fees and costs incurred pursuant to California Labor  
11 Code section 1194;
- 12 3. As to the Second Cause of Action:
  - 13 a. Wages in an amount to be proven at trial;
  - 14 b. Interest for the wages due pursuant to California Labor Code section 1194;
  - 15 c. For reasonable attorney's fees and costs incurred pursuant to California Labor  
16 Code section 1194;
  - 17 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 18 4. As to the Third Cause of Action:
  - 19 a. Wages in an amount to be proven at trial;
  - 20 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure  
21 section 1021.5;
- 22 5. As to the Fourth Cause of Action:
  - 23 a. Wages in an amount to be proven at trial;
  - 24 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure  
25 section 1021.5;
- 26 6. As to the Fifth Cause of Action:
  - 27 a. Penalties as provided for in Labor Code section 226, including the greater of all  
28 actual damages or fifty dollars (\$50.00) for the initial pay period in which the

- 1 violation occurred and one hundred dollars (\$100.00) per employee for each  
2 violation in the subsequent pay periods, but not to exceed four thousand dollars  
3 (\$4,000.00);
- 4 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section  
5 226(e);
- 6 7. As to the Sixth Cause of Action:
- 7 a. For any initial violations, \$100 for each failure to pay each employee;
- 8 b. For each subsequent violation or any willful or intentional violations \$200 for  
9 each failure to pay each employee, plus 25 percent of the amount unlawfully  
10 withheld;
- 11 8. As to the Seventh Cause of Action:
- 12 a. For any non-intentional violation, actual damages or two hundred dollars (\$200),  
13 whichever is greater;
- 14 b. For any intentional violation, treble actual damages, or five hundred dollars  
15 (\$500), whichever is greater,
- 16 c. Reasonable attorney's fees and costs;
- 17 9. As to the Eight Cause of Action:
- 18 a. Actual damages as proven at trial;
- 19 b. declaratory relief;
- 20 c. reasonable attorney's fees and costs;
- 21 10. As to the Ninth Cause of Action:
- 22 a. An amount to be proven at trial;
- 23 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 24 11. As to the Tenth Cause of Action:
- 25 a. Unpaid wages as proven at trial;
- 26 12. As to the Eleventh, Twelfth and Thirteen Causes of Action:
- 27 a. For compensatory damages, including lost and future wages, earnings, and  
28 benefits, and all other sums of money, together with interest thereon, according to

- 1 proof at trial;
- 2 b. For a money judgment for mental pain and anguish and emotional distress
- 3 according to proof;
- 4 c. For punitive damages;
- 5 d. For reasonable attorneys' fees and costs pursuant to the FEHA;

6 13. As to the Fourteenth Cause of Action:

- 7 a. For civil penalties as provided in the Labor Code for each enumerated
- 8 violation;
- 9 b. For those Labor Code sections where there is no civil penalty provided for their
- 10 violation, the default penalty provided in Labor Code section 2699(f): for any
- 11 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 12 period; For any subsequent violation, two hundred dollars (\$200) for each
- 13 aggrieved employee per pay period;
- 14 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 15 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 16 Court;
- 17 14. For such other and further relief as this Court may deem just and proper,
- 18 including, but not limited to:
- 19 a. Wages as proved at trial;
- 20 b. Injunctive and Declaratory relief;
- 21 c. Attorney's fees and costs as provided for by law; and
- 22 d. Interest.

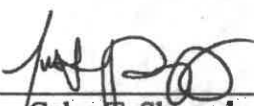
23

24 Dated: July 11, 2023

Shimoda & Rodriguez Law, PC

25

26 By: \_\_\_\_\_

  
Galen T. Shimoda  
Justin P. Rodriguez  
Renald Konini  
Attorneys for Plaintiff

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**  
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Elias Tapia, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to  
7 the within above-entitled action.

8 On July 11, 2023, I served the following documents on the party below:

- 9 • **FIRST AMENDED COMPLAINT FOR DAMAGES**

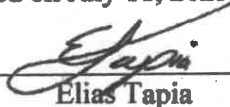
|                                                                                                                                                                                                                                                            |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 10 GREENBERG TRAUIG, LLP<br>11 Timothy J. Long (Bar No. 137591)<br>12 400 Capitol Mall, Suite 2400<br>13 Sacramento, California 95814<br>14 Telephone: (916) 442-1111<br>Facsimile: (916) 448-1709<br>Email: longt@gtlaw.com<br>Michael.Wertheim@gtlaw.com |  |
|                                                                                                                                                                                                                                                            |  |

15  
16  
17  
18 [XXX] [By Mail] I am familiar with my employer's practice for the collection and  
19 processing of correspondence for mailing with the United States Postal Service  
20 and that each day's mail is deposited with the United States Postal Service that  
21 same day in the ordinary course of business. On the date set forth above, I served  
22 the aforementioned document(s) on the parties in said action by placing a true  
copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for  
collection and mailing on this date, following ordinary business practices, at Elk  
Grove, California, addressed as set forth above.

23 [ ] [By Personal Service] By personally delivering a true copy thereof to the office  
of the addressee above.

24 [ ] [By Overnight Courier] By causing a true copy and/or original thereof to be  
25 personally delivered via the following overnight courier service:\_\_\_\_\_.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing  
27 is true and correct, and that this declaration was executed on July 11, 2023, at Elk Grove, California.

28   
Elias Tapia

# Exhibit C



**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Blvd.  
Suite #120  
Elk Grove, CA 95624  
Ph. (916) 525-0716  
Fax (916) 760-3733  
[www.shimodalaw.com](http://www.shimodalaw.com)

April 5, 2023

**For Online Filing:**

Labor and Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

**Re: *Prasad v. RCG Logistics LLC***

Dear Labor Commissioner,

As counsel for Naveen Prasad (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

RCG Logistics LLC  
9300 Tech Center Drive, Suite 190  
Sacramento, CA 95826

Sean Cabin  
9300 Tech Center Drive, Suite 190  
Sacramento, CA 95826

Vitaliy Kuzmenko  
9300 Tech Center Drive, Suite 190  
Sacramento, CA 95826

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against RCG Logistics, LLC (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiffs and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, aggrieved employees shall include, but is not limited to, the following: all individuals who have worked, or continue to work, for Defendants in California as a non-exempt employee at any time between one (1) year prior to the filing of this notice up to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



## A. FACTS

Plaintiff was employed with Defendants from April 20, 2021, to January 6, 2023, as a non-exempt employee. Plaintiff was paid eighteen dollars (\$18) per hour plus incentive commission payments. Plaintiff's duties included coordinating companies that needed cargo loads transported with truckers that needed cargo loads to transport. Plaintiff and aggrieved employees were paid commissions based on the profits they were able to generate for Defendants based on the difference between the quoted transport costs provided to companies actual the actual costs truckers agreed to transport the cargo loads for.

Defendants' incentive commission payment system was never provided to employees in writing. However, under the incentive commission payment system, Plaintiff and aggrieved employees received "ICP" points if they booked a load for certain percentage profit. For example, on a project Plaintiff worked on, a 10% profit yielded eight (8) ICP points to Plaintiff. If Plaintiff yielded a 20% margin, then Plaintiff would receive additional points, which would amount to a higher commission. The required profit percentage required to earn points varied for each project, but the ultimate incentive commission payment made to Plaintiff and aggrieved employees was based on the amount of ICP points earned.

Plaintiff and aggrieved employees received incentive commission payments on a monthly basis for the ICP points earned in the month prior. Defendants paid these amounts on paychecks separate from their regular paychecks. However, Defendants failed to also pay the increased overtime premiums, meal and rest period premiums, and sick leave payments that were earning as a result of the increased regular rate of pay during the same periods.

Plaintiff and aggrieved employees regularly fielded, and were responsible for, taking phone calls to obtain quotes related to cargo loads. If Plaintiff or aggrieved employees were on a phone call, they could not abruptly end the call to take a meal or rest break. Plaintiff and aggrieved employees were encouraged to edit their time records to reflect timely meal periods being taken when, in fact, they had not been taken. Plaintiff and aggrieved employees regularly worked during the hours they were clocked out for meal periods. Furthermore, Defendants' timecards also reflected that Plaintiff and aggrieved employees were not able to take timely meal periods, yet Plaintiff and aggrieved employees did not receive any meal period premiums. Defendants did not accurately record Plaintiff and aggrieved employees' meal period times. Furthermore, Defendants' meal and rest period policies violated California law, authorizing only one meal period a day if employees worked longer than five (5) hours (*i.e.* no provision for a second meal period when working more than ten (10) hours), failing to authorize rest periods when employees worked between 3.5-4 hours, and failing to authorize a third rest period when employees worked longer than ten (10) hours. Plaintiff and aggrieved employees were also interrupted by supervisors and cargo calls when attempting to take rest breaks. Defendants did not accurately record Plaintiff and aggrieved employees meal period times.



Additionally, Plaintiff and aggrieved employees were unable to take uninterrupted rest breaks. Indeed, a team lead, Leticia, yelled at Plaintiff while he was on break to return to work. On several occasions, Plaintiff was interrupted to return to work to take a phone call or finish miscellaneous tasks.

Defendant failed to provide Plaintiff and aggrieved employees with paid sick leave. Plaintiff became sick for a period of six (6) months from March 2022 to October 2022 and did not receive any paid sick days.

Defendants also did not have a policy to reimburse Plaintiff and Aggrieved Employees for use of their personal cell phones for work purposes. Plaintiff and Aggrieved Employees used their personal cell phones to communicate with managers, supervisors, and other aggrieved employees regarding work issues via Microsoft Teams. Also, Plaintiff and Aggrieved Employees used their personal cell phones to lock and unlock the door or doors of their office building. Defendants instructed Plaintiff and Aggrieved Employees to use a cell phone application named KISI that locked and unlocked doors. Furthermore, Defendants used an online payroll service named Gusto to enter and keep track of employee times. Plaintiff and Aggrieved Employees used their cell phones to access the Gusto website to clock in and clock out and to check their payroll data.

Defendant maintains a “Criminal Conviction Policy” that requires employees to disclose an arrest or conviction within three (3) days of the arrest or conviction to the employees’ supervisor or to Human Resources. The policy further requires supervisors who are made of aware of an employee’s arrest or conviction to disclose in accordance with the handbook procedures. The existence of, and/or failure to disclose, an arrest or conviction was used by Defendant as a factor for determining whether an employee would continue to be employed and the conditions under which that employment would occur.

As a result of Defendants’ failure to pay Plaintiff and aggrieved employees all overtime, sick leave wages, and meal and rest period premiums owed, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay and overtime wages earned, the number of meal and rest period premiums owed, and the accurate gross and net wages earned.

As of this date of this letter, Defendants has not paid Plaintiff and aggrieved employees all overtime wages, meal and rest period premiums, and sick leave wages owed to them.

## **B. ALLEGATIONS AND CHARGES**

**Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)**



Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and aggrieved employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and aggrieved employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

**Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)**

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.,* IWC Wage Order MW-2019; IWC Wage Order No. 4, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

**Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)**

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and aggrieved employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. To the extent any meal period premiums were paid, they were not paid at the regular rate of pay. This was in violation of the law.

**Count Four – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)**

Labor Code section 226.7 and Wage Order No. 4, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and aggrieved employees were



not authorized and permitted to take legally compliant rest periods pursuant to California law. Indeed, Plaintiff and aggrieved employees were interrupted on their rest breaks and demanded to return to work by team leads. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. To the extent any rest period premiums were paid, they were not paid at the regular rate of pay. This was in violation of the law.

**Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)**

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and aggrieved employees. This is in violation of the law.

**Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)**

Labor Code sections 201-203 require that all wages, including missed meal and rest periods and bonuses/commissions, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and aggrieved employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

**Count Seven – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)**

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. Sean Cabin is and has been, an officer and managing member of the company. Similarly, Vitaliy Kuzmenko, is and has been, an officer and managing member of the company. Sean Cabin and Vitaliy Kuzmenko were responsible for overseeing the



policies and practices described herein. Both of them were aware of, approved, and enforced these practices either by creating them, directly enforcing them, and/or training and counseling subordinate managers and supervisors to enforce them as detailed herein. As described above, Defendants, by and through Defendants agents, violated Plaintiff and aggrieved employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.

**Count Eight – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)**

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiffs and Aggrieved Employees' wage records and hours worked. This was against the law.

**Count Nine – Violation of Labor Code § 2751 (Commission Contracts)**

Labor Code section 2751 states that “[w]henver an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid. . . . The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee.” Defendants’ compensation system involved commission payments based on the amount of ICP points earned by Plaintiff and aggrieved employees on any given project. However, Defendants’ failed to provide this agreement in writing to Plaintiff and aggrieved employees, which was against the law.

**Count Ten – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)**

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An



employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave because they failed to correctly calculate the regular rate of pay.

**Count Eleven - Violation of Labor Code §§ 432.6, 432.7, 432.8 (Limitations on Employers Regarding Inquiring Into Criminal History and Waivers Relating Thereto)**

Labor Code section 432.7 provides that “an employer shall not seek from any source whatsoever or utilize as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction....”

California Labor Code § 432.7(a)(1) makes it unlawful for an employer to ask an applicant or employee to disclose information regarding an arrest that did not result in a conviction or information concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law. Moreover, Labor Code § 432.8 prohibits employers from asking job applicants about convictions that are more than two years old for possession of marijuana. California Labor Code section 432.6 prohibits employers from requiring individuals to sign, as a condition of employment, any document waiving any right in the Fair Employment and Housing Act, including California Government Code section 12952, which prohibits inquiry into any information related to an individual's criminal history directly in an application or through other means directed at discovering criminal history. *See* Cal. Code Regs., tit. 2, § 11017.1(4). For the reasons stated above, Defendants Criminal Conviction Policy violated these statutes.

**Count Twelve– Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)**

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements to Plaintiff and Aggrieved Employees for use of their personnel cell phones for work purposes. This was in violation of the law.



If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

**Shimoda & Rodriguez Law, PC**

By: \_\_\_\_\_

Justin P. Rodriguez

JPR:rk

cc: Client via e-mail

1 *Prasad v. RCG Logistics LLC*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**  
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Elias Tapia, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to  
6 the within above-entitled action.

7 On April 5, 2023, I served the following documents on the party below:

- 8 • PRIVATE ATTORNEYS GENERAL ACT LETTER

|                                                                                        |                                                                         |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 9 RCG Logistics LLC<br>10 9300 Tech Center Drive, Suite 190<br>11 Sacramento, CA 95826 | Sean Cabin<br>9300 Tech Center Drive, Suite 190<br>Sacramento, CA 95826 |
| 12 Vitaliy Kuzmenko<br>13 9300 Tech Center Drive, Suite 190<br>14 Sacramento, CA 95826 |                                                                         |

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection  
16 and processing of correspondence for mailing with the United States Postal  
17 Service and that each day's mail is deposited with the United States Postal  
18 Service that same day in the ordinary course of business. On the date set forth  
19 above, I served the aforementioned document(s) on the parties in said action by  
placing a true copy thereof enclosed in a sealed envelope with postage thereon  
fully prepaid, for collection and mailing on this date, following ordinary business  
practices, at Elk Grove, California, addressed as set forth above.

20 [ ] [By Personal Service] By personally delivering a true copy thereof to the office  
of the addressee above.

21 [ ] [By Overnight Courier] By causing a true copy and/or original thereof to be  
22 personally delivered via the following overnight courier service:\_\_\_\_\_.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct, and that this declaration was executed on April 5, 2023, at Elk Grove, California.

25   
26 Elias Tapia  
27  
28

# Exhibit D

| <b>Date</b> | <b>Description</b>                                                             | <b>Amount</b> |
|-------------|--------------------------------------------------------------------------------|---------------|
| 2/28/23     | Administration Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fee     | \$500.00      |
| 4/5/23      | Certified Mail - PAGA Letters                                                  | \$14.97       |
| 4/5/23      | Payment to LWDA - PAGA Filing Fee                                              | \$75.00       |
| 4/6/23      | One Legal Filing Fee - Complaint, CCCS, Summons                                | \$125.00      |
| 4/13/23     | One Legal Service Fee & Court Filing Fee 20166290                              | \$1,586.72    |
| 6/15/23     | One Legal Service Fee - Summons order 20495459                                 | \$61.26       |
| 6/20/23     | Mediation fee                                                                  | \$4,125.00    |
| 7/11/23     | Priority Mail - FAC to Court - Service Copy to Opposing Counsel                | \$6.73        |
| 7/21/23     | Priority Mail - Filed FAC Service Copy to Opposing Counsel                     | \$6.73        |
| 7/31/23     | One Legal Filing Service Fee - First amended complaint order 20773868          | \$149.28      |
| 1/17/24     | One Legal Service Fee - notice order 22022904                                  | \$14.25       |
| 1/18/24     | One Legal Filing/Service Fee & Court Payment - Preliminary Approval Motion     | \$78.65       |
| 4/10/24     | One Legal File Fee / Service Fee - CMC Statement re 4/26/24 Hearing            | \$16.88       |
| Anticipated | One Legal Filing/Service Fee & Court Payment - Final Approval Motion           | \$225.00      |
| Anticipated | One Legal Filing Fee / Notice of Entry of Order re Final Approval and Judgment | \$61.26       |
| Anticipated | One Legal Filing Fee / Compliance Declaration                                  | \$61.26       |

**Total: \$7,107.99**

# Exhibit E

# Exhibit F

| <b>TASK CATEGORY</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |  | <b>GTS</b> | <b>JPR</b> | <b>RK</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|------------|------------|-----------|
| <b><u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law &amp; Motion.</u></b> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendant; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings and court filings; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |  | 17         | 13.4       | 21.6      |
| <b><u>Case Review, Management, Strategy Meetings, Dispositive Motions.</u></b> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding wage and hour claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from the Court regarding case management and assignments; Research regarding certification; Research regarding trial plan; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                           |  |  |  | 22.7       | 18.7       | 7.2       |
| <b><u>Discovery (Pre-Mediation/Non-Mediation Related), Related Law &amp; Motion, and Hearings.</u></b> Includes time spent preparing discovery requests; Drafting proposed Belaire notices and Protective Order; Research regarding discovery issues and anticipated objections; Document review and analysis; Seek out witnesses for interviews and declarations; Review public records requests regarding prior labor commissioner filings and prior wage and hour lawsuits; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                               |  |  |  | 1.5        | 6.9        | 24        |
| <b><u>Discovery / Investigation for Mediation.</u></b> Includes time spent preparing informal discovery specifically geared towards mediation; reviewing informal mediation productions, including data, analyses, documents, and public records; Analyzing sample; Perform damages analysis and calculations; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |  | 14.1       | 34.2       | 4.3       |
| <b><u>Mediation / Settlement Conference / Direct Negotiations.</u></b> Includes time spent drafting/revising mediation brief and accompanying exhibits; Drafting pocket brief; Review documents productions for potential exhibits; Preparing for and attending mediation; Pre-mediation calls with mediator; Legal research relating to issues on day of mediation; Direct negotiations with opposing counsel both before and after mediations; Preparing working draft of MOU; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                             |  |  |  | 11.6       | 19.1       | 21.9      |
| <b><u>Drafting Settlement Agreements.</u></b> Includes time spent preparing long form agreement and exhibits, revisions relating thereto; Research regarding any approval procedures or issues regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |  | 4.8        | 7.1        | 7.8       |
| <b><u>Settlement Approval and Administration.</u></b> Includes time spent drafting motion for preliminary approval and supporting declarations and order; Class data and settlement calculation review; Reviewing and resolving escalator issue for additional workweeks; Speaking with Settlement Administrator regarding calculations, distributions, and final approval logistics; Review reports from Settlement Administrator; Respond to Class Member calls and inquiries regarding the settlement and research relating thereto; Draft Motion for Final Approval and supporting declarations, review and finalize exhibits relating thereto; Legal research regarding approval issues. Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same. Includes estimated 10 hours for J. Rodriguez supervising final distributions and compliance with Court final approval order and attending compliance hearings. |  |  |  | 13.4       | 48.7       | 34.4      |
| <b>TOTAL:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |  | 85.1       | 148.1      | 121.2     |

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff NAVEEN PRASAD  
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**

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

Date: September 6, 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 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above  
3 referenced case came before this Court, on September 6, 2024, at 9:00 a.m., in Department 23 before  
4 the Honorable Jill Talley, presiding. Plaintiff Naveen Prasad (“Plaintiff”) filed this putative class  
5 action on April 7, 2023. The operative Complaint asserted class action and Private Attorney’s General  
6 Act (“PAGA”) claims alleging that Defendant RCG Logistics LLC (“Defendant”) violated California  
7 law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal  
8 periods, 4) failing to provide rest periods, 5) failing to provide accurate wage statements, 6) failing to  
9 timely pay all final wages, 7) violating Labor Code section 432.7, 8) violating Labor Code section  
10 432.6, 9) failing to reimburse employees for incurred expenses, and 10) engaging in unfair  
11 competition. Plaintiff also alleged Defendant is liable for civil penalties under the PAGA based on  
12 these violations. Plaintiff sought attorneys’ fees and costs as part of this Action. Defendant denied all  
13 of Plaintiff’s claims and denied that this case was appropriate for class treatment. No class has been  
14 certified. The class settlement was preliminarily approved by this Court on March 5, 2024.

15 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary  
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement  
17 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release  
18 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth  
19 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of  
20 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice  
21 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS  
22 FOLLOWS:

23 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**  
24 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is  
26 appropriate under the California Code of Civil Procedure and related case law:

27 All individuals who have worked, or continue to work, for Defendant in  
28 California as a non-exempt employee at any time between April 5, 2019,  
up to January 27, 2024.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes  
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the  
3 Agreement.

4 For settlement purposes only, the Court finds that Class Members meet the ascertainability and  
5 numerosity requirements since the parties can identify with a matter of certainty, based on payroll  
6 records, individuals who fall within the definition and the number of Class Members would make  
7 joinder impractical. The commonality and predominance requirements are met for settlement purposes  
8 since there are questions of law and fact common to Class Members. The common questions of law or  
9 fact in this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above  
10 by 1) failing to incorporate the value of nondiscretionary incentive based compensation into Plaintiff's  
11 and putative class members' regular rates of pay for the purpose of calculating premium wages owed, 2)  
12 failing to provide meal and rest periods in compliance with California law, 3) encouraging Plaintiff and  
13 putative class members to edit their time records to reflect timely meal periods being taken when, in  
14 fact, they had not been taken, 3) refusing to provide all paid sick leave available, 4) failing to reimburse  
15 Plaintiff and putative class members for use of their personal cell phone for work purposes, and 5)  
16 maintaining a criminal conviction policy that unlawfully required disclosure of arrests not resulting in  
17 conviction. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims  
18 also derive from these violations. Additionally, Class Members seek the same remedies under state  
19 law. The typicality requirement for settlement purposes is also satisfied since the wage and hour claims  
20 of the Class Representative are based on the same facts and legal theories as those applicable to the class  
21 members.

22 The Court also finds that certifying the settlement class is required to avoid each Class Member  
23 from litigating similar claims individually. This Settlement will achieve economies of scale for Class  
24 Members with relatively small individual claims and conserve the resources of the judicial system.

25 The Court finds that Plaintiff Naveen Prasad and Plaintiff's counsel, Galen T. Shimoda  
26 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate  
27 representatives of the settlement class. The Court appoints them as Class Representative and Class  
28 Counsel, respectively.

1       **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

2       The Court has again reviewed the preliminary approved Agreement, which was submitted with  
3 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls  
4 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also  
5 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length  
6 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to  
7 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members  
8 were able to object to the Agreement and its terms through the administration process and at a fairness  
9 hearing or opt-out of being bound by the preliminary approved Agreement.

10       No objections were made by Class Members and no Class Members opted out of the settlement.  
11 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive  
12 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs. The  
13 Court gives final approval to the Agreement and all terms therein as if stated here in full, including the  
14 \$552,795.23 Gross Settlement Amount.

15       The Court approves of the Twenty Thousand Dollars (\$20,000) PAGA Payment, which shall be  
16 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the  
17 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and  
18 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved  
19 Employees on a pro rata basis as described in the Agreement. The Court also finds that based on the  
20 facts of this case and the disputed issues, the Agreement provides a recovery that creates an effective,  
21 substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code  
22 and LWDA.

23       The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any  
24 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the  
25 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for  
26 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the  
27 Gross Settlement Amount will revert to Defendant for any reason.  
28

1 The releases and waivers for Class Members who did not opt out of being bound by the  
2 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are  
3 also approved by the Court as set forth in the Agreement.

4 Class Counsel sought an award of attorney's fees of \$193,478.33, attorney's costs of \$7,107.99,  
5 an Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement  
6 Administrator Costs in the amount of \$6,350. Defendant does not oppose these requests. The Notice of  
7 Settlement sent to Class Members included information regarding these amounts and that they would be  
8 requested in connection with final approval of the Agreement. Class Members have been given the  
9 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.  
10 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including  
11 prior fee awards in Sacramento County Superior Court at the requested rates, and the amount of time  
12 expended in litigation for the benefit of Class Members. The Court finds that the rates requested and  
13 hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by  
14 Class Counsel, the information provided by the Class Representative regarding the efforts and burdens  
15 undertaken for the benefit of the class, and the cost information provided by the Settlement  
16 Administrator. The Court finds that these amounts are fair, reasonable, and supported by the evidence  
17 submitted by Class Counsel. The requested amounts are approved and awarded as requested, which will  
18 be deducted from the Gross Settlement Amount. This finding is further supported by the lack of  
19 objections by Class Members to these amounts. The difference between the actual attorneys costs and  
20 Settlement Administrator Costs awarded and the originally allocated \$10,000 for each payment will be  
21 added to the Net Settlement Amount pursuant to the terms of the Agreement.

22 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**  
23 **INCLUDING THE NOTICE OF SETTLEMENT**

24 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as  
25 Exhibit A to the Declaration of Lesly Rubalcava, fairly and adequately advised Class Members of the  
26 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number  
27 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how  
28 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and

when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

#### IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

|                                                                                                                                                                                                                                                                                                            |                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel | Within 7 calendar days after the Effective Date                                                   |
| Last day for Defendant to fund settlement                                                                                                                                                                                                                                                                  | Within 21 calendar days after the Effective Date                                                  |
| Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees                                                      | Within 7 calendar days after Defendant has funded the settlement                                  |
| Last day for Participating Class Members and Aggrieved Employees to cash settlement checks                                                                                                                                                                                                                 | 180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees |
| Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries                                                                                                                                                                                       | Within 14 calendar days after settlement check cashing deadline                                   |
| Last day for Settlement Administrator to provide Parties with compliance declaration                                                                                                                                                                                                                       | Within 21 calendar days after settlement check cashing deadline                                   |

1 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each  
2 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the  
3 Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved  
4 Agreement.

5 **IT IS SO ORDERED.**

6  
7 Date: \_\_\_\_\_

By: \_\_\_\_\_

Judge of the Superior Court