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6

7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

9 KENIA CASTRO, as a private attorney
general and proxy for the State of
10 California,

11 Plaintiffs,

12 vs.

13 FRED LEEDS PROPERTY
MANAGEMENT, INC., a California
14 corporation; MAXIMILIAN LEEDS, an
individual; and DOES 1 through 10,
15 inclusive,

16 Defendants.
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Case No. 23STCV21642

**DECLARATION OF KEITH CUSTIS IN
SUPPORT OF MOTION FOR APPROVAL OF
PAGA ACTION SETTLEMENT**

Date: January 17, 2024

Time: 8:30 a.m.

Dept. 37

Judge: Hon. Gail Killefer

[Assigned for all purposes]

Reservation ID: 135370417337

Complaint Filed: September 8, 2023

Trial Date: June 3, 2025

DECLARATION OF KEITH CUSTIS

I, Keith Custis, declare as follows:

1. I am a shareholder at the law firm of Custis Law, P.C. (“Custis Law”), and counsel for plaintiff Kenia Castro. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would competently testify under oath to the facts set forth in this declaration. I submit this declaration in support of Plaintiff’s Motion for Approval of PAGA Action Settlement.

2. Attached hereto as **Exhibit A** is a true and correct copy of the fully-executed PAGA Action Settlement (“Settlement Agreement” or “SA”).

3. In compliance with Labor Code Section 2699(1)(2), I submitted the proposed Settlement, along with the Motion for Approval Of PAGA Action Settlement to the LWDA on December 4, 2024. Attached hereto as **Exhibit B** is a true and correct copy of an email from the LWDA confirming receipt of the proposed Settlement.

A. Brief Overview of the Litigation

4. Fred Leeds is a property management company.

5. Fred Leeds employed Plaintiff from April 1, 2022 through June 10, 2022.

6. On June 7, 2023, Plaintiff’s Counsel provided pre-filing written notice to the LWDA and by certified mail to Defendants of the alleged Labor Code violations on behalf of the LWDA, Plaintiff, and similarly situated employees as required by Labor Code § 2699.3(a).

7. On September 8, 2023, Plaintiff commenced the Action against Defendants by filing her complaint, which asserts a single cause of action under PAGA seeking civil penalties for alleged violations of the Labor Code sections 201, 202, 203, 204, 226, 226.3, 432, 510, 558, 1174(d), 1182.12, 1194, 1174.5, 1197, 1197.1, 1198, 1198.5, and 2802.

8. In the Action, Plaintiff seeks civil penalties on behalf of all employees of Defendant Fred Leeds who worked in the position of onsite property managers in the State of California, during the PAGA Period (June 7, 2022 through August 31, 2024).

B. Discovery and Investigation

9. I thoroughly investigated and researched the PAGA claim and theories of liability

1 before entering into the proposed Settlement. I initially obtained the following information and
2 documents relevant to PAGA liability: (1) the employee handbook that contained Fred Leeds' written
3 wage and hour policies including its timekeeping policies; and (2) Plaintiff's wage statements.

4 10. In preparation for the mediation, Fred Leeds also provided Plaintiff with (1) the total
5 number of former and current employees during the PAGA period; (2) the total number of separated
6 employees during the PAGA period; and (3) the total aggregate number of pay periods during the
7 PAGA period for the Aggrieved Employees (the "PAGA Data"). Using the PAGA Data, Plaintiff's
8 Counsel prepared a comprehensive damage analysis for use at mediation, which is described in detail
9 below.

10 **C. The Parties Settled After Mediation**

11 11. On June 24, 2024, the parties and their counsel participated in a full-day mediation
12 with Steven Paul, Esq., a well-respected mediator with considerable experience mediating wage and
13 hour class and PAGA actions. The settlement discussions were conducted at arm's length. Following
14 the June 2024 mediation session, the Parties accepted the mediator's proposal to resolve the action.
15 The Parties continued to engage in extensive post-mediation settlement negotiations regarding
16 settlement terms over several months. The Parties also exchanged multiple drafts of the settlement
17 documents before agreeing on the final form of the Settlement Agreement. The negotiations were at
18 all times adversarial and at arm's length.

19 **D. Summary of Key Settlement Terms**

20 12. Aggrieved Employees Definition. The term "Aggrieved Employees" means "a person
21 employed by Fred Leeds in California as an onsite property manager during the PAGA Period." SA,
22 ¶ 1.4.

23 13. PAGA Period. The PAGA Period is defined as the period from "June 7, 2022 through
24 August 31, 2024." SA, ¶ 1.20.

25 14. According to Fred Leeds, there are approximately 113 Aggrieved Employees. SA, ¶
26 4.1.

27 15. Monetary Terms. Defendants have agreed to pay a Gross Settlement Amount of
28 \$200,000 ("GSA") to settle the action. SA, ¶¶ 1.11, 3.1. After deducting amounts for Plaintiff's

Service Payment, Attorneys' Fees and Costs, and Settlement Administration Costs, the Settlement provides that the remaining Net Settlement Amount ("NSA") will be distributed pursuant to Labor Code § 2699(i) to the LWDA and the Aggrieved Employees as follows: 75% to the LWDA and 25% to Aggrieved Employees. SA, ¶ 3.2; *see also* ¶ 3.2.4. The Settlement is non-reversionary. SA, ¶ 3.1.

16. The principal monetary terms of the Settlement, and the amounts sought by this Motion, respectively, are as follows:

	Negotiated Settlement Amounts	Amounts Sought By Motion
Maximum Settlement Amount:	\$200,000.00	\$200,000.00
Less PAGA Counsel's Attorneys' Fees	-\$66,660.00	-\$66,660.00
Less PAGA Counsel's Litigation Costs	-\$10,000.00	-\$8,661.85
Less Plaintiff's Service Award	-\$5,000.00	-\$5,000.00
<u>Less Settlement Administration Costs</u>	-\$4,000.00	-\$4,000.00

17. Assuming the Court grants the relief requested by the Motion, the NSA will be \$115,678.15. Seventy-five percent (75%) of the NSA—or \$86,758.61—will be distributed to the LWDA as required by the PAGA. SA, ¶ 3.2.4. The remaining twenty-five percent (25%)—or \$28,919.54—will be distributed on a pro-rata basis to the Aggrieved Employees. *Id.* The average net payment of civil penalties to Aggrieved Employees will be \$255.93 (\$28,919.54 / 113 employees).

Individual PAGA Payments. Individual PAGA Payments will be calculated and paid from the NSA based on the number of pay periods an Aggrieved Employee worked during the PAGA Period. SA, ¶ 3.2.4.1. To calculate Individual PAGA Payments, the Administrator will calculate the total number of Pay Periods worked by each Aggrieved Employee during the PAGA Period and the aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's Individual PAGA Payment, the Administrator will use the following formula: The Aggrieved Employee Portion of the NSA will be divided by the aggregate number of Pay Periods, resulting in the "pay period value." Each Aggrieved Employee's Individual PAGA Payment will be calculated by multiplying each individual Aggrieved Employee's total number of Pay Periods by the pay period value. *Id.*

18. Tax Treatment. For tax reporting purposes, each settlement payment will be deemed

1 to be 100% penalties that will not be subject to deductions and withholdings. Because no claim forms
2 are required, settlement checks will be mailed to all Aggrieved Employees.

3 19. Settlement Administration. The Settlement provides that ILYM Group, Inc.
4 (“ILYM”) will serve as the Settlement Administrator. SA, ¶ 7.1. ILYM is a reputable administrator
5 that has successfully administered thousands of class and PAGA action settlements. Declaration of
6 Lisa Mullins ¶¶ 2-3; *see also id.* Ex. A (ILYM resume). ILYM will administer the Settlement for the
7 capped costs of \$4,000.00. Mullins Decl., Ex. C.

8 20. If the Settlement is approved, Fred Leeds will pay the GSA and provide the Aggrieved
9 Employees List to ILYM, respectively, within 14 and 15 days after the Effective Date. SA, ¶¶ 4.2,
10 4.3. ILYM, in turn, will make all payments required by the Settlement including the payments to the
11 LWDA and all Aggrieved Employees within 28 days after the Effective Date. SA, ¶¶ 4.4.

12 21. Treatment of Uncashed Settlement Checks. Settlement checks will be negotiable for
13 180 days. If a check is returned to the Administrator as undeliverable during the 180-day period, the
14 Administrator shall take all reasonable efforts to identify the employee’s correct address, including
15 the performance of a “skip-trace,” and to send another check to the employee at his or her updated
16 address. SA, ¶ 4.4.2. For any Aggrieved Employee whose check is uncashed and cancelled after the
17 void date, the Administrator shall transmit the funds represented by such checks to the California
18 Controller’s Unclaimed Property Fund in the name of the Aggrieved Employee. SA, ¶ 4.4.3; *see also*
19 Civ. Proc. Code § 1500, *et seq.*

20 **E. Plaintiff’s Counsel Experience**

21 22. Custis Law, P.C. has ample experience litigating wage and hour class actions and
22 PAGA representative actions.

23 23. I have approximately 27 years of litigation experience representing clients in complex
24 litigation in state and federal courts. I have litigated complex class actions since 2002. Since 2014, I
25 have focused on employment litigation and consumer and wage and hour class actions.

26 24. I am a 1997 graduate of Boston College Law School, where I graduated magna cum
27 laude, served as executive editor of the Boston College Law Review, and was admitted into the Order
28 of the Coif. During law school, I worked for the Consumer Protection Division of the Office of the

1 Massachusetts Attorney General.

2 25. Following law school, I clerked for the Honorable Mark L. Wolf of the United States
3 District Court for the District of Massachusetts.

4 26. I was admitted to the Massachusetts Bar in December 1997 and the California Bar in
5 February 2002.

6 27. In 1998, I began working as an associate attorney at the Boston-based law firm of
7 Choate, Hall & Stewart LLP. As a member of Choate's Complex Financial Litigation Practice Group,
8 my practice focused on insurance coverage claims and other complex business litigation.

9 28. In 2002, after a move to California, I began working at Stroock, Stroock & Lavan
10 LLP at its Los Angeles office. While at Stroock, I was primarily staffed on consumer class actions
11 venued in California state and federal courts. During my employment at Stroock, I played a
12 significant role in the class actions that I was staffed on, as I was often the only associate staffed on
13 such cases. In particular, I received a wide-array of class action experience performing the following
14 types of tasks: (a) drafting demurrers, motions to strike and/or dismiss; (b) drafting and responding
15 to written discovery; (c) drafting and opposing discovery-related motions; (d) arguing discovery-
16 related motions; (e) drafting oppositions to motions for class certification; (f) conducting exposure
17 analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at
18 class certification and potential damages resulting from such claims; (g) drafting mediation briefs;
19 (h) attending mediations, (i) deposing named plaintiffs and putative class members; (j) defending the
20 depositions of corporate witnesses; and (k) drafting appellate briefs. In short, I played an integral role
21 in all aspects of litigation from the inception of a matter through and beyond class certification.

22 29. In December 2012, after I had resigned from Stroock, I accepted a position with an
23 employment law firm based in Long Beach, California, where I worked on plaintiffs-side
24 employment litigation and wage and hour class actions.

25 30. In March 2014, I opened Custis Law Office, the predecessor to Custis Law, P.C.
26 During that time, Custis Law Office focused on business and employment litigation.

27 31. In April 2014, I also began working as an Of Counsel with the plaintiff's side class
28 action law firm of Ahdoot & Wolfson, P.C. Ahdoot & Wolfson is a nationally recognized law firm

1 that specializes in complex and class action litigation, with a focus on privacy rights, consumer fraud,
2 anti-competitive business practices, employee rights, defective products, civil rights, and taxpayer
3 rights and unfair practices by municipalities.

4 32. While working with Ahdoot & Wolfson, my practice focused on representing the
5 interests of plaintiffs in consumer class actions in the areas of consumer fraud, false and misleading
6 labeling of food products, and privacy. As Of Counsel to Ahdoot & Wolfson, I had principal day-to-
7 day responsibility for numerous consumer class actions and contributed significantly to other
8 consumer class actions. The following examples of such class actions are either ongoing or have
9 been successfully resolved, and have or will confer millions of dollars worth of benefits to
10 consumers, as well as injunctive relief:

- 11 ○ *McKnight v. Uber Technologies, Inc.*, No. 14-CV-05615-JST (N.D. Cal.) (final
12 approval of a \$32.5 million settlement granted).
- 13 ○ *DiFrancesco, et al. v. Utz Quality Foods, Inc.*, Case No. 1:14-CV-14744-DPW
14 (D. Mass.) (\$1.25 million settlement finally approved).
- 15 ○ *In re Hain Celestial Seasonings Prods. Consumer Litig.*, 13-CV-01757-AG-AN
16 (C.D. Cal.) (appointed Class Counsel).
- 17 ○ *Remijas, et al. v. Neiman Marcus Group, LLC*, Case No. 14-cv-1735 (N.D. Ill.)
18 (final approval of a \$1.6 million settlement granted).

19 33. In 2017, I transitioned from my consumer class action practice at Ahdoot & Wolfson,
20 P.C. to litigating single plaintiff employment cases and wage and hour class actions from the
21 plaintiff's side as the principal of Custis Law Office.

22 34. In 2018, I opened Custis Law, P.C. to exclusively represent plaintiffs in single
23 plaintiff employment cases, and class and PAGA representative actions.

24 35. In the past three years, I have represented over eighty clients in single-plaintiff
25 employment cases, many of which included a wage-and-hour component. In the past few years, I
26 have also successfully resolved or am currently litigating the following wage and hour class and/or
27 PAGA representative actions:

- 28 ○ *Mitchell, et al. v. The Madera Group, LLC, et al.*, LASC Case No. 20STCV24075

(approval of \$2,000,000 settlement in a wage-and-hour class and PAGA action granted on October 27, 2022).

- *Harris v. LDI Trucking, Inc., et al.*, LASC Case No. 19STCV04890 (approval of an \$1,500,000 settlement in a wage-and-hour class and PAGA action granted on August 17, 2022).
- *Bautista v. FM Restaurants HQ, LLC, et al.*, Orange County Superior Court Case No. 30-2022-01253704-CU-OE-CJC (approval of an \$850,000 settlement in a PAGA action granted on July 11, 2022).
- *Maldonado v. Wingman Partners, Inc., et al.*, LASC Case No. 19STCV09210 (final approval of \$500,000 wage-and-hour class action settlement granted on July 10, 2020).
- *Morales v. Wag Labs, Inc., et al.*, LASC Case No. 19STCV04890 (approval of an \$850,000 settlement in a PAGA action granted on March 10, 2020).
- *Coutcher v. Harman Fitness, et al.*, LASC Case No. 22STCV18360 (pending wage-and-hour class action).
- *Cheever v. Tuesday Morning, Inc.*, LASC Case No. 21STCV39238 (pending wage-and-hour class action; representing plaintiffs and putative class of over 1,000 employees).
- *Flamer v. Advertise Purple, et al.*, LASC Case No. 23STCV14693 (approval of settlement in a PAGA action granted on March 14, 2024).
- *Jackson v. Quantum Behavioral Solutions, Inc.*, LASC Case No. 21STCV12389 (pending wage-and-hour class action; representing plaintiff and putative class of over 580 employees).
- *Conriquez v. Cerritos Health & Fitness, LLC, et al.*, LASC Case No. 24STCV25107 (pending wage-and-hour class action).

36. I am an active member of the California Employment Lawyers Association (CELA), the Labor and Employment Section of the Los Angeles County Bar Association, the Labor and Employment Section of the California Lawyers Association, and the Consumer Attorneys

Association of Los Angeles (CAALA).

F. The Settlement Is Fair, Adequate And Reasonable

37. The Agreement Was Reached After Extensive Arms-Length Negotiations. As noted above, on June 24, 2024, the parties and their counsel participated in a full-day mediation with Steven Paul, Esq., a well-respected mediator with considerable experience mediating wage and hour class and PAGA actions. The settlement discussions were conducted at arm's length. Following the June 2024 mediation session, the Parties accepted the mediator's proposal to resolve the action. The Parties continued to engage in extensive post-mediation settlement negotiations regarding settlement terms over several months. The Parties also exchanged multiple drafts of the settlement documents before agreeing on the final form of the Settlement Agreement. The negotiations were at all times adversarial and at arm's length.

38. Strength of Plaintiff's Case. Although Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges there are substantial risks and uncertainties in trying the Action on the merits. As detailed below in Paragraphs 40-59, Fred Leeds could present multiple defenses to Plaintiff's claims. Thus, while Plaintiff was prepared to litigate her claims through trial, success was far from certain.

39. The Risk, Expense, Complexity, and Likely Duration of Further Litigation. If the case had not settled, and continued to be litigated, Plaintiff anticipates that the parties would spend hundreds of hours preparing for a trial. Both parties would engage in extensive, additional discovery including depositions of Plaintiff, other Aggrieved Employees, several defense witnesses, and each party's experts. Defendants also would engage in motion practice. The parties would thus incur considerably more attorneys' fees and costs through trial, and possible appeals. This Settlement avoids those risks and the accompanying expense.

40. Amount Offered In Settlement Given the Realistic Value of The Claims. The Settlement provides a fair and reasonable monetary recovery for the LWDA and the Aggrieved Employees in the face of disputed claims. A comparison of the amount that Fred Leeds offered in settlement to Fred Leeds' total exposure demonstrates that \$200,000 is reasonable.

41. According to the PAGA Data produced by Fred Leeds, Fred Leeds employed 113

1 Aggrieved Employees during the PAGA Period. The Aggrieved Employees worked a total of
2 approximately 4,300 pay periods during the PAGA Period, which was defined at mediation to
3 conclude on August 31, 2024. During the PAGA Period, 20 Aggrieved Employees separated from
4 Fred Leeds.

5 42. Using that data, and assuming a 100% violation rate, Plaintiff predicted Fred Leeds’
6 total exposure for civil penalties using the initial civil penalties available was \$2,210,500, with
7 stacking of penalties (i.e., the tabulating and aggregating of all potential penalties); and \$430,000
8 without stacking of penalties, as detailed in Paragraph 58.

9 43. Plaintiff did not calculate the total exposure for civil penalties using both the available
10 initial civil penalties and subsequent heightened penalties because it is unlikely that a court would
11 find that either the Labor Commissioner or a court had placed Fred Leeds on notice that its conduct
12 violated the Labor Code. Several courts have found that the “subsequent” penalty under PAGA
13 applies only after a court or the Labor Commissioner determines that the employer has violated the
14 Labor Code. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) (“the increased
15 \$200 civil penalty for ‘subsequent violation[s]’ does not apply unless [Plaintiff] presents evidence
16 that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor
17 Code.”); *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as
18 to “heightened civil penalties” because the defendant was not given notice by the Labor
19 Commissioner when the “subsequent” violations occurred).

20 44. The \$2,210,500 amount, however, is subject to challenge in several respects.

21 45. Fred Leeds would argue that an award of \$2,210,500 is “unjust, arbitrary and
22 oppressive, or confiscatory.” PAGA authorizes the court to reduce the maximum amount of civil
23 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would
24 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2).
25 In reducing PAGA penalties, courts have considered issues including whether the employees suffered
26 actual injury from the violations, whether the defendant was aware of the violations, and the
27 employer’s willingness to fix the violation. *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th
28 504, 528 (awarding PAGA penalties of only 0.2% of the maximum, reducing approximately

1 \$70,000,000 in penalties to \$150,000); *see also* *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
2 Cal. App. 4th 1112, 1136 (reducing original penalty of \$512,268.88 by 30% to \$358,588.22);
3 *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011), No. ED CV 10-01487 RGK (OPx), 2011 WL
4 7563047, at *4 (reducing original penalty of \$2.8 million by 82% to \$500,000 where Defendant was
5 “not aware” that its actions violated the law).

6 46. As detailed in the following paragraphs, Fred Leeds would also have raised many
7 defenses to each claim on the merits.

8 47. Civil Penalties for Minimum and Overtime Wage Claims: Plaintiff alleges that Fred
9 Leeds failed to pay the applicable minimum and overtime wages for all hours worked because Fred
10 Leeds required Aggrieved Employees to work off-the-clock to respond to tenant inquiries after hours,
11 and Fred Leeds failed to compensate the Aggrieved Employees for all off-the-clock hours worked
12 including off-the-clock hours worked in excess of eight (8) hours in a workday and forty (40) hours
13 in a workweek. Cmpl., ¶¶ 48-71. Using only the initial violation rate, I calculated the potential
14 maximum exposure on the minimum wage violation as \$430,000 (4,300 pay periods x \$100 civil
15 penalty per pay period), and the potential maximum exposure on the overtime wage violation as
16 \$430,000 (4,300 pay periods x \$100 civil penalty per pay period).

17 48. Fred Leeds would raise numerous defenses to these claims. Fred Leeds would argue
18 that Fred Leeds expressly instructed Aggrieved Employees not to work off-the-clock after their
19 regular work hours. Fred Leeds would also argue that Fred Leeds advised all tenants to call an after-
20 hours telephone number for after hours and emergency requests. In light of those facts, Fred Leeds
21 would argue that individual issues will predominate, requiring an employee-by-employee inquiry of
22 who worked off the clock, how long they worked, and whether Fred Leeds knew or should have
23 known of the off-the-clock work. Fred Leeds would argue there was sufficient variation in the
24 circumstances that could allegedly cause employees to perform work off the clock that resolution of
25 these claims would require an unmanageable series of mini-trials to determine how much time was
26 spent by each Aggrieved Employee off the clock, if any. Fred Leeds also would likely argue that the
27 Court should exercise its discretion to reduce the maximum penalty exposure because it was unaware
28 of the violations and because of its willingness to fix the violations. In light of these defenses, I

1 discounted the maximum recovery on this claim by 75% to account for the risks that Fred Leeds may
2 prevail in its arguments and arrived at a projected total recovery of \$107,500 in civil penalties for the
3 minimum wage claim and \$107,500 in civil penalties for the overtime wage claim.

4 49. Civil Penalties for Unpaid Reimbursements: Plaintiff alleges that Fred Leeds required
5 Aggrieved Employees to use their personal vehicles for work purposes, but failed to reimburse any
6 portion of the cost of their personal vehicles as required by Labor Code Section 2802 and *Cochran*
7 *v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137. Cmpl., ¶¶ 72-81. Using only the
8 initial violation rate, I calculated the potential maximum exposure on the unpaid reimbursement
9 claim to be \$430,000 (4,300 pay periods x \$100 civil penalty per pay period).

10 50. Among other defenses, Defendants would contend that Aggrieved Employees were
11 not required to use their own personal vehicles for work purposes and that Defendants provided
12 Aggrieved Employees with different options to provide tenant's rent checks to Fred Leeds'
13 corporate office other than by having an Aggrieved Employee personally deliver the rent checks
14 using the Aggrieved Employees' personal vehicle. Defendants also contend that the Labor Code
15 only requires reimbursement of "necessary" expenses—as opposed to any expense that is incurred
16 in the course of performing work—and argue that distinguishing a necessary expense from an
17 unnecessary one would require individualized inquiry. Furthermore, whether or not an expense was
18 necessary, would depend, in part, on the reasonableness of the employee's choice, and whether or
19 not an expense was incurred, would have to be established by way of extensive individual factual
20 inquiry and/or statistical evidence. To account for Defendants' defenses that could reduce damages
21 or preclude resolution of this claim on manageability grounds, Plaintiff discounted the maximum
22 recovery on this claim by 50% to arrive at a projected total recovery of \$215,000 in civil penalties.

23 51. Civil Penalties for Inaccurate Wage Statements: Plaintiff's allegations that Fred Leeds
24 violated Labor Code section 226 is derivative of Plaintiff's minimum wage, overtime, and rest and
25 meal period claims. Preliminarily, Plaintiff used the default \$100 penalty instead of the \$250 penalty
26 available under Labor Code section 226.3 to calculate maximum exposure. In 2021, the California
27 Court of Appeal held that additional penalties can be imposed under section 226.3 only if "the
28 employer either fails to provide a wage statement or fails to keep required records," not "for any

1 violation of section 226(a),” such as an incomplete or inaccurate statement. *Gunther v. Alaska*
2 *Airlines, Inc.*, 72 Cal. App. 5th 334, 354 (2021). The Court of Appeal expressly disagreed with a
3 contrary interpretation by a different district of the Court of Appeal, which had held a few years
4 before that section 226.3 applies to “all violations of section 226.” *Raines v. Coastal Pac. Food*
5 *Distributors, Inc.*, 23 Cal. App. 5th 667, 675 (2018) (emphasis in original). As the Court of Appeal
6 pointed out in *Gunther*, the decision in *Raines* rests on a false dilemma. In the case of an incomplete
7 or inaccurate statement, the choice is not between penalties under 226.3 and no penalties at all, but
8 rather between the standard penalty and a heightened penalty. *See Gunther*, 72 Cal. App. 5th at 354.
9 Although the California Supreme Court has not resolved this disagreement, Plaintiff assumes for
10 settlement purposes that it is more likely to adopt the reasoning in *Gunther*. Using the initial violation
11 rate of \$100, I calculated the potential maximum exposure on the inaccurate wage statement claim
12 to be \$430,000 (4,300 pay periods x \$100 civil penalty per pay period).

13 52. Fred Leeds would raise the same defenses to these claims that it raised in response to
14 the minimum and overtime wage claims, because all of these claims are based on Plaintiff’s
15 allegation that Fred Leeds required the Aggrieved Employees to work off the clock. In light of those
16 defenses, I discounted the maximum recovery on this claim by 75% to account for the risks that Fred
17 Leeds may prevail in its arguments and arrived at a projected total recovery of \$107,500 in civil
18 penalties.

19 53. Civil Penalties for Violations of Labor Code Sections 201-203: Plaintiff contends that
20 all Aggrieved Employees whose employment with Fred Leeds ended during the PAGA Period are
21 entitled to a derivative “waiting time” penalty under Labor Code Section 203 as a result of Fred
22 Leeds’ failure to pay all wages due and owing at the end of employment. This claim is largely
23 derivative of the unpaid minimum wage and overtime claims. Based on the PAGA Data, there are
24 approximately 20 Aggrieved Employees whose employment with Fred Leeds ended during the
25 PAGA Period. Plaintiff’s counsel calculated the total potential exposure for waiting time penalties
26 as \$2,000 (20 separated Aggrieved Employees * \$100 civil penalty per violation).

27 54. However, Fred Leeds would argue that Plaintiff could only recover waiting time
28 penalties if he were able to establish an entitlement to the underlying wages. Fred Leeds also would

1 have argued that it attempted to pay employees all final wages owed in good faith upon their
2 separation, therefore precluding the finding of willfulness necessary to obtain waiting time penalties.
3 *See* Cal. Code Regs. tit. 8, § 13520 (a “good faith dispute that any wages are due will preclude
4 imposition of waiting time penalties”); *Kao v. Joy Holiday* (2017) 12 Cal. App. 5th 947, 963 (holding
5 that “good faith dispute” over whether employee was exempt precluded imposition of waiting time
6 penalties over contested wages owed). Based on Fred Leeds’ likely defenses, I discounted the
7 maximum recovery by 50% to arrive at a projected total of \$1,000.

8 55. Civil Penalties for Violations of Labor Code Section 204: Plaintiff’s allegations that
9 Fred Leeds violated Labor Code Section 204 is also derivative of Plaintiff’s minimum wage,
10 overtime, and rest and meal period claims. Labor Code § 204 requires employers to provide
11 employees with all wages due and payable twice a month. According to the California Labor
12 Commissioner, “If an employee does not receive full payment of the wages due on the payday
13 designated by the employer in accordance with Labor Code section 204, the payment is late.” *See*
14 <https://www.dir.ca.gov/dlse/Late-Payment-of-Wages.htm>. Using the initial violation rate of \$100, I
15 calculated the potential maximum exposure on the inaccurate wage statement claim to be \$430,000
16 (4,300 pay periods x \$100 civil penalty per pay period).

17 56. Fred Leeds would raise the same defenses to these claims that it raised in response to
18 the minimum and overtime wage claims, and unlawful deduction claims. In light of these defenses,
19 I discounted the maximum recovery on this claim by 75% to account for the risks that Fred Leeds
20 may prevail in its arguments and arrived at a projected total recovery of \$107,500 in civil penalties
21 for this claim.

22 57. In reaching the foregoing estimates of projected total recoveries, Plaintiff also took
23 into consideration the risks of continued litigation, including: (1) the strength of Fred Leeds’ defenses
24 on the merits; (2) the risk of losing on any number of dispositive motions that could have been
25 brought between now and trial (e.g., motions for summary judgment and/or motions in limine), which
26 may have eliminated Plaintiff’s claim, or barred evidence necessary to prove her claim; (3) the risk
27 that the Court would exercise its discretion under PAGA to reduce the maximum civil penalties
28 available by statute; (4) the risk that the court would not stack all available civil penalties; (5) the

chances of a favorable verdict being reversed on appeal; and (6) the difficulties attendant to collecting on a judgment; e.g., solvency issues.

58. Taking into account the above contingencies, Plaintiff determined that a realistic total recovery for the Aggrieved Employees would be approximately \$672,750 with the stacking of civil penalties, as follows:

Violation	Total Potential Sanctions (with only Initial Violation Penalty)	Estimated Realistic Recovery
Failure to Minimum Wages	\$430,000	\$107,500
Failure to Overtime Wages	\$430,000	\$107,500
Failure to Reimburse Necessary Business Expenses	\$430,000	\$215,000
Failure to Provide Accurate Itemized Wage Statements	\$430,000	\$107,500
Failure to Pay Wages Timely Upon Separation	\$2,000	\$1,000
Failure to Pay Wages Timely	\$430,000	\$107,500
Failure to Produce Personnel File and Payroll Records	\$2,000	\$500
Failure to Maintain Accurate Payroll Records	\$56,500	\$26,250
TOTAL (With Stacking)	\$2,210,500	\$672,750

59. The proposed settlement of \$200,000 thus represents approximately 29.7% of the predicted realistic total recovery of \$672,750 with the stacking of penalties, and 46.5% of the total maximum amount of civil penalties that are available without stacking, and is thus reasonable.

60. Discovery Completed and Status of Proceedings. As detailed above in Paragraphs 10-13, the Parties engaged in sufficient investigation and discovery to support the Settlement.

61. The Experience And Views Of Counsel. Based on my experience litigating complex consumer class actions and wage and hour class and representative actions, as well as my knowledge of the average recovery in PAGA representative actions and wage and hour class actions in California, I believe the Settlement is fair, adequate, and reasonable, is in the best interests of the State of California and the Aggrieved Employees, and should be approved. That is particularly true in light of the uncertainties, risks and costs inherent in continued litigation, and the excellent benefit to be provided to the State of California and the Aggrieved Employees, if the Settlement is approved.

1 **G. Plaintiff's Service Payment**

2 62. The Settlement provides that Plaintiff may seek a Plaintiff's Service Payment in the
3 amount of \$5,000 to be paid from the GSA for her service to the State of California and the other
4 Aggrieved Employees and the risks incurred in serving as Plaintiff in a PAGA action. SA, ¶ 3.2.2,
5 The requested Service Payment is fair and reasonable compensation for Plaintiff's efforts in
6 representing the interests of the LWDA and other Aggrieved Employees, assisting counsel with the
7 litigation and settlement, attending dozens of telephonic meetings with Plaintiff's counsel to discuss
8 the claims and theories at issue in the litigation, attending the mediations to assist with the Settlement
9 and reviewing drafts of the complaint, the memorandum of understanding, and the Settlement
10 Agreement.

11 63. It should be noted, too, that Plaintiff's decision to serve as a PAGA plaintiff is largely
12 responsible for this settlement. Most current employees and the vast majority of former employees
13 are reluctant to serve as PAGA plaintiffs for fear of retaliation.

14 64. In light of Plaintiff's substantial contributions to the other Aggrieved Employees and
15 the State of California, Plaintiff submits that the requested service award is reasonable and should be
16 approved.

17 **H. Plaintiff's Attorneys' Fees and Costs**

18 65. The Settlement provides that Plaintiff's Counsel may apply for an award of attorneys'
19 fees in an amount not to exceed 33.33% of the MSA, or \$66,660, and reasonably incurred costs not
20 to exceed \$10,000. SA, ¶ SA, ¶ 3.2.1. Plaintiff's Counsel is entitled to attorneys' fees and costs as a
21 matter of right under PAGA. Labor Code § 2699(g)(1). By Plaintiff's Motion for Approval of PAGA
22 Action Settlement, Plaintiff seeks an award of \$66,660 in attorneys' fees.

23 66. Plaintiff's Counsel undertook this representation of Plaintiff and the Aggrieved
24 Employees to the exclusion of other paying work, devoting significant time and out-of-pocket costs
25 to this litigation. As a result of this representation, I was unable to accept numerous other cases.
26 During the time that this action has been pending, I have been unable to take on new clients and cases
27 that I otherwise would have been able to accept.

28 67. Plaintiff's Counsel also took this case on contingency, working over 59 hours without

1 being paid, and advancing over \$8,500 in costs without any guarantee of reimbursement. A true and
2 correct copy of Plaintiff's counsel's contemporaneous billing records for this matter is attached
3 hereto as **Exhibit C**.

4 68. I have spent approximately 59.1 hours litigating this case thus far, which is equivalent
5 to a lodestar of \$53,100, using my current hourly rate of \$900.

6 69. My work on this case included the pre-filing investigation, researching multiple
7 theories of liability against Fred Leeds, drafting the PAGA Notice letter, drafting the complaint,
8 preparing written discovery responses, document review and analysis, preparing for mediation, and
9 otherwise litigating the case. Since mediation, I have spent additional time negotiating and preparing
10 the long-form settlement agreement, and this Motion.

11 70. Plaintiff's Counsel will continue to incur time preparing for and attending the hearing
12 on this Motion, and submitting a report regarding dissemination of funds to the Court, among other
13 potential tasks.

14 71. The requested fees of \$66,660 are equal to Plaintiff's Counsel's lodestar of \$53,100,
15 increased by a modest upward multiplier of 1.25. A 1.25 multiplier is not "extraordinarily high." To
16 the contrary, the normal range for a multiplier on a lodestar cross-check "can range from 2 to 4 or
17 even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).

18 72. To calculate the lodestar for all of the time spent on this case, I reviewed and audited
19 my billing records. In determining that I have billed 59.1 hours, I exercised significant billing
20 judgment, reducing a number of hours billed to exclude redundancies, inefficiencies, or other time
21 not appropriately charged to a paying client.

22 73. I also have not included any hours billed to Plaintiff's individual case entitled *Castro*,
23 *et al. v. Fred Leeds Property Management, Inc., et al.*, Los Angeles County Superior Court Case No.
24 22STCV29694. The billing and accounting on this action was maintained separately and apart from
25 Case No. 22STCV29694.

26 74. My current hourly rate on this matter is \$900 per hour, and is reasonable.

27 75. On June 13, 2023, the Hon. Stephanie M. Bowick approved my then-current \$850.00
28 rate when ruling on a request for sanctions in denying a motion to compel arbitration in *Castro, et*

1 *al. v. Fred Leeds Property Management, Inc.*, Los Angeles County Superior Court, Case No.
2 22STCV29694.

3 76. On August 17, 2022, the Court approved my then-effective hourly rate of \$825 per
4 hour in *Wesley Harris v. LDI Trucking, Inc., et al.*, Los Angeles County Superior Court, Case No.
5 19STCV12827, which was consolidated for settlement purposes with *Danny Outland v. Lexmar*
6 *Distribution, Inc., et al.*, Los Angeles County Superior Court, Case No. 19STCV10261 (approving
7 class action settlement with my rate calculated at \$825/hour for lodestar cross-check).

8 77. My current hourly rate of \$900 is also consistent with or lower than the hourly rates
9 prevailing in the community for similar work by attorneys with similar levels of experience. For
10 example, on April 25, 2023, the management-side firm of Sheppard Mullin filed the Declaration of
11 Gal Gressel in connection with a request for attorneys' fees in the matter of *Torres v. Southern*
12 *California Permanente Medical Group, et al.*, LASC Case No. 19STCV42476. A true and correct
13 copy of the Gressel Declaration is attached hereto as **Exhibit D**.

14 78. According to the Gressel Declaration, the regular hourly rate charged by Sheppard
15 Mullin for Babak Yousefzadeh, a partner who has been practicing for only 18 years, was "\$860/hr
16 in 2020; \$925/hr in 2021; \$985/hr in 2022; and \$1,065/hr in 2023." **Exhibit D at ¶ 27**. According to
17 the Gressel Declaration, the regular hourly rate charged by Sheppard Mullin for Mr. Gressel, an
18 employment practitioner who has been practicing for only 10 years, was "\$685/hr in 2020; \$780/hr
19 in 2021; \$880/hr in 2022; and \$975/hr in 2023." **Exhibit D at ¶ 28**. Mr. Yousefzadeh is a 2004
20 graduate of San Francisco Law School. Mr. Gressel is a 2012 graduate of UCLA School of Law. By
21 comparison, I am a 1997 graduate of Boston College Law School.

22 79. My hourly rate of \$900 is also reasonable because courts have consistently approved
23 the hourly rates that I have sought during my 25 years of practice, including *Bautista v. FM*
24 *Restaurants HQ, LLC*, Orange County Superior Court Case No. 30-2022-01253704-CU-OE-CJC
25 (July 2022 Order approving PAGA only settlement with my rate calculated at \$800/hour for lodestar
26 cross-check); *Maldonado v. Wingman Partners, Inc., et al.*, Case No. 19STCV09210 (Los Angeles
27 Sup. Ct.) (July 2020 order approving hourly rate of \$725 for work principally performed in 2018 to
28 2019); *Morales v. Wag Labs, Inc., et al.*, Case No. 19STCV04890 (Los Angeles Sup. Ct.) (March

2020 order approving hourly rate of \$725 for work principally performed in 2018 to 2019; and applying a 1.60 multiplier); *Williamson v. McAfee, Inc.* (N.D. Cal., Feb. 3, 2017) No. 5:14-CV-00158-EJD, 2017 WL 6033070, at *2 (2017 order approving 2016 rate of \$670; and applying a 1.499 multiplier); *Lenore Levenhagen v. PacWest Bancorp*, Los Angeles County Superior Court Case No. BC581367 (Los Angeles Sup. Ct.) (2015 order approving 2015 rate of \$655).

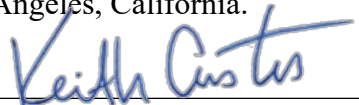
80. The Parties agreed that Plaintiff could seek litigation costs in an amount up to \$10,000. SA, ¶ 3.2.1. Plaintiff seeks an award of \$8,661.85 for reasonably incurred costs, including filing fees, postage, photocopying, mediation fees and deposition costs. A true and correct copy of a record of all costs incurred in this case is attached hereto as **Exhibit E**. Because these reasonable costs were necessarily incurred during the case's pendency, they should be reimbursed to Plaintiff's Counsel. All of these costs were necessary to the prosecution of the claims in this matter.

I. The Administrator and Settlement Administration Costs

81. The parties agreed to use ILYM Group, Inc. ("ILYM Group") to administer the settlement and respectfully request that the Court appoint ILYM Group to handle the notice and settlement administration procedures. ILYM agreed to conduct the administration for the capped costs of \$4,000.00.

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

Executed on December 4, 2024 in Los Angeles, California.



Keith Custis

Exhibit A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Kenia Castro (“Plaintiff”) and defendants Fred Leeds Property Management, Inc and Maximilian Leeds (“collectively, Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants, captioned *Kenia Castro v. Fred Leeds Property Management, Inc, et al.*, Los Angeles County Superior Court Case No. 23STCV21642, filed on September 8, 2023, and pending in the Superior Court of the State of California, County of Los Angeles.
- 1.2 “Administrator” means the ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4 “Aggrieved Employee” means a non-exempt, hourly-paid current and/or former employee of Fred Leeds Property Management, Inc. who worked in the State of California at any time during the PAGA Period in the position of onsite property manager.
- 1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant Fred Leeds Property Management, Inc.’s possession, including the Aggrieved Employee’s name, last-known mailing address, Social Security Number, and number of PAGA Pay Periods.
- 1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using reasonably available sources, methods and means including, but not limited to, the National Change of Address database, and skip traces by the Administrator with Aggrieved Employees.
- 1.7 “Court” means the Superior Court of California, County of Los Angeles.
- 1.8 “Defendants” means Fred Leeds Property Management, Inc. and Maximilian Leeds.
- 1.9 “Defense Counsel” means Kurt Bockes and Emily Mertes of Littler Mendelson, P.C..
- 1.10 “Effective Date” means the date that the Court’s Approval Order and Judgment become final and are no longer appealable. For purposes of this Agreement, the phrase “become final and are no longer appealable” shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the Approval Order and Judgment approving the Settlement may be timely filed and none is filed (i.e., 61 days from notice of entry of Judgment); (b) if an appeal is

filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the Approval Order and Judgment, the day after the last date for filing a request for further review of the Approval Order and Judgment passes, and no further review is requested; or (c) if an appeal is filed and the Approval Order and Judgment are affirmed and further review of the order is requested, the day after the review is finally resolved and the Approval Order and Judgment is affirmed. The Effective Date cannot occur, and Defendant will not be obligated to fund the Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent the Settlement from becoming final and binding.

- 1.11 “Gross Settlement Amount” means \$200,000.00, which is the total amount Defendant Fred Leeds Property Management, Inc. agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments to the Aggrieved Employees for their share of the Net Settlement, the LWDA PAGA Payment for its share of the Net Settlement Amount, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Plaintiff’s Service Payment, and the Administrator’s Expenses Payment.
- 1.12 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the Net Settlement Amount calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.13 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.14 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.15 “LWDA PAGA Payment” means the 75% of the Net Settlement Amount paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.16 “Net Settlement Amount” means the Gross Settlement Amount minus the sum of: (1) the court-approved PAGA Counsel Fees Payment; (2) the court-approved PAGA Counsel Litigation Expenses Payment; (3) the court-approved Administration Expenses Payment; and (4) the court-approved Plaintiff’s Service Payment. 75% of the Net Settlement Amount will be paid to the LWDA as the LWDA PAGA Payment and the remaining 25% of the Net Settlement Amount will be paid to Aggrieved Employees as their Individual PAGA Payments, which amounts may be amended by the Court’s Order Approving the PAGA Settlement.
- 1.17 “PAGA Counsel” means Keith Custis of Custis Law, P.C., the attorneys representing the Plaintiff in the Action.
- 1.18 “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

- 1.19 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Fred Leeds Property Management, Inc. for at least one day during the PAGA Period.
- 1.20 “PAGA Period” means the period from June 7, 2022 through August 31, 2024.
- 1.21 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.22 “PAGA Notice” means Plaintiff’s June 7, 2023 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), which is attached hereto as Exhibit 1 and incorporated herein as if expressly set forth.
- 1.23 “Plaintiff” means Kenia Castro, the named plaintiff in the Action.
- 1.24 “Plaintiff’s Service Payment” means the amount that the Court authorizes to be paid to Plaintiff, in addition to her Individual PAGA Payment, in recognition of her efforts and risks in assisting with the prosecution of the Action.
- 1.25 “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.26 “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.27 “Released Parties” means: Maximilian Leeds and Fred Leeds Property Management, Inc., and each of its former and present directors, officers, shareholders, owners, employees, agents, members, managers, representatives, attorneys, insurers, partners, investors, principals, administrators, parent companies, predecessors, successors, assigns, subsidiaries, joint ventures, and affiliates.
- 1.28 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1 On September 8, 2023, Plaintiff commenced this Action by filing a Complaint alleging a single cause of action against Defendants for violation of the PAGA, based on alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.3, 432, 510, 558, 1174(d), 1182.12, 1194, 1174.5, 1197, 1197.1, 1198, 1198.5, and 2802.
- 2.2 Defendants deny the allegations in the Action, deny any failure to comply with the laws identified in in the Action and deny any and all liability for the causes of action alleged in the Action.
- 2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice on or about June 7, 2023.

- 2.4 On June 24, 2024, the Parties participated in an all-day mediation presided over by Steven Paul, Esq. The mediator issued a mediator's proposal to settle this case, which was accepted by the Parties.
- 2.5 Prior to mediation, Plaintiff obtained through informal discovery the number of Aggrieved Employees and PAGA Pay Periods worked as well as relevant policy and procedure documents regarding Plaintiff's claims.
- 2.6 The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Defendant Fred Leeds Property Management, Inc. promises to pay \$200,000.00 and no more as the Gross Settlement Amount. Defendant Fred Leeds Property Management, Inc. has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be \$66,600.00 and PAGA Counsel Litigation Expenses Payment of not more than \$10,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount; and PAGA Counsel shall not have the right to revoke this Settlement, and it will remain binding. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.2 To the Plaintiff: A Plaintiff's Service Payment not to exceed \$5,000.00 as approved by the Court. If the Court approves a Plaintiff's Service Payment less

than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount; and Plaintiff shall not have the right to revoke this Settlement, and it will remain binding. The Administrator will pay the Plaintiff's Service Payment using an IRS 1099 Form. Plaintiff assumes full responsibility and liability for taxes owed on the Plaintiff's Service Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding the Plaintiff's Service Payment.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$4,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$4,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To the LWDA and Aggrieved Employees: Net Settlement Amount to be paid from the Gross Settlement Amount, with 75% of the Net Settlement Amount allocated to the LWDA PAGA Payment and 25% of the Net Settlement Amount allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the Net Settlement Amount by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if required by applicable law.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 113 Aggrieved Employees who will have worked approximately 4,300 PAGA Pay Periods during the PAGA Period.

4.2 Aggrieved Employee Data. Within 15 calendar days after the Effective Date, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts,

in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

- 4.3 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 calendar days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 calendar days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and the Plaintiff's Service Payment in the amounts approved by the Court. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
 - 4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
 - 4.4.3 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
 - 4.4.4 The payment of Individual PAGA Payments shall not obligate Defendant Fred Leeds Property Management, Inc. to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
- 4.5 The Administrator shall send a "PAGA Payment Letter" to each Aggrieved Employee with that Aggrieved Employee's Individual PAGA Payment substantially in the form attached hereto as Exhibit 2, in both English and Spanish, including any revisions required by the Court.

5. RELEASES OF CLAIMS. Upon the Effective Date, and provided Defendant Fred Leeds Property Management, Inc. funds the entire Gross Settlement Amount, Plaintiff, Aggrieved Employees, PAGA Counsel, the LWDA, and the State of California will release claims against all Released Parties, as follows:

- 5.1 Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns, and the LWDA and the State of California, generally, release and discharge Released Parties from all claims, transactions, or occurrences under the PAGA that occurred during the PAGA Period, including, but not limited to: (a) all claims under the PAGA that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint in the Action and the PAGA Notice, including but not limited to alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 432, 510, 558, 1174(d), 1182.12, 1194, 1174.5, 1197, 1197.1, 1198, 1198.5, and 2802, as set forth in the PAGA Notice and including attorneys' fees and costs related thereto. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.
- 5.2 Aggrieved Employees' Release. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 432, 510, 558, 1174(d), 1182.12, 1194, 1174.5, 1197, 1197.1, 1198, 1198.5, and 2802, as set forth in the PAGA Notice, and including attorneys' fees and costs related thereto.
- 5.3 Release by PAGA Counsel: PAGA Counsel releases on behalf of its present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.
- 5.4 It is the intent of the Parties that the release of the Released PAGA Claims shall be given full res judicata and collateral estoppel effect as of the date that Defendants fully fund the entire Gross Settlement Amount, so as to bar the LWDA and any other individual or entity from filing or pursuing the Released PAGA Claims against the Released Parties in any forum.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. PAGA Counsel shall prepare and file a motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel, for Defense Counsel's review and comments, all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the motion for approval of this Settlement no later than 60 days after the full execution of this Agreement, and shall obtain a prompt hearing date for the motion and appear in Court to advocate in favor of the motion. PAGA Counsel is also responsible for delivering the Court's Approval Order to the Administrator.
- 6.3 Duty to Cooperate. PAGA Counsel shall provide a draft motion for approval to Defense counsel for Defense Counsel's review and comments no later than the date that is two weeks before the filing deadline for the motion. Defense Counsel agrees to provide Defendants' comments and proposed revisions to the draft motion for approval, if any, in redline format to PAGA Counsel no later than 5:00 p.m. on the date that is two court days before the filing deadline for the motion. If the Parties disagree on any aspect of the proposed motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns. However, in no event, should this paragraph be construed to require the Parties to agree to any term that materially alters this Agreement.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected the ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or

otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

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

- 8.1 Waiver of Right to Appeal. The Parties agree, with the exception of PAGA Counsel Fees and Expenses Payment, provided the Fees sought do not exceed the amount provided herein, to waive any and all rights to appeal, this waiver being contingent upon the Court entering the Final Judgment as provided herein. This waiver includes waiver of all rights to any post-judgment proceeding and appellate proceeding, including, but not limited to, motions for relief from judgment and motions to amend or alter the judgment.

9. ADDITIONAL PROVISIONS.

- 9.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants’ defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants’ defenses. The Settlement, this Agreement and Parties’ willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 9.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 9.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all

appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

- 9.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 9.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 9.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 9.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 9.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 9.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 9.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 9.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 9.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants 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 Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

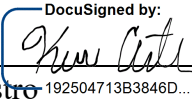
- 9.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 9.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 9.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Keith Custis
kcustis@custislawpc.com
Custis Law, P.C.
2121 Avenue of the Stars, Suite 800
Los Angeles, California 90067

To Defendants: Kurt Bockes
KBockes@littler.com
Emily Mertes
EMertes@littler.com
Littler Mendelson P.C.
101 Second Street, Suite 1000
San Francisco, California 94105

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

Dated: 10/1/2024

DocuSigned by:


Kenia Castro
Plaintiff

Dated: _____

Maximilian Leeds
Fred Leeds Property Management, Inc.

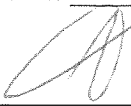
Dated: _____

Maximilian Leeds

Dated: _____

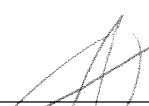
Kenia Castro
Plaintiff

Dated: 10-8-24



Maximilian Leeds
Fred Leeds Property Management, Inc.

Dated: 10-8-24



Maximilian Leeds

Exhibit 1



June 7, 2023

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE CLAIM NOTICE

California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
(<https://dir.tfaforms.net/198>)

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Maximilian Leeds
Vice President of Legal Affairs
Fred Leeds Property Management, Inc.
3860 Crenshaw Blvd., Suite 201
Los Angeles, CA 90008
Attn: Human Resources

Re: *Kenia Castro v. Fred Leeds Property Management Inc. and Maximilian Leeds*: Written
Notice of Intent to File Civil Action Pursuant to California Labor Code § 2699.3

Dear PAGA Administrator and Employer,

This office represents Kenia Castro (“Ms. Castro”) with respect to claims arising under California’s Labor Code during her employment at and termination from Fred Leeds Property Management, Inc. (“Fred Leeds”). Fred Leeds is a California corporation that operates a property management company. According to its LinkedIn profile, Fred Leeds employs between 200 and 500 employees. Fred Leeds employed Ms. Castro from approximately May 2021 until June 10, 2022 as a non-exempt, hourly-paid property manager. Ms. Castro is referred to in this correspondence as the “Lead Aggrieved Employee.”

The Lead Aggrieved Employee intends to file a civil action against Fred Leeds and its owner and officer Maximilian Leeds in his individual capacity, (collectively, “Fred Leeds” or “Employer”), seeking, *inter alia*, civil penalties, attorneys’ fees, costs and other available relief that is recoverable under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Section 2698, *et al.*, for violations of the California Labor Code. The Lead Aggrieved Employee shall seek relief on behalf of the State of California, and all aggrieved employees, who are defined as “all non-exempt, hourly-paid current and former employees of Fred Leeds Property

Management, Inc. who worked in the State of California at any time between June 7, 2022 and the present” (hereafter, “Aggrieved Employees”).

Mr. Leeds is an officer and, on information and belief, owner of Fred Leeds and is, thus, liable in his individual capacity for the civil penalties, attorneys’ fees and litigation costs available to the Lead Aggrieved Employee and other Aggrieved Employees pursuant to California Labor Code Sections 558, 1197.1 and 2699(g)(1). *See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809 (holding that “the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than the corporate employer* subject to the civil penalties awarded by the trial court under those two statutes.”) (emphasis in original). Importantly, the *Atempa* court held that the alter ego doctrine did not apply in PAGA actions to immunize owners and officers from liability because the Labor Code imposed liability directly on owners and officers for the corporate employer’s violations of the Labor Code.

Additionally, as an owner and officer of Fred Leeds, Mr. Leeds is also liable in his individual capacity as an employer pursuant to California Labor Code Section 558.1 for Fred Leeds’s (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide accurate wage statements; (d) failure to reimburse for necessary business expenses incurred; and (e) failure to pay wages timely during employment and at the time of termination or resignation. Labor Code § 558.1.

Pursuant to California Labor Code Section 2699.3, this letter serves as the Lead Aggrieved Employee’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Fred Leeds regarding the following alleged violations of the California Labor Code, and the facts and legal theories that support those violations.¹ This letter is being submitted to the LWDA online pursuant to the process described on the California Department of Industrial Relations’ website.² The \$75.00 filing fee required by Labor Code Section 2699.3 was paid during the online submission of this letter.

As detailed below, Fred Leeds has violated the California Labor Code within the last year and beyond as to the Lead Aggrieved Employee and other Aggrieved Employees in the following respects:

¹ The Labor Code violations, facts and legal theories detailed herein are based on the Lead Aggrieved Employee’s experience and his counsel’s review of the records currently available relating to the Lead Aggrieved Employee’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional Labor Code violations as well as additional facts and legal theories supporting the alleged Labor Code violations. Thus, the Lead Aggrieved Employee reserves the right to supplement this letter with additional Labor Code violations, facts, and legal theories if she becomes aware of them subsequent to the submission of this letter.

² *See* <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

A. Failure to Pay Minimum Wages in Violation of Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198

California Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198 require an employer to pay employees no less than the established minimum wage. These Labor Code Sections provide that payment of a wage less than the established minimum wage is unlawful. The applicable Industrial Welfare Commission (“IWC”) Wage Order defines compensable work time, or “hours worked,” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11100(2)(K) (defining “Hours Worked”). An employee is entitled to be paid no less than the established minimum wage for all hours worked.

Within the previous twelve months and beyond, Fred Leeds maintained a policy and practice of failing to pay the Lead Aggrieved Employee and other Aggrieved Employees the correct minimum wage for all hours worked because Fred Leeds required the Lead Aggrieved Employee and other Aggrieved Employees to work off-the-clock without compensation. Fred Leeds required the Lead Aggrieved Employee and other Aggrieved Employees to work, inter alia, as “on site” property managers and supervisors. As a property management company, Fred Leeds was well aware that tenants of the buildings managed by the Lead Aggrieved Employee and other Aggrieved Employees would request assistance from the “on site” property managers including the Lead Aggrieved Employee and other Aggrieved Employees after hours on a routine basis. By requiring the Lead Aggrieved Employee and other Aggrieved Employees to work, inter alia, as on-site property managers, Fred Leeds required the Lead Aggrieved Employee and other Aggrieved Employees to work off the clock to respond to the numerous inquiries for assistance and/or emergencies that were made and/or occurred after hours. In addition, the Lead Aggrieved Employee and other Aggrieved Employees also had to travel from the building where they resided to another property after hours, when they were off the clock, to respond to alarm that had been triggered at another property. Fred Leeds certainly expected and required on-site property managers to respond to alarms whether or not they were on the clock. In addition, Fred Leeds required the Lead Aggrieved Employee and other Aggrieved Employees to respond to business-related calls, emails and text messages when they were off-the-clock, and the Lead Aggrieved Employee and other Aggrieved Employees worked off-the-clock to respond to such business-related communications.

Because Fred Leeds required the Lead Aggrieved Employee and other Aggrieved Employees to work off-the-clock, Fred Leeds failed to compensate the Lead Aggrieved Employee and other Aggrieved Employees for all hours worked, including minimum wage and overtime hours.

Fred Leeds has thus violated Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover

civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 1197.1 and/or 2699(a), (f) and (g).

B. Failure to Pay Overtime in Violation of Labor Code Sections 510 & 1198

California Labor Code Sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay.

Within the previous twelve months and beyond, Fred Leeds failed to pay the requisite overtime wages to the Lead Aggrieved Employee and other Aggrieved Employees. When the Lead Aggrieved Employee and other Aggrieved Employees worked eight or more hours on-the-clock, the off-the-clock work detailed above constituted work in excess of eight hours in workday and should have been paid at the applicable overtime rate. When the Lead Aggrieved Employee's and other Aggrieved Employees' time records indicate that they worked close to eight hours in a workday on the clock—e.g., when their time cards reflect that they worked 7.7 or more total hours—the off-the-clock work detailed above also caused the Lead Aggrieved Employee's and other Aggrieved Employees' total hours worked to exceed eight (8) hours on such a workday and, likewise, should have been paid at the applicable overtime rate. Thus, because Fred Leeds required the Lead Aggrieved Employee and other Aggrieved Employees to work off-the-clock, Fred Leeds failed to pay all required overtime wages in violation of Labor Code Sections 510 and 1198 and the applicable IWC Wage Order.

Fred Leeds has thus violated Labor Code Sections 510 and 1198. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558, 1194, and/or 2699(a), (f)-(g).

C. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802

Labor Code Section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code Section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

Within the previous twelve months and beyond, Fred Leeds, on a company-wide basis, systematically failed to reimburse the Lead Aggrieved Employee and other Aggrieved Employees for necessary business expenses incurred at the direction of Fred Leeds. Specifically, during the

relevant time period, Fred Leeds had a consistent policy and/or practice that required the Lead Aggrieved Employee and other Aggrieved Employees to use their personal vehicle, gas and auto insurance to carry out her job duties, but Fred Leeds failed to reimburse the Lead Aggrieved Employee and other Aggrieved Employees for the reasonable costs of the use of their respective personal vehicle, fuel, auto insurance, vehicle maintenance costs and other vehicle-related expenses.

Fred Leeds could have provided the Lead Aggrieved Employee and other Aggrieved Employees with the actual tools required for use on the job, including a company car. Likewise, Fred Leeds could have reimbursed the Lead Aggrieved Employee and other Aggrieved Employees for the reasonable costs of the use of their personal vehicle, fuel, auto insurance, vehicle maintenance costs and other vehicle-related expenses they incurred for the business, but Fred Leeds failed to do so. Thus, Fred Leeds violated Section 2802 by uniformly failing to reimburse the reasonable costs of the Lead Aggrieved Employee's and other Aggrieved Employees' personal vehicle expenses. *See, e.g., Cochran*, 228 Cal. App. 4th at 1144 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

Fred Leeds's policy and/or practice of passing its operating costs on to the Lead Aggrieved Employee and other Aggrieved Employees violates Labor Code Section 2802. As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

D. Failure to Provide Accurate Wage Statements in Violation of Labor Code Sections 226(a), 1174(d) and 1198

Labor Code Section 226(a) requires an employer to provide its employees with "an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all deductions . . . , (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 . . . , (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." The itemized wage statement must be provided semimonthly or otherwise when wages are paid.

Fred Leeds has not provided the Lead Aggrieved Employee and other Aggrieved Employees with properly itemized wage statements. Labor Code Section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in Section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee

for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code Section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

Within the last twelve months and beyond, Fred Leeds knowingly and intentionally failed to provide accurate and complete itemized wage statements to the Lead Aggrieved Employee and other Aggrieved Employees in violation of Labor Code Section 226(a) in several ways:

- Fred Leeds violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to include the accurate amount of “gross wages,” and “net wages” because Fred Leeds failed to record all hours worked by the Lead Aggrieved Employee and other Aggrieved Employees, as detailed above, and failed to compensate them for all hours worked off the clock.
- Fred Leeds violated Labor Code Sections 226(a)(2) and 226(a)(9) by failing to include the accurate number of “total hours worked by the employee” and “the corresponding number of hours worked at each hourly rate by the employee” because the Lead Aggrieved Employee and other Aggrieved Employees were required to work off the clock and all hours worked were not recorded.

Because Fred Leeds violated Labor Code Section 226 in numerous ways, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code Sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

E. Failure to Pay Wages Timely Upon Termination in Violation of Labor Code Sections 201, 202 & 203

California Labor Code Section 201 provides that if an employer discharges an employee, the employee’s earned and unpaid wages at the time of discharge are due and payable immediately. California Labor Code Section 202 provides that, if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Failure to pay all wages in compliance with Labor Code Sections 201 and 202 subjects the employer to the penalties outlined in Labor Code Section 203. Section 203, in turn, requires the employer to pay the employee a full day of wages (8 hours) at the employee’s last hourly rate for each day that all earned but unpaid wages remain unpaid up to a total of 30 days.

Within the previous twelve months and beyond, and in violation of California Labor Code Sections 201 and 202, Fred Leeds willfully failed to pay the Lead Aggrieved Employee and other

Aggrieved Employees all their earned and unpaid wages either at the time of discharge, or within seventy-two (72) hours of their separation from employment with Fred Leeds for several reasons:

- Fred Leeds failed to pay Aggrieved Employees for all off-the-clock hours worked, as detailed above.
- Fred Leeds also misrepresented the last date that the Lead Aggrieved Employee worked for Fred Leeds as June 8, 2022, rather than June 10, 2022, and failed to compensate her for the last two days of work that she performed for Fred Leeds.

The Lead Aggrieved Employee and other Aggrieved Employees are thus entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 203 and/or 2699(f)-(g).

F. Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204

Labor Code Section 204 provides that all wages earned by any person in any employment between the 1st and the 15th days of any calendar month (other than those wages due upon termination of an employee) are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code Section 204 further provides that all wages earned by any person in any employment between the 16th and the last day of any calendar month (other than those wages due upon termination of an employee) are due and payable between the 1st and the 10th day of the following month. Labor Code Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code Section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

Within the previous twelve months and beyond, for all the reasons detailed above, Fred Leeds failed to pay the Lead Aggrieved Employee and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages and minimum wages within the time period specified by Labor Code Section 204.

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 210 and/or 2699(a), (f)-(g).

G. Failure To Maintain Accurate Records In Violation Of Labor Code § 1174(d)

Labor Code Section 1174(d) requires employers to keep payroll records showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage Orders require employers to keep accurate records for each employee with respect to total wages paid each payroll

period, total hours worked in the payroll period and applicable rates of pay, as well as time records showing when employees begin and end each work period, including meal periods, split shift intervals, and total daily hours.

Within the previous twelve months and beyond, for all the reasons detailed above, Fred Leeds violated Labor Code Section 1174(d) by knowingly, intentionally, and willfully failing to keep required accurate payroll records for the Lead Aggrieved Employee and other Aggrieved Employees. Fred Leeds did not accurately record all hours worked by the Lead Aggrieved Employee and other Aggrieved Employees including the off-the-clock work detailed above, which caused the payroll records of Aggrieved Employees to be inaccurate. Fred Leeds also did not accurately record all hours worked by certain Aggrieved Employees who were paid a daily rate and did not maintain any records showing when they began and ended each work period, including meal periods, split shift intervals, and total daily hours.

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

H. Failure To Produce Employment Records, Payroll Records and Personnel Files In Violation Of Labor Code Sections 226(b) & (c), 432 and 1198.5

Labor Code Section 226(b) provides in relevant part that "An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code Section 226(c) provides in relevant part that "An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction."

Labor Code Section 432 provides that "If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request."

Labor Code Section 1198.5(a) provides in relevant part that "Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Labor Code Section 1198.5(b)(1) provides in relevant part that "The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed

35 calendar days from the employer's receipt of the written request.”

Within the previous twelve months and beyond, and in violation of California Labor Code Sections 226, 432 and 1198.5, Fred Leeds failed to produce the required employment records in response to a written request by the Lead Aggrieved Employee. On information and belief, Fred Leeds likewise fails to respond to the requests of other Aggrieved Employees for copies of their employment records made pursuant to Labor Code Sections 226, 432 and 1198.5

As a result, the Lead Aggrieved Employee and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code Sections 2699(a), (f)-(g).

I. Penalties Pursuant to California Labor Code Section 558(a)

Labor Code Section 558(a) provides that “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code Section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

Within the previous twelve months and beyond, Fred Leeds was an employer who violated the Lead Aggrieved Employee’s and other Aggrieved Employees’ rights by violating the various sections of the Labor Code detailed herein. Accordingly, the Lead Aggrieved Employee shall seek all applicable remedies available under Labor Code Section 558 for herself, the State of California, and all other Aggrieved Employees.

* * *

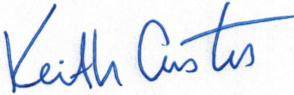
If the LWDA does not provide notice that it will investigate these violations within 65 days of the date of this notice, The Lead Aggrieved Employee, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against Fred Leeds and its owners and officers for violations of California Labor Code Sections 201, 202, 203, 204, 226, 432, 510, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2802, as detailed herein. The Lead Aggrieved Employee shall seek all applicable and available penalties and remedies related to these violations of the California Labor Code pursuant to PAGA, including an award of reasonable attorneys’ fees and costs pursuant to Labor Code § 2699(g).

California Labor and Workforce Development Agency
Fred Leeds Property Management, Inc.
June 7, 2023
Page 10

If the LWDA has any questions for the Lead Aggrieved Employee or any aspect of this Notice, please feel free to contact Keith Custis as kcustis@custislawpc.com or 213-863-4276.

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis

cc: Daniel Spencer, Esq. (via email only)

Exhibit 2

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION
Kenia Castro v. Fred Leeds Property Management, Inc., et al.
Superior Court for the State of California, County of Los Angeles, Case No. 23STCV21642

You are receiving this notice in connection with a Court-approved PAGA Settlement in a lawsuit (“the Action”) brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”). The plaintiff in the lawsuit is Kenya Castro (“Plaintiff”) and the defendants are Fred Leeds Property Management, Inc. (“Fred Leeds”) and Maximilian Leeds (collectively, “Defendants”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all persons who worked in California for Fred Leeds as a non-exempt, hourly-paid onsite property manager during the PAGA Period (June 7, 2022 to August 31, 2024) (“Aggrieved Employees”).

Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that Fred Leeds has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have agreed to settle the Action. By settling the Action, Defendants are not admitting that they have done anything wrong.

Subject to Court approval, the Settlement Agreement provides that Defendant Fred Leeds Property Management, Inc. shall pay a maximum amount (“Maximum Settlement Amount”) of \$200,000.00 to settle the Action. Under the Settlement, the following amounts will be deducted before any payments are made to Aggrieved Employees, subject to approval by the Court: (1) the court-approved PAGA Counsel fees payment; (2) the court-approved PAGA Counsel litigation expenses payment; (3) the court-approved settlement administration costs; and (4) the court-approved service payment to Plaintiff. After deducting the above items, the remaining Net Settlement Amount will be divided 75% to the LWDA, pursuant to the California Labor Code, section 2699(i), and 25% to the Aggrieved Employees.

The PAGA Settlement resolves all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 432, 510, 558, 1174(d), 1182.12, 1194, 1174.5, 1197, 1197.1, 1198, 1198.5, and 2802, as set forth in the PAGA Notice, and including attorneys’ fees and costs related thereto (the “Released PAGA Claims”). This Settlement excludes all other legal claims. The Released Parties include Defendants Maximilian Leeds and Fred Leeds Property Management, Inc., and each of its former and present directors, officers, shareholders, owners, employees, agents, members, managers, representatives, attorneys, insurers, partners, investors, principals, administrators, parent companies, predecessors, successors, assigns, subsidiaries, joint ventures, and affiliates.

By Order dated [Approval Date], the Superior Court approved the PAGA Settlement. By approving the PAGA Settlement, the Court did not decide in favor of either Plaintiff or Defendants.

According to Fred Leeds’ records, you are an Aggrieved Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law in the name of, and for the benefit of, the Aggrieved Employee that did not cash his or her settlement check.

Please Note: One hundred percent (100%) of your individual settlement you receive pursuant to this PAGA Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your settlement. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your settlement. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CALL OR WRITE TO THE SETTLEMENT ADMINISTRATOR AT:

ILYM GROUP, INC.
[TELEPHONE NUMBER]
[ADDRESS]
[ADDRESS]

Exhibit B



From: DIR PAGA Unit no-reply@formassembly.com
Subject: Thank you for your Proposed Settlement Submission
Date: December 4, 2024 at 12:42 PM
To: kcustis@custislawpc.com

12/04/2024 12:42:13 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

Case Information

Case Number: LWDA-CM-960311-23
Plaintiff for PAGA Case: Kenia Castro
Filer/Attorney for PAGA Case: Keith Custis
Law Firm for PAGA Plaintiff: Custis Law, P.C.
Employer: Fred Leeds Property Management, Inc.
Date Case Received:
Filer for Employer:
Employer Filer Firm:
Court Type: California Superior Courts
Court Name: Los Angeles County Superior Court
PAGA Court Case Number: 23STCV21642
Violation Type:
Related BOFE Case:

Attachments

Attachment Name	Description	Date Submitted	Type
Court Complaint Submitted on 11/06/2023 03:26:34 PM by Keith Custis	2023.09.08 Complaint.pdf	11/6/2023 11:26 PM	Court Complaint
PAGA Notice Submitted on 06/07/2023 09:07:02 AM by Keith Custis	2023.06.07 PAGA_Notice_Fred_Leeds.pdf	6/7/2023 4:07 PM	PAGA Notice
Proposed Settlement Submitted on 12/04/2024 12:42:13 PM by Keith Custis	Ex A - 2024.10.01 FULLY EXECUTED Castro PAGA Settlement Agreement (Execution Copy).pdf	12/4/2024 8:42 PM	Proposed Settlement

Exhibit C



2121 Avenue of the Stars, Suite 800
Los Angeles, California 90067
Phone: 213-863-4276
Email: kcustis@custislawpc.com

Kenia Castro Rogel

00201-Castro Rogel

Fred Leeds Property Management, Inc. (PAGA)

Type	Date	Attorney	Description	Quantity	Rate	Total
Service	05/29/2023	KC	Communication with client relevant to case (telephone)	0.60	\$900.00	\$540.00
Service	06/02/2023	KC	Communication with client relevant to case (telephone)	0.50	\$900.00	\$450.00
Service	06/06/2023	KC	Draft, revise PAGA Notice to LWDA	2.70	\$900.00	\$2,430.00
Service	06/07/2023	KC	Draft, revise, finalize PAGA Notice to LWDA	1.50	\$900.00	\$1,350.00
Service	09/08/2023	KC	Draft, revise, finalize Castro PAGA complaint	3.70	\$900.00	\$3,330.00
Service	09/08/2023	KC	Draft, revise, finalize Civil Case Cover Sheet, Civil Case Cover Sheet Addendum and Summons	0.30	\$900.00	\$270.00
Service	09/08/2023	KC	Attn to filing of complaint, civil case cover sheet and summons	0.10	\$900.00	\$90.00
Service	09/12/2023	KC	Email to process server (USA Express Legal) re service of process on defendant's registered agent	0.10	\$900.00	\$90.00
Service	10/12/2023	KC	Draft Special Interrogatories and Requests for Production	0.80	\$900.00	\$720.00
Service	10/13/2023	KC	Email from defendant Fred Leeds Property, transmitting Answer; preliminary/review of same	0.20	\$900.00	\$180.00
Service	10/13/2023	KC	Draft, revise, finalize Plaintiff's Request for Production (Set 1), Special Interrogatories, (Set 1) and General Form Interrogatories (Set 1)	1.20	\$900.00	\$1,080.00
Service	10/13/2023	KC	Draft, revise, finalize Plaintiff's Notice of Case	0.30	\$900.00	\$270.00

			Management Conference; attn to filing/service of same			
Service	11/06/2023	KC	File complaint with the LWDA (PAGA Online)	0.10	\$900.00	\$90.00
Service	11/06/2023	KC	Draft Belaire West Notice and Stipulation and Proposed Order re Belaire West Notice	0.70	\$900.00	\$630.00
Service	11/08/2023	KC	Draft revise proposed Belaire West Notice, Stipulation for Implementation of Belaire West Notice and proposed Stipulation and Proposed Protective Order; email same to defense counsel K. Brockes	0.70	\$900.00	\$630.00
Service	11/16/2023	KC	Telephone call and emails to defense counsel E. Mertes re defendant's requested extension	0.10	\$900.00	\$90.00
Service	11/16/2023	KC	Emails to defense counsel K. Bockes re Belaire West notice, stipulate for same and stipulated protective order; and request to meet and confer in advance of CMC	0.10	\$900.00	\$90.00
Service	11/20/2023	KC	Email from/to defense counsel E. Mertes re scheduling time to meet and confer before initial CMC	0.10	\$900.00	\$90.00
Service	11/27/2023	KC	Telephone call with E. Mertes to meet and confer re CMC and other case management issues	0.20	\$900.00	\$180.00
Service	11/27/2023	KC	Draft RFAs (Set 2) and GFROGs (Set 3)	0.40	\$900.00	\$360.00
Service	11/29/2023	KC	Email from defense counsel E. Mertes re proposed mediation	0.10	\$900.00	\$90.00
Service	01/09/2024	KC	Draft Second Amended Representative Action Complaint	0.60	\$900.00	\$540.00
Service	01/09/2024	KC	Email from defense counsel re proposed mediators	0.10	\$900.00	\$90.00
Service	01/09/2024	KC	Email from defendant transmitting Notice of Address Change	0.10	\$900.00	\$90.00
Service	01/11/2024	KC	Legal research re prior decisions of Dept. 37's on motions for leave to amend complaints	0.20	\$900.00	\$180.00
Service	01/11/2024	KC	Email to defense counsel re selection of mediators and transmitting proposed SAC, and asking Defendants if they will stipulate to grant Plaintiff leave to file SAC	0.20	\$900.00	\$180.00
Service	01/23/2024	KC	Email from defense counsel E. Mertes advising that Defendants will respond to Plaintiff's request to enter into stipulation granting plaintiff leave to amend complaint on Friday, Jan. 26.	0.10	\$900.00	\$90.00

Service	02/12/2024	KC	Emnail to/from defense counsel E. Mertes re mediation scheduling and "scheduling difficulties" that Defendant or its counsel have	0.10	\$900.00	\$90.00
Service	02/15/2024	KC	Review/analysis of Defendant's Notice of Related Case filed in Case No. 23STCV21642 (served improperly by mail only)	0.10	\$900.00	\$90.00
Service	02/20/2024	KC	Email from defense counsel E. Mertes re potential mediators and mediation dates	0.10	\$900.00	\$90.00
Service	02/20/2024	KC	Factual research re potential mediators proposed by mediators	0.20	\$900.00	\$180.00
Service	02/21/2024	KC	Emails with defense counsel E. Mertes re scheduling mediation	0.10	\$900.00	\$90.00
Service	03/20/2024	KC	Email from AAA transmitting Invoice for Fred Leeds to commence arbitration	0.10	\$900.00	\$90.00
Service	06/10/2024	KC	Emails to/from Defendant re Defendant's need to provide PAGA Data and verified responses to three special interrogatories, as agreed by Defendant in December 2023.	0.20	\$900.00	\$180.00
Service	06/11/2024	KC	Review/analysis Defendant's 6/10/24 email re PAGA data and discovery issues; and draft Plaintiff's response to same setting forth requirements for mediation	0.40	\$900.00	\$360.00
Service	06/12/2024	KC	Email from/to defense counsel E. Mertes re PAGA Data and Plaintiff's long-standing request that the PAGA data be provided in verified form	0.20	\$900.00	\$180.00
Service	06/14/2024	KC	Email from defense counsel E. Mertes transmitting time and pay data sets	0.10	\$900.00	\$90.00
Service	06/15/2024	KC	Draft PAGA Mediation Brief and prepare penalties analysis	2.50	\$900.00	\$2,250.00
Service	06/16/2024	KC	Draft, revise PAGA Mediation Brief	1.70	\$900.00	\$1,530.00
Service	06/19/2024	KC	Draft, revise, finalize PAGA Mediation Brief and prepare exhibits for same; transmit brief and exhibits to mediator	7.20	\$900.00	\$6,480.00
Service	06/23/2024	KC	Email to mediator Steve Paul re PAGA mediation and Plaintiff's provision of Memorandum of Understanding to Defendant	0.10	\$900.00	\$90.00
Service	06/24/2024	KC	Attend and participate at mediation with mediator Steve Paul	9.40	\$900.00	\$8,460.00
Service	06/25/2024	KC	Email from/to defense counsel E. Mertes re proposed PAGA Memorandum of Understanding	0.10	\$900.00	\$90.00

Service	06/26/2024	KC	Communication with client relevant to case (telephone)	0.10	\$900.00	\$90.00
Service	06/27/2024	KC	Review/analyze Defendant's proposed revisions to PAGA Settlement MOU, draft further revisions to same; draft/revise/finalize email explaining why Defendant cannot include LC sections in PAGA release that have not been properly exhausted; legal research related to same	1.40	\$900.00	\$1,260.00
Service	07/02/2024	KC	Communication with mediator Steven Paul relevant to case (telephone, emails, texts)	0.50	\$900.00	\$450.00
Service	07/09/2024	KC	Telephone call and emails with Defense counsel K. Bockes re defining the scope of the PAGA release consistent with Plaintiff's PAGA Notice	0.50	\$900.00	\$450.00
Service	07/11/2024	KC	Email to/from defense counsel re status of settlement documentation	0.10	\$900.00	\$90.00
Service	07/16/2024	KC	Email to defense counsel re settlement issues	0.10	\$900.00	\$90.00
Service	07/17/2024	KC	Telephone call with defense counsel K. Bockes re settlement issues	0.10	\$900.00	\$90.00
Service	07/28/2024	KC	Review Defendants further redline revision and revise PAGA Settlement MOU	0.20	\$900.00	\$180.00
Service	07/30/2024	KC	Further review of PAGA MOU; transmit same to defense counsel	0.20	\$900.00	\$180.00
Service	08/07/2024	KC	Email to Defendant re status of execution of MOU	0.10	\$900.00	\$90.00
Service	08/07/2024	KC	Email to Defendant re status of execution of settlement agreement	0.10	\$900.00	\$90.00
Service	08/08/2024	KC	Telephone call with defense counsel K. Silva re PAGA MOU	0.10	\$900.00	\$90.00
Service	08/14/2024	KC	Email from defense counsel E.Mertes transmitting short-form MOU for execution	0.10	\$900.00	\$90.00
Service	08/15/2024	KC	Multiple emails with multiple third party class/ PAGA action administrators to obtain quotes for administration of Fred Leeds PAGA settlement	0.20	\$900.00	\$180.00
Service	08/16/2024	KC	Communication with client relevant to case (emails, texts) (re short-form MOU)	0.10	\$900.00	\$90.00
Service	08/16/2024	KC	Email from defense counsel E. Mertes re need for Spanish translation of any settlement documents to be provided to aggrieved employees	0.10	\$900.00	\$90.00

Service	08/19/2024	KC	Email to defense counsel E. Mertes transmitting executed MOU	0.10	\$900.00	\$90.00
Service	08/19/2024	KC	Multiple emails with three settlement administrators re quotes for administering PAGA settlement	0.20	\$900.00	\$180.00
Service	08/21/2024	KC	Draft, revise, finalize PAGA Payment Letter	0.30	\$900.00	\$270.00
Service	08/21/2024	KC	Draft, revise, finalize proposed PAGA Settlement Agreement	0.60	\$900.00	\$540.00
Service	08/21/2024	KC	Multiple emails with multiple administrators re quotes for administering settlement	0.30	\$900.00	\$270.00
Service	08/21/2024	KC	Email to defense counsel E. Mertes transmitting proposed PAGA Settlement Agreement, PAGA Payment letter and quotes from administrators	0.30	\$900.00	\$270.00
Service	08/30/2024	KC	Emails with defense counsel E. Mertes re draft PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	09/06/2024	KC	Email to/from defense counsel E. Mertes re need to finalize PAGA Settlement Agreement and further request for Defendant's comments to proposed PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	09/16/2024	KC	Email from respondent's counsel E. Mertes re PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	09/16/2024	KC	Email to respondent's counsel K. Bockes re PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	09/17/2024	KC	Telephone call to defense counsel K. Bockes requesting call to discuss PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	09/19/2024	KC	Review/revise further amended PAGA settlement agreement, and Exhibit 2 (payment letter) for same; email to defense counsel E. Mertes re same	0.40	\$900.00	\$360.00
Service	09/23/2024	KC	Email from defense counsel E. Mertes re further revisions to PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	09/26/2024	KC	Review and revise further draft of PAGA Settlement Agreement; email to defense counsel E. Mertes re same	0.40	\$900.00	\$360.00
Service	09/27/2024	KC	Email from defense counsel E. Mertes re finalizing the PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	09/30/2024	KC	Email from defense counsel E. Mertes re PAGA Settlement Agreement and Ex. 2 Payment Letter	0.10	\$900.00	\$90.00

Service	10/01/2024	KC	Communication with client relevant to case (texts/emails)	0.20	\$900.00	\$180.00
Service	10/02/2024	KC	Communication with client relevant to case (texts/telephone/emails)	0.20	\$900.00	\$180.00
Service	10/02/2024	KC	Email to defense counsel E. Mertes transmitting PAGA Settlement Agreement executed by Plaintiff	0.10	\$900.00	\$90.00
Service	10/06/2024	KC	Draft, revise Plaintiff's Motion for Approval of PAGA Action Settlement	1.10	\$900.00	\$990.00
Service	10/06/2024	KC	Draft, revise Plaintiff's Request for Judicial Notice ISO Motion for Approval of PAGA Action Settlement	0.20	\$900.00	\$180.00
Service	10/06/2024	KC	Draft, revise Proposed Order and Judgment Granting Plaintiff's Motion for Approval of PAGA Action Settlement	0.40	\$900.00	\$360.00
Service	10/06/2024	KC	Draft Custis Decl ISO Plaintiff's Motion for PAGA Settlement Approval	0.70	\$900.00	\$630.00
Service	10/08/2024	KC	Email to/from defense counsel E. Mertes re obtaining fully executed PAGA Settlement Agreement	0.10	\$900.00	\$90.00
Service	11/17/2024	KC	Draft, revise Motion for Approval of PAGA Action Settlement; and supporting Custis and Castro Declarations	6.60	\$900.00	\$5,940.00
Service	11/26/2024	KC	Communication with client relevant to case (emails/texts)	0.20	\$900.00	\$180.00
Service	11/26/2024	KC	Communication with third party administrator re declaration to support PAGA Approval Motion	0.20	\$900.00	\$180.00
Service	11/26/2024	KC	Draft, revise, finalize ILYM Group's ISO Motion for Approval of PAGA Action Settlement	0.40	\$900.00	\$360.00
Service	11/26/2024	KC	Draft, revise, finalize Plaintiff's Declaration ISO Motion for Approval of PAGA Action Settlement	0.40	\$900.00	\$360.00
Service	12/03/2024	KC	Email from Defendant's counsel E. Mertes re draft proposed Motion for Approval of PAGA Action Settlement	0.10	\$900.00	\$90.00
Service	12/04/2024	KC	Draft, revise, finalize Motion for Approval of PAGA Action Settlement	2.40	\$900.00	\$2,160.00
				Quantity Subtotal		59.1
				Quantity Total		59.1

Subtotal	\$53,190.00
Total	\$53,190.00

Exhibit D

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
Babak G. Yousefzadeh, Cal. Bar. No. 235974
Gal Gressel, Cal. Bar. No. 286312
Hyunki ("John") Jung, Cal. Bar. No. 318887
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4158
Telephone: (415) 434-9100
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Email: byousefzadeh@sheppardmullin.com
ggressel@sheppardmullin.com
hjungsheppardmullin.com

Attorneys for Defendants, KAISER FOUNDATION
HEALTH PLAN INC., KAISER FOUNDATION
HOSPITALS, and SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

MARIA F. TORRES,

Plaintiff,

v.

SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP, a corporation; KAISER
FOUNDATION HEALTH PLAN INC.; a
corporation; KAISER FOUNDATION
HOSPITALS, a corporation; and Does 1 through
10, Inclusive,

Defendants.

Case No. 19STCV42476

Assigned for all purposes to Dept. 58

**DECLARATION OF GAL GRESSEL IN
SUPPORT OF DEFENDANTS' MOTION FOR
TERMINATING SANCTIONS OR ISSUE
AND EVIDENCE SANCTIONS; AND
MONETARY SANCTIONS AGAINST
PLAINTIFF AND HER COUNSEL IN THE
AMOUNT OF \$154,557**

RESERVATION ID#: 019718469581

Judge: Hon. Judge Bruce G. Iwasaki
Date: May 17, 2023
Time: 9:00 a.m.
Courtroom: Dept. 58

Complaint: November 25, 2019
FAC: December 7, 2022
Trial Date: TBD

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I, Gal Gressel, declare and state as follows:

1. I am an attorney with the law firm Sheppard Mullin Richter & Hampton, LLP, attorneys of record for defendants Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals, and Southern California Permanente Medical Group (“Defendants”). Unless expressly stated otherwise below, I have personal knowledge of the facts set forth herein, and I could and would testify competently thereto if called and sworn as a witness.

Factual Background

2. A true and correct copy of excerpts of Volume I of Plaintiff's deposition testimony, taken on November 11, 2020 is attached as **Exhibit A**. A true and correct copy of excerpts of Volume II of Plaintiff's deposition testimony, taken on November 12, 2020 is attached as **Exhibit B**. A true and correct copy of excerpts of Volume III of Plaintiff's deposition testimony, taken on March 26, 2021, is attached as **Exhibit C**. A true and correct copy of excerpts of Volume IV of Plaintiff's deposition testimony, taken on October 6, 2022, is attached as **Exhibit D**.

3. **Exhibit E** is a true and correct copy of the License, Certificate, and Registration Verification (“LCR”) policy in effect at the time of Plaintiff’s termination of employment.

4. As part of litigation of this case, a search was conducted for any instance where an employee performed worked on an expired license, certification, or verification (“LCR”) (such as a Basic Life Support certification), or when an employee failed to timely renew their LCR. SCPMG produced documents to Plaintiff showing such information for each employee. **Exhibit F** is a true and correct copy of a chart produced in this case that shows (a) the employees’ ages at the time of discipline, and (b) whether the employee had taken a medical leave of absence within the year preceding the discipline (like Plaintiff). An analysis of the information in the chart shows the following:

- The age of the employee at termination ranged from 22 to 63 years old, with an average age of 40 (adding together all ages and dividing by 25);
- In 18 instances the employee had not taken medical leave in one year preceding the termination ($18/25 = 72\%$);
- In 6 instances the employee had taken medical leave in the preceding year ($7/25 = 28\%$).

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6. On March 15, 2021, I sent a letter to Plaintiff's counsel requested that Plaintiff produce her medical records, and also execute a release that SCPMG could provide to Plaintiff's healthcare providers to obtain records directly from the provider. A true and correct copy of my letter is attached as **Exhibit I**. At the time I sent my letter, Plaintiff had produced just *two* pages of medical records.

8. On April 22, 2021, SCPMG propounded Special Interrogatory No. 17, a true and correct copy of which is attached as **Exhibit M**. SCPMG specifically limited the interrogatory to start on May 1, 2018 because: (a) Plaintiff went on a medical leave on May 4, 2018 for arm and wrist injuries; and (b) based on Plaintiff's interrogatory answers, deposition testimony, and meet and confer correspondence, all of which asserted she did not have any prior emotional distress for which she sought treatment. Had Plaintiff truthfully answered these interrogatories or testified at deposition that she *had* previously sought treatment for emotional distress, this interrogatory would have used a broader timeframe to obtain all relevant information.

Plaintiff's Native Text Messages and Questions About Her Alleged Disability

10. SCPMG previously filed a motion to compel Plaintiff to answer further questions at deposition about her disability, and to produce documents, including native copies of her text messages, which the Court granted, on February 25, 2021. A true and correct copy of the court's February 25, 2021 order, and the parties' corresponding notices of ruling, is attached as **Exhibit O**.

11. Plaintiff's counsel had instructed Plaintiff not to answer questions about her disability on the basis that the questions were improper legal-contention questions not permitted by *Rifkind v. Superior Court*, 22 Cal. App. 4th 1255, 1258 (1994). This Court overruled those objections and ordered Plaintiff to answer these questions. **See Exhibit G.** However, at Plaintiff's continued deposition, on March 26, 2021, Plaintiff's counsel instructed Plaintiff not to answer questions considered "outside the scope" of the questions the Court ordered Plaintiff to answer. Plaintiff's counsel had made the same "Rifkind" instructions in another case, *Vargas v. Kaiser Foundation Health Plan, Inc.*, Riverside County Superior Court Case No. RIC1906237. The Court in *Vargas* also found the instructions improper and imposed \$3,600 in sanctions against the plaintiff in that case. A true and correct copy of the Notice of Ruling, which includes the court's order, is attached as **Exhibit P.**

12. SCPMG repeatedly requested that Plaintiff comply with the Court's order to produce her text messages in native format, but she refused, taking the position that she had "complied" with the Court's order by producing them in *PDF* format, and that there was "nothing left to do." True and correct copies of meet and confer communications between the parties' counsel on this subject are attached as **Exhibit Q** (March 2, 2021: defendants, requesting native copies of text messages, as ordered by the Court), **Exhibit R** (March 17 and 19, same), **Exhibit S** (March 23, 2021, Plaintiff stating that with her latest PDF format production, she had "complied" and there was "nothing left to do"); **Exhibit T** (March 24, 2021: defendants again requesting natives to comply with the Court's order); **Exhibit U** (March 25, Plaintiff refusing compliance).

13. On November 2, 2021, the parties stipulated, and the Court approved, the appointment of the Honorable Elizabeth Feffer (ret.) as an all-purpose discovery referee under Code of Civil Procedure section 638 (the "Referee"). A true and correct copy of the parties' stipulation and the Court's order appointing the Referee is attached as **Exhibit V.**

14. On February 3, 2022, Defendants filed an Omnibus Motion re Discovery Disputes, and to Impose Sanctions in the Amount of \$6,000 Against Plaintiff and Her Counsel (the "Omnibus Motion"), to be heard by the Referee. This included Plaintiff's refusal to comply with this Court's February 25, 2021 order (Exhibit G) to produce native copies of her text messages and to answer questions at deposition about her alleged disability. On March 4, 2022, the Referee granted most parts of

1 Defendants' Omnibus Motion, including enforcing this Court's order that Plaintiff must produce her text
2 messages in native format and answer questions at deposition about her disability. A true and correct
3 copy of the Referee's order is attached as **Exhibit W**. The Referee also imposed the full amount of
4 sanctions requested, \$6,000, against Plaintiff, because of "Plaintiff's failure to comply with the court's
5 February 25, 2021 orders" regarding production of her text messages in native format and refusal to
6 answer questions about her disability. Exhibit W, p. 19. I attended the hearing on the Omnibus Motion,
7 which took place on March 3, 2022. A true and correct copy of excerpts of the hearing are attached as
8 **Exhibit X**.

9 **Plaintiff's Refusal to Comply with the Referee's Order**

10 15. On March 23, 2022, Defendants removed this action to federal court. On March 29,
11 2022, I sent a letter to Plaintiff's counsel requesting that Plaintiff confirm she would comply with the
12 Referee's Order and make all disclosures and production by March 31, 2022. My letter explained that
13 "after removal, the federal court takes the case up where the State court left it off," *Jenkins v.*
14 *Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9th Cir. 1996); *see also* 28 U.S.C. § 1450, that
15 any order entered by a state court "should be treated as though it had been validly rendered in the federal
16 proceeding," *Butner v. Neustadter*, 324 F.2d 783, 786 (9th Cir. 1963), and that as a result, the Referee's
17 Order remained valid and in effect. A true and correct copy of my letter is attached as **Exhibit Y**.

18 16. On March 31, 2022, Plaintiff's counsel responded that Plaintiff would not comply with
19 the Referee's Order, based on her contention that Defendants' removal was improper and that the action
20 was "stayed" at the superior court. Plaintiff's counsel did not offer any authority for their position. A
21 true and correct copy of Plaintiff's March 31, 2022 letter is attached as **Exhibit Z**.

22 17. On April 7, 2022, I sent another letter to Plaintiff's counsel, again requesting that
23 Plaintiff comply with the Referee's Order, a true and correct copy of which is attached as **Exhibit AA**.
24 My letter explained that the state court action was not "stayed," but that rather, the removal terminated
25 the state court's jurisdiction altogether. My letter explained that if Plaintiff continued to refuse to
26 comply with the Referee's Order, Defendants would file a motion for sanctions, including for issue
27 sanctions, evidence sanctions, monetary sanctions, and an adverse inference instruction. I requested that
28

1 Plaintiff's counsel reconsider their position and inform me when they were available to discuss the
2 issues raised in my letter. I did not receive a response.

3 18. On April 25, 2022, Defendants filed a motion for sanctions against Plaintiff due to her
4 refusal to comply with the Referee's order. Plaintiff also filed a motion to remand the action. On June
5 13, 2022, the federal court denied Plaintiff's motion to remand, finding that her claims were preempted
6 by the LMRA, and gave "Plaintiff one last chance to comply with the outstanding discovery orders
7 before issuing additional sanctions, up to and including those requested by Defendants, if not
8 additional." A true and correct copy of the federal court's order is attached as **Exhibit BB**. On May 23,
9 2022, the federal court had issued a tentative ruling to this same effect.

10 **Plaintiff's Failure to Comply With The Federal Court's Order**

11 19. On May 25, 2022, Plaintiff supplemented her answer to Special Interrogatory No. 17, a
12 true and correct copy of which is attached as **Exhibit CC**. Plaintiff also produced medical records.
13 However, despite disclosing four new healthcare providers, Plaintiff produced records for just one of
14 those providers. Plaintiff also produced unemployment and disability benefits records, but did not
15 include in her production the records held by the Employment Development Department (EDD).
16 However, Plaintiff had not provided Defendants with a release for those records from the EDD.
17 Plaintiff's total production was 195 pages.

18 20. On June 22, 2022, Defendants sent a demand to Plaintiff to supplement her discovery and
19 provide releases for her medical records and EDD records. A true and correct copy of my letter with
20 this demand is attached as **Exhibit DD**. Plaintiff provided the releases and supplemented her discovery
21 responses. A true and correct copy of Plaintiff's second supplemental answer to Special Interrogatory
22 No. 17 is attached as **Exhibit EE**.

23 21. Upon receiving Plaintiff's releases, Defendants issued subpoenas and included the
24 releases, and received document productions from Plaintiff's providers and the EDD. The table below
25 summarizes the information and documents that Plaintiff produced in comparison to the production of
26 records received from Plaintiff's providers and the EDD. The additional documents that Defendants
27 received total 1,281 new pages that Plaintiff did not produce.

Custodian or Person Identified by Plaintiff as a Healthcare Provider	Documents Produced by Plaintiff	Later Production from Third Parties
Kaweah Delta Health Care District	Torres 2257-2315 (58 pages total)	SCPMG obtained via release, and produced under SCPMG 00004289-4596 (307 pages total). The true document production was over 5 times what Plaintiff produced – an additional 290 pages of medical records at issue in this case.
Dr. Aditya Verma	None	SCPMG obtained via release, and produced under SCPMG 00004272-4288 (16 pages)
Terrio Physical Therapy	None	SCPMG obtained via release, and produced under SCPMG 00004670-4774 (104 pages)
Dr. Lily Honoris	None	SCPMG obtained via release, and produced under SCPMG 00004775-4803 (billing records) (28 pages); and SCPMG00004804-5753 (949 pages). Defendants served a subpoena for these records on or about July 6, 2022. However, because the custodian of records did not respond to the subpoena and informed Defendants' deposition officer that the subpoena could not be located. Defendants re-issued the subpoena on September 15, 2022. The custodian of records then delivered the documents to the deposition in response to the July 6, 2022 subpoena.
Unemployment and EDD Benefits Records	Torres 2119-2256 (137 pages total)	SCPMG obtained via release, and produced under SCPMG 00004597-4669 (72 pages) These were entirely different records than the records Plaintiff produced.

22. On September 27, 2022, Defendants received Plaintiff's medical records from her cardiologist. A true and correct copy of excerpts of these records are attached in **Exhibit FF**. Plaintiff's cardiologist's records disclosed at least three new providers, but Plaintiff has not produced any records relating to those providers.

23. On October 11, 2022, Plaintiff produced Plaintiff produced 24 pages of medical records from Dr. Jennifer Soares, a true and correct copy of which is attached as **Exhibit GG**. On October 12,

2022, Plaintiff produced Torres 002375, a true and correct copy of which is attached as **Exhibit HH**.

On October 13, 2022, Plaintiff produced an expert report, which refers to Dr. Soares' notes.

24. On September 14, 2022, before receiving the medical records productions described above, I sent a letter to Plaintiff's counsel inquiring whether Plaintiff sought more than garden variety emotional distress damages, with a request that Plaintiff agree to an independent medical examination if she so alleged. On September 15, 2022, Plaintiff's counsel responded that Plaintiff alleged more than garden variety emotional distress damages and represented that Plaintiff would agree to an independent medical examination. Following the disclosure of some of Plaintiff's missing mental health history on September 27, 2022, Plaintiff's counsel indicated that Plaintiff would no longer agree to an independent medical examination by Defendant's expert. After Defendants filed a renewed motion for sanctions in federal court, which raised Plaintiff's refusal, and provided Plaintiff with additional explaining that that the examination was proper, Plaintiff agreed to sit for an examination.

Renewed Sanctions Motion in Federal Court

25. On October 24, 2022, Defendants filed a renewed motion for sanctions. A true and correct copy of Plaintiff's opposition is attached as **Exhibit II**. However, on December 7, 2022, the federal court permitted Plaintiff to amend her Complaint to withdraw any allegations that gave rise to federal court jurisdiction under the Labor Management Relations Act, remanded the case to state court, and referred Defendants' motion for monetary sanctions (only) to the magistrate judge. A true and correct copy of the court's order is attached as **Exhibit JJ**. The federal court heard the motions on December 5, 2022, and a true and correct copy of the transcript from the hearing is attached as **Exhibit KK**. On January 26, 2023, the magistrate judge declined to consider the substance of the motion for sanctions, explaining that due to the remand, "the superior court would be better suited to determine whether Plaintiff has complied with the orders of the superior court and the superior court's discovery referee." A true and correct copy of the magistrate's order is attached as **Exhibit LL**.

Sanctions

26. On February 27, 2023, this Court entered terminating sanctions in the case *Robert Wendt v. Oi, Inc.*, Case No. 22STCV10507. A true and correct copy of the Court's order is attached as **Exhibit MM**.

1 27. Babak Yousefzadeh, a partner at my firm, has been practicing law in California for over
2 eighteen years, and is a labor and employment specialist (having focused on employment law for
3 almost his entire career), at one of the most preeminent law firms in the country, with one of the largest
4 and best known labor and employment practices in California. Mr. Yousefzadeh's regular hourly rate
5 during the pendency of this litigation are as follows: \$860/hr in 2020; \$925/hr in 2021; \$985/hr in
6 2022; and \$1,065/hr in 2023. Although Mr. Yousefzadeh's regular hourly rate has increased during
7 this litigation, and the bulk of Defendants' efforts to obtain Plaintiff's medical records and related
8 information took place in 2021 to present, when Mr. Yousefzadeh's rates were higher, for purposes of
9 this motion, and to calculate fees more conservatively, Defendants request that the Court approve a
10 lower rate of \$750 per hour for Mr. Yousefzadeh.

11 28. I have been practicing law in California for over ten years, and am also an employment
12 specialist in the labor and employment group of Sheppard Mullin. My regular hourly rates during the
13 pendency of this litigation are as follows: \$685/hr in 2020; \$780/hr in 2021; \$880/hr in 2022; and
14 \$975/hr in 2023. Although my regular hourly rate has increased during this litigation, and the bulk of
15 Defendants' efforts to obtain Plaintiff's medical records and related information took place in 2021 to
16 present, when my rates were higher, for purposes of this motion, and to calculate fees more
17 conservatively, Defendants request that the Court approve a lower rate of \$585 per hour for me.

18 29. John Jung has been practicing law in California for over five years, and is also an
19 employment specialist in the labor and employment group of Sheppard Mullin. Mr. Jung's regular
20 hourly rate in 2022, at the time he performed the relevant work on this matter, was \$715 per hour. For
21 purposes of this motion, and to calculate fees more conservatively, Defendants request that the Court
22 approve lower rate of \$500 per hour for Mr. Jung.

23 30. For efficiency, our firm has utilized paralegals to assist on this matter, with rates varying
24 from \$205 per hour to \$385 per hour from 2020 to 2023. For purposes of this motion, and to calculate
25 fees more conservatively, Defendants request that the Court approve an hourly rate of \$250 per hour for
26 paralegals.

27 31. I have reviewed our billing records to determine the costs and time incurred in: (1)
28 seeking emotional-distress discovery from Plaintiff, such as propounding discovery, meet-and-confer

correspondence, reviewing documents and records, and seeking Plaintiff's medical records; (2) motion practice to obtain Plaintiff's emotional-distress discovery, which includes the motion to compel before the Referee, two sanctions motions in federal court, and this motion for sanctions (including an estimated eight hours of time for myself on the reply brief and two hours for Mr. Yousefzadeh); and (3) Defendants' expert psychiatrist, who was required to proceed without all of Plaintiff's relevant medical records, as summarized in the tables below.

Reasonable Attorneys Fees'

Timekeeper	Hours	Rate	Total Reasonable Fees
Babak G. Yousefzadeh	23.40	\$750	\$17,550
Gal Gressel	161.70	\$585	\$94,595
John Jung	24.8	\$500	\$12,400
Paralegals	36.8	\$250	\$9,200
Total			\$133,745

Costs Incurred

Item	Cost
Service of Subpoenas, records fees, deposition officer fees	\$3,138
Psychiatric expert	\$17,674
Total	\$20,812

Thus, the total reasonable attorneys fees' and costs incurred are \$154,557.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the 25th day of April, 2023, in San Francisco, California.



Gal Gressel

Exhibit E

Exhibit E

Castro v. Fred Leeds Property Management, Inc., et al., Case No. 23STCV21642

Litigation Costs

Date	Description	Amount
6/7/23	Filing Fee paid to LWDA when filing PAGA Notice	\$75.00
6/7/23	Postage for US Certified Mail to send PAGA Notice to Employer, as required by PAGA	\$9.24
9/8/23	Initial Filing Fees and associate e-filing/court fees for filing complaint, summons and civil case cover sheet	\$463.07
10/13/23	U.S. Postage for serving Plaintiff's Request for Production (Set 1), Special Interrogatories, (Set 1) and General Form Interrogatories (Set 1)	\$6.95
10/13/23	Ace Legal fee for e-filing Plaintiff's Notice of Case Management Conference	\$15.02
10/13/23	Ace Legal fee for e-filing Joint Post-Mediation Status Conference	\$15.02
3/20/24	Mediation Fee paid to Steven Paul of Paul Mediation (For June 24, 2024 mediation)	\$8,000.00
3/20/24	Postage for mailing Mediation Fee to Steven Paul of Paul Mediation (For June 24, 2024 mediation)	\$0.88
12/3/24	Court/reservation fee for Motion for Approval Of PAGA Action Settlement (Estimated)	\$61.65
10/24/25	Ace Legal and court fees for e-filing Declaration of Administrator re Distribution of Settlement Funds (Estimated)	\$15.02
		\$8,661.85

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2121 Avenue of the Stars, Suite 800, Los Angeles, California 90067.

On December 4, 2024, I served the foregoing document(s) described as:

**DECLARATION OF KEITH CUSTIS IN SUPPORT OF MOTION FOR APPROVAL OF
PAGA ACTION SETTLEMENT**

on the interested parties in this action,

Kurt Bockes
KBockes@littler.com
Emily Mertes
EMertes@littler.com
Littler Mendelson P.C.
101 Second Street, Suite 1000
San Francisco, California 94105

by sending a true copy thereof to the interested parties as follows:

- ☐ **(BY PERSONAL SERVICE)** By causing the document(s) listed above to be personally delivered on the date set forth above to the person(s) at the address(es) set forth above.
- ☒ **(BY EMAIL)** By electronically mailing a true and correct copy through Custis Law, P.C.'s electronic mail system from kcustis@custislawpc.com to the email addresses set forth above pursuant Code of Civil Procedure Section 1010.6(e) and Rule 2.251 of the California Rules of Court.
- ☐ **(BY U.S. MAIL)** In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California, that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 4, 2024 in Los Angeles, California.



Keith Custis