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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF YOLO

WILLIAM APPEL, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SUNFOODS, LLC, a California Corporation;
MATT ALONSO, an individual; and DOES 1
to 100, inclusive,

Defendants.

Case No. CV2023-2012

*Assigned for All Purposes to Hon. Samuel T. McAdam
Department 14*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT SETTLEMENT**

Date: January 22, 2025

Time: 9:00 a.m.

Dept.: 14

Judge: Hon. Samuel T. McAdam

Filed: September 25, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 22, 2025, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 14 of the above-entitled Court, Plaintiff William Appel (“Plaintiff”)
4 will move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act (“PAGA”) and, as such, became authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$99,000 PAGA Settlement, which is incorporated by reference as if stated
9 here in full;
- 10 3. Approving the application for payment to Plaintiff’s Counsel of reasonable attorneys’ fees in
11 the amount of 35% of the Gross Settlement Amount;
- 12 4. Approving the application for payment to Plaintiff’s Counsel of reasonable costs in the
13 amount of \$6,412.51;
- 14 5. Approving the appointment of ILYM Group, Inc., as the Settlement Administrator and for
15 payment to ILYM Group, Inc., for administering said settlement in an amount not to exceed
16 \$5,000;
- 17 6. Approving an Enhancement Payment of \$10,000 to Plaintiff from the Gross Settlement
18 Amount for his work on behalf of the Aggrieved Employees and the LWDA and in exchange
19 for his general release of all his individual claims in addition to any amount Plaintiff may be
20 entitled to under the Agreement’s pro rata distribution formula;
- 21 7. Approving as to form and content the proposed Notice of Settlement, which provides
22 Aggrieved Employees information regarding the nature and scope of the Settlement;
- 23 8. Approving the proposed procedures to notify, and deliver payment to, Aggrieved Employees;
- 24 9. Directing Defendants to report employment information, as set forth in the Agreement, to the
25 Settlement Administrator to administer the settlement proceeds;
- 26 10. Directing that any funds from settlement checks that were not cashed by the check cashing
27 deadline be forwarded to the California State Controller’s Unclaimed Property Fund in the
28

1 name of the employee who did not cash their Individual PAGA Amount payment under the
2 doctrine of *cy pres*; and

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

5 This Motion is being made pursuant to California Labor Code section 2699(1)(2)¹ on the grounds
6 that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the
7 asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement
8 should be approved by the Court. This Motion will be based on the notice of motion, memorandum of
9 points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of William Appel,
10 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the
11 hearing of this Motion.

12 **Pursuant to Local Rule 11.2, the court will issue a tentative ruling on the merits of the matter by**
13 **3:00 p.m. on the court day before the hearing. The tentative rulings are available by phone at**
14 **(530)406-6806 and on the Court's web site after 3:00 p.m. The tentative ruling shall become the**
15 **ruling of the court, unless a party desiring to be heard so advises the courtroom clerk of the**
16 **designated department no later than 4:00 p.m. on the court day preceding the hearing, and**
17 **further advises the courtroom clerk that such party has notified the other party(s) of its intention**
18 **to appear.**

19 Dated: December 17, 2024

Shimoda & Rodriguez Law, PC

20 By: _____

21 Galen T. Shimoda
22 Justin P. Rodriguez
23 Renald Konini
24 Attorneys for Plaintiff

25
26
27
28 ¹ Although the PAGA was recently amended, the amendments specifically state they are applicable to cases filed after June 19, 2024. *See* Cal. Lab. Code § 2699(v)(1). Because the PAGA notice in this case predates this, all further references to the PAGA in this Motion will be based on the statutory numbering applicable prior to the July 1, 2024, amendment.

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**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Date: January 22, 2025

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Dept.: 14

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff William Appel (“Plaintiff”) seeks approval of a non-reversionary Private Attorneys General Act (“PAGA”) Settlement in the gross amount of \$99,000. *See generally* Exhibit A (Proposed PAGA Settlement [“Agreement”]). Plaintiff brought this PAGA lawsuit on behalf of the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees who worked for Defendants Sunfoods, LLC, and Matt Alonso, (“Defendants”) (Plaintiff and Defendants sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint).

Plaintiff has alleged that Defendants violated California law by 1) failing to incorporate the value of non-discretionary safety bonuses into Aggrieved Employees’ regular rates of pay for the purpose of calculating overtime premiums and paid sick time; 2) paying Aggrieved Employees two different rates of pay in the same workweek and failing to use the weighted average method to calculate Aggrieved Employees’ regular rates of pay; 3) failing to provide all meal periods, including second meal periods; 4) failing to provide all rest periods, including third rest periods; 5) failing to pay meal premiums and paid sick time at the correct regular rate of pay; 6) failing to reimburse Aggrieved Employees for the use of their personal tools for work, 7) failing to provide meal period and rest period premium pay for missed meal and rest breaks to Aggrieved Employees, 8) failing to provide Aggrieved Employees with accurate wage statements, and 9) failing to pay Aggrieved Employees at termination or separation all wages owed. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9. Defendants have denied all of Plaintiff’s allegations and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6, 12; Declaration of William Appel (“Decl. Appel”), ¶ 7. The Agreement was entered into in good faith by the Parties to resolve heavily contested claims and guarantees a reasonable recovery for Aggrieved Employees and the LWDA.

1 Accordingly, Plaintiff is requesting that the Court: (1) make a finding that Plaintiff has exhausted
2 all administrative remedies and that Plaintiff is authorized to enter into the proposed Agreement on
3 behalf of the LWDA; (2) approve the proposed Agreement as fair, reasonable, and adequate; (3) set
4 dates for, and direct distribution of, payment and the Notice of Settlement (Exhibit E) to Aggrieved
5 Employees affected by the settlement as set forth in the Agreement and (4) adopt the implementation
6 schedule contained in the proposed order.

7 **II. PROCEDURAL AND LITIGATION HISTORY**

8 On July 18, 2023, Plaintiff gave written notice to the LWDA and Defendants, providing facts
9 and the legal basis for all claims asserted in the Complaint and being resolved under the Agreement. *See*
10 Exhibit C (Plaintiff's Ltr. to the LWDA). Plaintiff also submitted the \$75.00 filing fee. *See* Decl.
11 Rodriguez ¶ 3. The July 18, 2023, notice was also sent via certified mail to Defendants on the same day.
12 *See* Exhibit C. The LWDA did not provide any response to Plaintiff's notice correspondence within the
13 statutorily required time frame and, as a result, Plaintiff became authorized to act as a Private Attorney
14 General for the asserted claims. *See* Decl. Rodriguez ¶ 3; Cal. Lab. Code § 2699.3(a), (c)¹. Plaintiff
15 filed this lawsuit on September 25, 2023, and uploaded a copy of the filed Complaint to the LWDA on
16 October 4, 2023. *See* Decl. Rodriguez ¶ 3. No trial date has been set in this matter. *See id.*

17 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

18 Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims.
19 *See id.* at ¶¶ 6-10; Decl. Appel, ¶¶ 5-7. Plaintiff worked during the time all of Defendants' policies and
20 practices at issue in the Complaint were in effect and provided information regarding these policies and
21 practices, enabling pre-filing investigations to take place. *See* Decl. Appel, ¶ 2. The Parties engaged in
22 informal discovery and exchange of documents, including a representative sampling of employee data,
23 such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of
24 limitations applicable to the asserted claims. The discovery covered all aspects of the asserted claims,
25 including merits issues, damages, the scope and configuration of Aggrieved Employees, the content and
26 implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial,

27
28 ¹ Although the PAGA was recently amended, the amendments specifically state they are applicable to cases filed after June 19, 2024. *See* Cal. Lab. Code § 2699(v)(1). Because the PAGA notice in this case predates this, all further references to the PAGA will be based on the statutory numbering applicable prior to the July 1, 2024, amendment.

1 among other relevant areas. *See* Decl. Rodriguez ¶¶ 6-7. The information allowed Plaintiff to determine
2 the extent and frequency of any violations in accordance with Plaintiff's contentions and create an
3 accurate damages model to assess the reasonableness of any settlement. *See id.* at ¶¶ 7, 9-12.

4 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

5 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

6 The final settlement occurred only after extended, arm's length negotiations. Over the course of
7 nearly two (2) years, Plaintiff has been investigating the claims and discussing with Defendants' counsel
8 the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-10. The Parties exchanged
9 substantial amounts of information and legal analysis in connection with these discussions. *See id.* It
10 was only after these extended discussions, which included a full day mediation with Russ J. Wunderli,
11 Esq., that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

12 **b. The Terms of the Agreement**

13 1. The scope of Aggrieved Employees covered under the Agreement includes all individuals
14 who have, or continue to, work for Defendants in California as non-exempt employees from July 18,
15 2022, up to either 1) the End Date, or 2) January 7, 2025, whichever is earlier. *See* Exhibit A, ¶ 1.2.

16 2. Defendants will pay the Gross Settlement Amount of \$99,000. *See id.* at ¶ 5.1. No
17 portion of the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.5.

18 3. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the
19 Settlement Administrator, who has provided a maximum cost estimate of \$3,950. *See* Exhibit D (ILYM
20 Group, Inc. Bid); Exhibit A, ¶ 1.28; Decl. Rodriguez, ¶ 23.

21 4. The Parties agree that up to Thirty-Five (35%) of the Gross Settlement Amount (\$34,650)
22 will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendants will not
23 oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
24 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as approved
25 by the Court in an amount not to exceed \$8,500. *See id.* At the time this Motion was filed, the
26 estimated total costs incurred and that will be incurred in the future as a result of the litigation and
27 implementing the terms of the Agreement are \$6,412.51. *See* Decl. Rodriguez ¶ 22; Exhibit G
28 (Plaintiff's Itemized Costs).

1 5. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment for his efforts on
2 behalf of Aggrieved Employees and the LWDA as well as in exchange for a general waiver of all his
3 individual claims. This amount will be in addition to any amount Plaintiff may be entitled to under the
4 terms of the Agreement. *See id.* at ¶ 5.3.

5 6. Any allocated amounts under the Agreement for attorney’s fees and costs, any
6 Enhancement Payment, and Settlement Administrator Costs that are not ultimately awarded by the Court
7 will remain part of the Net Settlement Amount and be paid out to the LWDA and Aggrieved Employees
8 as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.13, 1.15, 1.19, 5.2-5.4, 5.8. These amounts will be
9 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See id.* at ¶¶
10 5.2-5.4, 5.8-5.9.

11 7. Any and all claims for civil penalties under the PAGA that were asserted in Plaintiff’s
12 notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have
13 been brought based on the facts alleged therein will be deemed fully, finally, and forever released
14 against the Released Parties. *See* Exhibit A, ¶¶ 1.25, 1.27, 6.1.

15 8. The Settlement Administrator will perform searches to locate Aggrieved Employees
16 based on the last contact information in Defendants’ possession. *See id.* at ¶¶ 7.2, 7.5-7.7. The searches
17 will include reference to the U.S. Postal Service’s National Change of Address Database and, for any
18 notice returned as undeliverable, skip tracing using the individual’s social security number and other
19 pertinent identifying information. *See id.* Although not required to provide a notice of settlement to
20 Aggrieved Employees in connection with the Individual Settlement Amount, the Agreement provides
21 that Aggrieved Employees will receive a notice giving them information concerning all material terms
22 of the settlement. *See id.* at ¶ 7.5; Exhibit E; *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
23 1340777, *5 (N.D. Cal. 2010) (“Unnamed employees need not be given notice of the PAGA claim, nor
24 do they have the ability to opt-out of the representative PAGA claim”); *see also Arias v. Superior Ct.*, 46
25 Cal.4th 969, 984-988 (2009) (rejecting a defendant’s due process argument that aggrieved employees
26 must be given notice similar to class members in class actions).

27 9. For any portion of the Net Settlement Amount allocated to Aggrieved Employees that is
28 not claimed by them by cashing their respective settlement checks within 180 days of issuance, the

1 remaining amount shall be forwarded to the California State Controller's Unclaimed Property Fund in
2 the name of the employee who did not cash their Individual PAGA Amount payment. *See* Exhibit A, ¶
3 5.5. Because the Agreement provides for the distribution of all funds such that there is no residue, the
4 provisions of California Civil Procedure Code section 384 are inapplicable. *See In re Microsoft I-V*
5 *Cases*, 135 Cal.App.4th 706, 718, 720 (2006).

6 **c. Allocation of Settlement Funds**

7 A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount
8 any attorneys' fees and costs, any Enhancement Payment, and/or Settlement Administrator Costs
9 awarded by the Court. *See* Exhibit A, ¶¶ 1.15, 5.8. The Net Settlement Amount shall be divided
10 between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA
11 will be 75% of the Net Settlement Amount. *See* Cal. Lab. Code § 2699(i). 25% of the Net Settlement
12 Amount will be paid to Aggrieved Employees *See id.* Each Individual Settlement Amount shall be
13 determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing
14 that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the
15 25% share of the Net Settlement Amount. *See* Exhibit A, ¶¶ 1.15, 1.24, 5.8. The payment to Aggrieved
16 Employee's will be characterized as 1099 income for tax reporting purposes. *See id.* at ¶ 5.7.

17 **V. THE AGREEMENT SHOULD BE APPROVED AS PLAINTIFF MET ALL**
18 **STATUTORY REQUIREMENTS FOR PROCEEDING WITH THE PAGA CLAIM AND**
19 **THE AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE**

20 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
21 representative of the LWDA have been complied with and the Court has reviewed and approved the
22 terms of the PAGA settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c). The Court has broad
23 discretion in making the decision to approve or reject a settlement for civil penalties as the statutory
24 scheme authorizes the Court to determine whether, in certain circumstances, penalties should be
25 assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of
26 the case. *See id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must determine
27 "whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law
28 violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA,*
Inc., 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same

1 established framework Courts use to evaluate whether class action settlements are fair, reasonable, and
2 adequate. *See id.*; *see also Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4 n.5
3 (E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O'Connor v. Uber*
4 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by
5 comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v.*
6 *NCI Group, Inc.*, 2018 WL 1409590, *2 (C.D. Cal. 2018) (same). This framework has been used many
7 times over by multiple Courts. *See, e.g., Kabasele v. Salon*, 2023 WL 4747691, *2 (E.D. Cal. 2023);
8 *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *3 (N.D. Cal. Aug. 25, 2017); *Gutilla v.*
9 *Aerotek, Inc.*, 2017 WL 2729864, *3, n.4 (E.D. Cal. 2017); *Rincon v. W. Coast Tomato Growers, LLC*,
10 2018 WL 828104, *2 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL 2029061, *2 (N.D.
11 Cal. 2019). An important difference in the analysis, however, is that the evaluation should focus on the
12 amount of the settlement as a whole rather than any individual aggrieved employee's share because a
13 PAGA lawsuit is fundamentally a law enforcement action where the "relief is designed to protect the
14 public[,] not to benefit private parties." *See Moniz*, 72 Cal.App.5th at 74 (internal quotation and
15 citations omitted).

16 **a. Plaintiff has Met All Statutory Requirements For Proceeding With A PAGA Claim**

17 An aggrieved employee must give written notice of the facts, theories, and statutes supporting
18 the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing
19 fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). An "aggrieved employee"
20 means any person who was employed by the alleged violator and against whom one or more of the
21 alleged violations was committed." *Id.* at § 2699(c). If the LWDA does not provide notice of its intent
22 to investigate within 65 calendar days of the notice, the aggrieved employee may commence a civil
23 action. *See id.* at §§ 2699.3(a)(2)(A), 2699.5. For alleged violations of the Labor Code sections not
24 enumerated in section 2699.5, an aggrieved employee may commence a civil action if the employer has
25 not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An
26 aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the
27 same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

1 As set forth above, Plaintiff complied with all statutory requirements to commence a civil action.
2 See Decl. Rodriguez ¶ 3; Exhibit C. The notice letter to the LWDA sets forth all claims and theories of
3 liability stated in the Complaint as well as supporting facts. See Exhibit C. Plaintiff also paid the
4 \$75.00 filing fee. See Decl. Rodriguez ¶ 3. As the LWDA did not provide any notice of its intent to
5 investigate within the required time frame and no cure under the statute took place, Plaintiff is
6 authorized resolve those claims contained in the notice letter(s) and the operative Complaint. See *id.*;
7 Exhibit B; Exhibit C. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire
8 motion for approval to the LWDA for its consideration at the same time this motion was filed. See
9 Rodriguez ¶ 24; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).

10 **b. The Terms of The Settlement Are Fair, Reasonable, and Adequate**

11 Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable,
12 and adequate include the strength of the case, the risk, expense, complexity and likely duration of further
13 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
14 extent of discovery completed and the stage of the proceedings, and the experience and views of
15 counsel. See *Chamberlain*, 2020 WL 4350207, *4 n.5; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
16 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
17 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
18 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
19 intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.App.4th at 1802.
20 Indeed, the law favors settlement of lawsuits, particularly complex litigation cases where substantial
21 resources can be conserved by avoiding the time, expense, and rigors of formal litigation. See *Neary v.*
22 *Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
23 1101 (9th Cir. 2008).

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

26 Settlement of the PAGA claims was reached only after substantial litigation and extensive arm’s
27 length negotiations lasting nearly two (2) years, which included a full day mediation. See Decl.
28

Rodriguez, ¶¶ 3, 6-10. At all times, the negotiations were adversarial, although still professional in nature. *See id.*

ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement

The Parties were in possession of all necessary information during the negotiations. The Parties engaged in substantial informal discovery, which included all necessary components for evaluating the PAGA claims and creating an accurate damages model. *See id.* at ¶¶ 6-12. Plaintiff was in possession of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable estimation of Defendants' potential liability. *See id.* For these reasons, the settlement now before the Court was reached at a stage where the parties "have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *See Kang v. Credit Bureau Connection, Inc.*, 2023 WL 6811994, *5 (E.D. Cal. 2023); *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D. Cal. 2013).

iii. Plaintiff's Counsel are Experienced in Similar Litigation

Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA actions. *See Decl. Rodriguez*, ¶¶ 13-21. Thus, Plaintiff's counsel are qualified to evaluate the PAGA claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Plaintiff's Counsel believe that the Agreement is fair, reasonable, and adequate in light of the risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Aggrieved Employees and the LWDA that the Agreement provides. *See id.* at ¶ 12.

iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

Plaintiff's claims and the manageability of the litigation proceeding as a PAGA action were heavily disputed by Defendants. *See Decl. Rodriguez*, ¶¶ 5-9. Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 9.8% of the maximum value of the claims in this matter and between 24.7% and 304.1% of the more realistic range of recovery, which equates to approximately \$54.19 per pay period. *See Decl. Rodriguez*, ¶¶ 9-11. The \$99,000 Gross Settlement Amount is a reasonable compromise and exceeds approved settlement ranges in other PAGA cases

whether comparing either absolute numbers or as a percentage of total available damages. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 WL 1496407, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 WL 12571448, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 WL 4899942, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, *2 (S.D. Cal. 2010); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *1, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 WL 714367, *13 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in \$3,950,000 gross settlement amount allocated to California class even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated potential value); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, *6-*7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 PAGA allocation from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (\$10,000 PAGA allocation from \$6,900,000 settlement fund).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in representative action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing

1 the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th
2 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
3 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
4 also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed
5 on all the claims, provided there is a record that allows “an understanding of the amount that is in
6 controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

7 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
8 data points relied upon in reaching these ranges. *See* Decl. Rodriguez ¶¶ 9-11. The record demonstrates
9 that the compromises made by Plaintiff were reasonable and have resulted in a settlement with recovery
10 percentage well within the range of what has been found to be sufficient in several other cases. *See*,
11 *supra*, Section V.b.iv; *see also Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)
12 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
13 in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”);
14 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in
15 theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a
16 single percent of the potential recovery”).

17 **VI. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS,**
18 **ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATION COSTS ARE**
19 **REASONABLE AND SHOULD BE APPROVED**

20 California state and federal courts have recognized that when a litigant’s efforts create or
21 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
22 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
23 444 U.S. 472, 477-481 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
24 than . . . his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
25 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
26 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1
27 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.
28 1977). Courts have approved using a percentage of the fund to calculate reasonable attorney fee awards
where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48

1 Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1)
2 the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the
3 fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v.*
4 *Graultry*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a
5 represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum
6 settlement recovered on his behalf.” *Id.* at 271 (citations omitted).

7 Although this litigation is under the PAGA and not a class action, the basis for a common fund
8 applies with equal force. The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this
9 case because there is a sufficiently identifiable class of beneficiaries (*e.g.* Aggrieved Employees and the
10 LWDA), the benefits can be accurately traced to the Agreement Plaintiff and Plaintiff counsel were able
11 to negotiate on behalf of the LWDA and Aggrieved Employees, and the fee can be shifted with
12 exactitude to those benefitting as the fee request is a specific, lump-sum of the common fund.
13 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of the fund,
14 depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed. 1992), § 14.03
15 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are generally
16 approved as reasonable in representative litigation settlements below \$10 million. *See, e.g., Martin v.*
17 *AmeriPride Servs., Inc.*, 2011 WL 2313604, *8 (S.D. Cal. 2011) (collecting cases and noting fee awards
18 may range between 30%-40% where the gross settlement amount is less than \$10 million); *Singer v.*
19 *Becton Dickinson & Co.*, 2010 WL 2196104, *8 (S.D. Cal. 2010) (collecting cases wherein the fee
20 awards ranged from 33.33% to 40% of the gross settlement amount, including *Ingalls v. Hallmark Mktg.*
21 *Corp.*, 08cv4342 VBF (Ex), Doc. No. 77, ¶ 6 (C.D. Cal. Oct. 16, 2009) [awarding 33.33% fee on a \$5.6
22 million wage and hour class action], *Birch v. Office Depot, Inc.*, Case No. 06cv1690 DMS (WMC), Doc.
23 No. 48, ¶ 13 (S.D. Cal. Sept. 28, 2007) [awarding a 40% fee on a \$16 million wage and hour class
24 action], and *Rippee v. Boston Mkt. Corp.*, Case No. 05cv1359 BTM (JMA), Doc. No. 70, at 7–8 (S.D.
25 Cal. Oct. 10, 2006) [awarding a 40% fee on a \$3.75 million wage and hour class action]]. Plaintiff’s
26 request of \$34,650 (35%) falls within these typical fee arrangements and should be awarded based on
27 the excellent results achieved on behalf of the Aggrieved Employees and the LWDA. *See Decl.*
28 *Rodriguez*, ¶ 22.

1
2 Plaintiff's Counsel seeks reimbursement of \$6,412.51 for the expenses they have and will
3 continue to incur while prosecuting this litigation through any compliance hearing(s). This is less than
4 the \$8,500 provided for in the Agreement. An itemization for these costs is being filed with this motion
5 as Exhibit G. All expenses were necessarily incurred to properly litigate this case. *See id.* The
6 appropriate analysis in determining whether particular costs are compensable is whether they are of the
7 type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16,
8 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of pocket
9 expenses that 'would normally be charged to a fee paying client.'"); *Abrams v. Lightolier, Inc.*, 50 F.3d
10 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v.*
11 *Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if
12 normally billed to client). The categories of expenses for which Plaintiff's counsel seek reimbursement
13 here are categories normally charged to hourly clients and, therefore, should be reimbursed out of the
14 common fund. *See Decl. Rodriguez*, ¶ 22.

15 With respect to the requested Enhancement Payment, the amount sought is also within ranges
16 that have been approved in similar cases. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th at
17 1393 (approving \$10,000 awards to each of the four (4) named plaintiffs); *West v. Circle K Stores, Inc.*,
18 2006 WL 8458679, *2-3, *7-*8 (E.D. Cal. 2006) (awarding \$15,000 to each of the named
19 representatives who spent 100 hours and 80 hours, respectively, prosecuting the case on behalf of class
20 members); *Dent v. ITC Serv. Grp., Inc.*, 2013 WL 5437331, *4, *7, *9 (D. Nev. 2013) (awarding a
21 \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class
22 members). Plaintiff has spent a substantial amount of time prosecuting the case for the benefit of
23 Aggrieved Employees and the LWDA. *See Decl. Appel*, ¶ 8. Plaintiff has been subjected to burdens
24 no other Aggrieved Employee has had to endure as part of this litigation, including waiving all his
25 individual claims beyond the PAGA claims. *See Exhibit A*, ¶¶ 1.26, 6.2; *Decl. Appel*, ¶ 10. An
26 Enhancement Payment of Ten Thousand Dollars is appropriate compensation for Plaintiff's efforts on
27 behalf of Aggrieved Employees and the LWDA in this case.
28

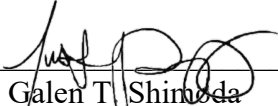
1 The \$3,950 in Settlement Administrator Costs is also within ranges approved by Courts and
2 should be approved in this case. *See Patel*, 2019 WL 2029061, *2 (\$5,261 for settlement administrator's
3 fees was not excessive where PAGA group consisted of 40 employees); Exhibit D; Decl. Rodriguez, ¶
4 23.

5 **VII. CONCLUSION**

6 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
7 has met all statutory requirements to commence a PAGA civil action; approve the Agreement, including
8 Plaintiff's Counsel's application for reasonable attorneys' fees and costs, an Enhancement Payment, and
9 Settlement Administrator Costs; approve the Notice of Settlement and payment distribution procedures;
10 and adopt the implementation schedule identified in the proposed order, which is being filed
11 concurrently herewith.

12
13
14 Dated: December 17, 2024

Shimoda & Rodriguez Law, PC

15
16 By: 
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18 Justin P. Rodriguez
19 Renald Konini
20 Attorneys for Plaintiff
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individually and on behalf of similarly situated employees
8

9 **SUPERIOR COURT OF CALIFORNIA**

10 **FOR THE COUNTY OF YOLO**

11 WILLIAM APPEL, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 SUNFOODS, LLC, a California Corporation;
16 MATT ALONSO, an individual; and DOES 1
to 100, inclusive,

17 Defendants.
18
19
20
21
22

Case No. CV2023-2012

*Assigned for All Purposes to Hon. Samuel T.
McAdam
Department 14*

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Date: January 22, 2025

Time: 9:00 a.m.

Dept.: 14

Judge: Hon. Samuel T. McAdam

Filed: September 25, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff William Appel (“Plaintiff”) herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private Attorneys
5 General Act Settlement. A true and correct copy of the Private Attorneys General Act Settlement is
6 being filed with this Motion as Exhibit A.

7 2. This case was brought as a Private Attorneys General Act (“PAGA”) lawsuit based on
8 Plaintiff’s contention that Defendants SunFoods, LLC, Matt Alonso (“Defendants”), violated California
9 law by failing to pay overtime wages, failing to provide meal periods or pay premiums in lieu thereof,
10 failing to provide rest periods or pay premiums in lieu thereof, failing to provide accurate wage
11 statements, failing to pay final wages, failing to pay reimbursements for expenses, violating Labor
12 Code sections 558, 558.1 regarding provisions regulating hours and days of work in any Industrial
13 Welfare Commission Order, and failing to provide sick leave. These claims primarily stemmed from
14 Plaintiff’s allegations that Defendants violated California law by 1) failing to incorporate the value of
15 non-discretionary safety bonuses into Aggrieved Employees’ regular rates of pay for the purpose of
16 calculating overtime premiums and paid sick time; 2) paying Aggrieved Employees two different rates
17 of pay in the same workweek and failing to use the weighted average method to calculate Aggrieved
18 Employees’ regular rates of pay; 3) failing to provide all meal periods, including second meal periods;
19 4) failing to provide all rest periods, including third rest periods; 5) failing to pay meal premiums and
20 paid sick time at the correct regular rate of pay; 6) failing to reimburse Aggrieved Employees for the
21 use of their personal tools for work, 7) failing to provide meal period and rest period premium pay for
22 missed meal and rest breaks to Aggrieved Employees, 8) failing to provide Aggrieved Employees with
23 accurate wage statements, and 9) failing to pay Aggrieved Employees at termination or separation all
24 wages owed.

25 3. Plaintiff is the only named Plaintiff in this matter. From our initial investigations of
26 Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
27 PAGA action. Plaintiff filed the original complaint on September 25, 2023. Plaintiff exhausted
28 administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to

1 filing the Complaint in order to pursue penalties under the PAGA. Plaintiff filed a notice with the
2 LWDA on July 18, 2023, setting forth the facts and theories of liability. A true and correct copy of the
3 notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also
4 sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time.
5 There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's
6 notice for more than 65 days and Defendants did not utilize the cure procedures under the statute. As
7 such, Plaintiff became authorized to commence a civil action under the PAGA. A copy of the
8 Complaint was uploaded to the LWDA on October 4, 2023, after we received a file stamped copy back
9 from Court. A true and correct copy of Plaintiff's operative Complaint is being filed with this Motion
10 as Exhibit B. Currently, there is no trial date set in this matter.

11 4. Because the settlement is a PAGA only settlement, no certification procedures need to
12 occur in the context of approving the Agreement pursuant to *Arias v. Superior Court*, 46 Cal.4th 969,
13 975 (2009) and California Labor Code section 2699(l)(2). The settlement notice being provided to
14 employees within the PAGA settlement identifies the scope of the settlement and that no other claims
15 of the Aggrieved Employees, class or otherwise, are being compromised as part of the settlement.

16 5. Defendants are represented in this matter by Downey Brand LLP. From the beginning,
17 Defendants have contested the merits of this case, the manageability of the case at trial, and Plaintiff's
18 ability to prove a violation in each pay period for each employee among other defenses and contentions
19 they made challenging the propriety of this action. Defendants further contended that, even assuming
20 there was a finding supporting the imposition of PAGA penalties, the Court would likely exercise its
21 discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to
22 comply with Labor Code obligations by Defendants. Notwithstanding the agreement to settle this
23 matter, Defendants believe the practices Plaintiff is contending are unlawful either do not exist or, to
24 the extent they do exist, fully comply with all state and federal employment laws with respect to
25 Plaintiff and Aggrieved Employees.

26 6. We have reviewed a substantial number of documents and informal discovery during our
27 investigation of the claims. Based on the expected testimony from Plaintiff and Aggrieved Employees,
28 a review of Defendants' policies and procedures and other documents relating to the alleged claims,

1 information on the number of Aggrieved Employees, Aggrieved Employees' total pay periods within the
2 PAGA Claim Period, the number of Aggrieved Employees who separated employment within one (1)
3 year of this case being filed, and a representative sample of Aggrieved Employees' payroll data, the
4 scope of the potential penalties at issue in light of the claims alleged, the Court's statutorily authorized
5 discretion to reduce any penalties assessed, and the negotiations that have taken place, I am convinced
6 that the proposed settlement is in the best interest of Aggrieved Employees and the LWDA. The length
7 and risk of continued litigation and trial, as well as other normal perils of complex litigation that impact
8 the value of the claims, were also considered and weighed in reaching the Agreement. These risks were
9 also exacerbated in this case in that it would have been necessary for Plaintiff to litigate the existence of
10 violations for numerous individual Aggrieved Employees in each pay period that they worked. In
11 addition, I carefully considered the difficulties of complex litigation, and the lengthy process of
12 establishing specific damages and various possible delays and appeals in agreeing to the proposed
13 settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the
14 discretion of the Court even if Plaintiff was successful on proving those claims and there was risk that a
15 Court could find no willfulness in the failure to pay wages at separation or the existence of a good faith
16 dispute, which would eliminate the value of several claims entirely. Overall, I believe it is more
17 beneficial to secure a guaranteed benefit to Aggrieved Employees and the LWDA now rather than to
18 proceed with litigation and potentially obtain zero funds due to legal or factual issues.

19 7. My office, including my partner, Galen T. Shimoda, our associates, our paralegals, and
20 myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential
21 damages for such claims. The parties engaged in informal discovery and exchange of documents,
22 including a representative sampling of employee data, such as timecards, paystubs, payroll data and
23 relevant policies for the entirety of the statute of limitations applicable to the PAGA claims. The
24 discovery covered all aspects of the asserted claims, including merits issues, damages, the scope and
25 configuration of Aggrieved Employees, the content and implementation of the wage and hour policies at
26 issue, issues relating to manageability concerns at trial, among other relevant areas. From this
27 production we were able to determine information critical to a reliable damages analysis such as the
28 average hourly rate, average daily hours worked, shifts eligible for meal and rest periods and the number

of potential shifts that may correspond to liability under our theories of liability, average number of pay periods that had potential violations based on the asserted claims, and the number of former employees. This information allowed my office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this litigation including providing factual information relating to Defendants' employment conditions, potential witness information, and answered questions regarding Defendants' factual contentions in this matter. This was important because it directly related to our ability to maintain this case as a PAGA action under manageability concerns and our ability to obtain a favorable settlement for Aggrieved Employees and the LWDA.

8. Throughout this litigation, our office had numerous communications with Defendants' Counsel discussing our respective positions. The parties engaged in mediation on February 22, 2024, using an experienced mediator, Russ J. Wunderli, Esq. It was only after two (2) years of extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred after a full-day mediation. The negotiations were, at all times, contentious, adversarial, and at arms-length, though still professional in nature.

9. There were approximately 1,827 pay periods during the PAGA Claim Period, 81 Aggrieved Employees, and 51 formerly employed Aggrieved Employees. We did not find any prior Labor Commissioner or Court decisions stating Defendants' practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes, and the penalty exposure analysis herein is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). The following represents the maximum recovery as well as the more realistic range of recovery for each of the PAGA violations alleged by Plaintiff:

- a) Failure to Pay Overtime: The maximum damages for this claim are \$20,200. Of the total 1,827 pay periods, only 404 (approximately 22.1%) were affected by the regular rate of pay issue wherein a bonus that Plaintiff contended should have been included in the regular rate of pay was paid in the same pay period that overtime was worked. Pursuant to Labor Code section 558, each violation for each employee has a maximum civil penalty of \$50 per pay period (404 x \$50 = \$20,200). The maximum damages

1 calculation does not account for the risks associated with this claim. Defendants
2 contended that any such bonuses were discretionary and, therefore, was not subject to
3 being included in the regular rate of pay. Defendants contended that the bonus was a
4 Safety Bingo raffle, akin to a lottery ticket, which is not a bonus for purposes of
5 calculating the regular rate of pay for overtime and other pay premiums. Also,
6 Defendants contended that Aggrieved Employees were not required to play the Safety
7 Bingo game, which they contended is a game of chance and where the timing and
8 amount of prize is unknown in advance. Also, participation was suspended if employees
9 committed a safety violation. Defendants also argued that even if the Safety Bingo game
10 bonus was found to be a non-discretionary bonus, there were very few Aggrieved
11 Employees who won and also who worked overtime, took paid sick leave, and were
12 given meal and rest period premiums. Defendants asserted there were no written
13 guidelines setting forth what or how a bonus could be earned and, therefore, the fact of
14 payment and the amounts to be paid were left entirely to the discretion of various
15 supervisors and managers at the locations where Aggrieved Employees worked. A
16 central dispute was whether the amount of the bonus to be paid could be considered set
17 in advance and, therefore, satisfy the requirements for a payment being non-
18 discretionary. A specific dollar figure for several types of bonuses was not stated, but
19 Plaintiff contended that a method setting forth the range of potential bonus payouts and
20 how any particular bonus would be calculated within that range was set in advance. To
21 the extent that the Court found that the payments were were merely a discretionary
22 payment, this would entirely eliminate the value of the claim. Taking these risk factors
23 into account, I believe a more realistic range of recovery for this theory of liability is
24 between \$10,100 and \$14,140 (30% to 50% reduction based on risk);

- 25 b) Failure to Provide Meal Periods: The maximum damages for this claim are \$91,350.
26 Based on the time records, approximately 11.07% of all shifts had a unique meal period
27 violation, *i.e.* 11.07% of shifts had either no meal period punch, a late meal period
28 punch, a meal period lasting less than thirty (30) minutes, and/or a shift of more than ten

(10) hours without a second meal period. Thus, on average, there was at least one (1) meal period violation in each of the of the total 1,827 pay periods. The meal period violations were based on allegations that Defendants interrupted and/or required Aggrieved Employees to during meal periods. Pursuant to Labor Code section 558, each violation for each employee has a maximum civil penalty of \$50 per pay period ($1,827 \times \$50 = \$91,350$). This does not take into account the risks associated with this claim. Defendants had a written policy that employees were entitled to meal periods and Defendants contend they communicated this policy to Aggrieved Employees and informed them that they should take legally compliant meal periods. In fact, Defendants produced a meal period policy where it stated that Aggrieved Employees are relieved of all duty during meal periods and are free to leave the premises. The policy advised Aggrieved Employees that if managers or supervisors impeded, discouraged, or prevented them from taking their meal periods, they must report them to the Human Resources Department. As a result, Defendants contend that they provided Aggrieved Employees with an opportunity to take meal periods and that to the extent they were not taken or were taken late it was due to employee choice. Taking these risk factors into account, I believe a more realistic range of recovery for this theory of liability is between \$36,540 and \$54,810 (40% to 60% reduction based on risk);

- c) Failure to Provide Rest Periods: The maximum damages for this claim are \$182,700. It can reasonably be assumed that the circumstances that created an employee's inability to take a meal period on a particular day also would have interfered with their ability to take a rest period. Thus, the basis for the rest period claim, and the estimated violation rate, is the same for rest periods as it was for meal period. Pursuant to Labor Code section 2699's default civil penalty, each violation for each employee has a maximum civil penalty of \$100 per pay period ($1,827 \times \$100 = \$182,700$). This does not take into account the risks associated with this claim. Defendants had a written policy that employees were entitled to rest periods and Defendants contend they communicated this policy to Aggrieved Employees and informed them that they should take legally

compliant rest periods. In fact, Defendants produced a rest period policy where it stated that Aggrieved Employees are relieved of all duty during rest periods and are free to leave the premises. The policy advised Aggrieved Employees that if managers or supervisors impeded, discouraged, or prevented them from taking their rest periods, they must report them to the Human Resources Department. As a result, Defendants contend that they provided Aggrieved Employees with an opportunity to take rest periods and that to the extent they were not taken or were taken late it was due to employee choice. Additionally, this claim does not benefit from any presumptive violation based on time records under the law like meal period claims do. Taking these risk factors into account, I believe a more realistic range of recovery for this theory of liability is between \$36,540 and \$91,350 (50% to 80% reduction based on risk);

d) Failure to Provide Paid Sick Leave: The maximum damages for this claim are \$20,700. Of the total 1827 pay periods, approximately only 11.35% of them (*i.e.* 207 pay periods) were affected by the regular rate of pay issue wherein a bonus that Plaintiff alleged should have been included in the regular rate of pay was paid in the same pay period that sick leave wages were paid. Pursuant to Labor Code section 2699, each violation for each employee has a maximum civil penalty of \$100, the default penalty, per pay period ($207 \times \$100 = \$20,700$). This does not take into account the risks associated with this claim. This claim is based on the same types of payments that form the basis of Plaintiff's overtime claims and, therefore, are subject to the same risk of being found to be discretionary. Taking these risk factors into account, I believe a more realistic range of recovery for this theory of liability is between \$10,350 and \$14,490 (30% to 50% reduction based on risk);

e) Failure to Pay Reimbursement: This claim was based on Plaintiff's contentions that he and other Aggrieved Employees were required to use their own personal tools because Defendants required Plaintiff and Aggrieved Employees to use their own tools for work such as impact drivers, grinders, power tools and hand tools without paying them twice the minimum wage or reimbursing them for the use of their tools. The maximum

1 damages for this claim are \$182,700. Pursuant to Labor Code section 2699, each
2 violation for each employee has a maximum civil penalty of \$100 per pay period, the
3 default penalty ($1,827 \times \$100 = \$182,700$). This does not take into account the risks
4 associated with this claim. Defendants contended that most employees do not need tools
5 to perform their jobs and that Defendants provided Plaintiff and employees with all the
6 tools to perform their job to the extent they were needed. Defendants also contended
7 that if Plaintiff or any other Aggrieved Employee used their own tools, that was because
8 of their own preference rather than any necessity. Furthermore, Defendants contended
9 they maintained a valid reimbursement policy that required employees to submit
10 reimbursement requests for work expenses. Given the risks associated with the claim, I
11 believe a more realistic range of recovery would be between \$54,810 to \$91,350 (50% to
12 70% reduction based on risk);

13 f) Failure to Provide Accurate Wage Statements: The maximum damages for this claim
14 are \$182,700. This claim was derivative of Plaintiff's claims for unpaid overtime, meal
15 period premiums, rest period premiums, and sick leave and, therefore, subject to the
16 same risks. Because this is a derivative claim and to avoid any potential undercounting
17 of pay periods at issue, Plaintiff assumed that each of the violations occurred in separate
18 pay periods rather than multiple violations occurring in a single pay period, which would
19 then result in only one (1) wage statement violation. Thus, Plaintiff assumed all of the
20 total 1,827 pay periods, were affected by the non-regular rate of pay issues as well as the
21 regular rate of pay issue wherein a bonus that Plaintiff alleged should have been
22 included in the regular rate of pay was paid in the same pay period that either overtime,
23 sick leave, or meal period premiums were earned. Pursuant to Labor Code section 2699,
24 each violation for each employee has a maximum civil penalty of \$100, the default
25 penalty, per pay period per employee ($1,827 \times \$100 = \$182,700$). This amount does not
26 take into account the potential risks associated with this claim. Because this claim is
27 derivative of Plaintiff's other claims, the same risks identified above for Plaintiff's
28 overtime, meal period, and rest period, sick leave, claims apply here as well,

1 substantially affecting the potential value of this claim. Given the risks to the claims as
2 described above, I believe a more realistic range of recovery for this theory of liability is
3 between \$27,405 and \$91,350 (50% to 85% reduction based on risk);

4 g) Failure to Pay Final Wages: The maximum damages for this claim are \$332,237.59.
5 This claim was derivative of Plaintiff's claims for unpaid overtime, meal period
6 premiums, rest period premiums, and sick leave. Based on the time and payroll records,
7 there were 51 formerly employed Aggrieved Employees who worked an average of 9.03
8 hours per day and were paid an average of \$22.75 per hour. This equates to a \$217.15
9 average daily rate $([8 \times 22.75] + [34.13 \times 1.03])$ and a total of \$6,514.46 per Aggrieved
10 Employee for the 30-day period. We based our calculations on Labor Code section 256,
11 stating civil penalties for this claim should be calculated in the same manner as under
12 Labor Code section 203. This does not take into account the risks associated with this
13 claim. This claim is derivative of Plaintiff's overtime, meal and rest period, and sick
14 leave claims and, therefore, is subject to the same risks regarding proving the merits of
15 the claims. Beyond the merits, the correct valuation for waiting time penalties under the
16 PAGA was heavily disputed as Defendants contended the default civil penalty \$100 per
17 violation would apply, not the calculation identified in Labor Code section 256, which
18 could reduce the applicable civil penalties from \$332,237.59 to \$5,100. Taking these
19 risk factors into account, I believe a more realistic range of recovery for this theory of
20 liability is between \$5,100 (based on the default PAGA penalty calculation) and
21 \$215,954.43 (35% reduction based on risk).

22 10. In total, the maximum exposure for PAGA penalties in this case is \$1,012,587.59.
23 However, in addition to the risks on the merits and disputes regarding the proper valuation of the
24 penalty amounts, I believe the Court may exercise its discretion to reduce PAGA penalties in this case
25 because some of the asserted violations are due to technical non-compliance with the Labor Code rather
26 than substantive wage loss, *e.g.* wage statement violations, several of the violations under different
27 statutes arise from the same, singular conduct (*e.g.* derivative claims), Defendants produced wage and
28 hour policies and other documents related to attempts at complying with the California Labor Code that

1 a Court may find demonstrates a good faith attempt at compliance, and there were several instances
2 where the actual substantive loss experienced by Aggrieved Employees was substantially less per pay
3 period than the potential maximum penalty that could be imposed. Courts are statutorily authorized to
4 use discretion to reduce penalties and the range of discretion used varies substantially and I believe the
5 Court is likely to exercise this discretion to reduce civil penalties in this case if it were to go to trial.

6 11. The range of civil penalty reductions applied by Courts varies substantially. *See*
7 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
8 *Fleming v. Covidien Inc.*, 2011 WL 7563047, *3–4 (C.D. Cal. 2011) (82% reduction); *Magadia v. Wal-*
9 *Mart Associates, Inc.*, 384 F.Supp.3d 1058, 1104 (N.D. Cal. 2019) (80% reduction); *Hamilton v. Juul*
10 *Labs, Inc.*, 2021 WL 5331451, *9-*10 (N.D. Cal. 2021). The 82% reduction equates to roughly \$9-\$18
11 worth of civil penalties per pay period per employee depending on the total potential value of the civil
12 penalty (*i.e.* \$50-\$100), which is more in line with actual awards based on my experience and review of
13 awards in other cases. Thus, even if using the maximum values and setting aside risks of proving the
14 claims on the merits, the total exposure may be cut to approximately \$182,265,377 (82% reduction) to
15 \$708,811.31 (30% reduction) or lower. Using the more realistic range of recovery (\$180,845 to
16 \$573,444.43), a discretionary reduction of penalties could lower the potential exposure even further to
17 \$32,552.10 (82% reduction from \$180,845) to \$401,411.10 (30% reduction from \$573,444.43). The
18 Gross Settlement Amount represents approximately 9.8% of the maximum value of the claims in this
19 matter, which equates to \$54.19 per pay period, and between 24.7% (\$99,000/\$401,411.10) and
20 304.1% (\$99,000/\$32,552.10) of the more realistic range of recovery.

21 12. I believe the Settlement is fair, reasonable, and adequate based on the legal and factual
22 disputes, and potential damages, at issue in this case. The Settlement is a reasonable compromise that I
23 believe will also further the purpose of the Labor Code and LWDA, creating an effective, substantial
24 deterrent to any potential future non-compliance. The reasonableness of the Settlement is also
25 supported when considering amounts that Courts have approved as reasonable PAGA valuations in
26 other cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
27 the resolution of PAGA claims based on their being disputed and being part of a class settlement which
28 was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*,

2022 WL 2318173, *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 WL 1496407, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 WL 12571448, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 WL 4899942, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, *2 (S.D. Cal. 2010); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *1, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 WL 714367, *13 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in \$3,950,000 gross settlement amount allocated to California class even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated potential value); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, *6-*7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 PAGA allocation from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (\$10,000 PAGA allocation from \$6,900,000 settlement fund).

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

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

15 15. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
16 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
17 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
18 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
19 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
20 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
21 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
22 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
23 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
24 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
25 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County
26 Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a
27 Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the
28 Sacramento County Bar Association Labor and Employment Law Section's executive committee in

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

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);

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

- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

1 17. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in
2 assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of
3 plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda
4 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a
5 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the
6 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He
7 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and
8 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of
9 employment law articles for journals and our firm regularly publishes articles on our firm's website.
10 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
11 Employment Review seminars from 2014 to the present. His speaking engagements include the
12 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
13 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
14 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
15 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
16 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
17 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
18 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
19 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
20 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
21 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
22 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
23 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
24 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
25 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
26 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
27 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
28 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a

Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

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

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.

- Sup. Ct.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
 - *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
 - *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
 - *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
 - *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
 - *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
 - *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
 - *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);

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

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

20. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he

practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021. He rejoined my firm in September 2022. Mr. Konini has experience drafting written discovery, taking and defending depositions, calculating class-wide damages, interviewing putative class members, drafting motions and briefs on complex class action procedures, negotiating class and individual damages claims, and communicating with opposing counsel regarding these items in navigating the litigation. Mr. Konini has also worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely revolves around wage and hour matters, including class and PAGA claims.

21. My former associate, Brittany V. Berzin, worked with me on this case as well. She attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. Ms. Berzin received her J.D. from the University of the Pacific McGeorge School of Law. Ms. Berzin joined Shimoda & Rodriguez Law, PC as a law clerk in February 2015 where she gained civil litigation

1 experience working on individual, class action and PAGA employment cases throughout law school.
2 Ms. Berzin also participated in an employment law clinic in 2015 and 2016 that helps low-income
3 workers by providing free legal consultations, advising employees of their legal remedies on a variety
4 of matters (*e.g.*, wage and hour, discrimination, harassment, California leave laws, unemployment,
5 workers' compensation, retaliation, and wrongful termination, etc.) under the supervision of an
6 attorney, preparing wage claims, and providing representation in wage claims before the California
7 Labor Commissioner. From 2016-2017, Ms. Berzin completed an externship at the Federal Public
8 Defenders Office as a Certified Law Student where Ms. Berzin obtained discovery, completed legal
9 research, drafted motions, negotiated plea deals, represented clients in a variety of hearings (*e.g.*,
10 arraignments, motion hearings, sentencing hearings, etc.), and defended a client against five
11 misdemeanor charges in a jury trial in the United States District Court for The Eastern District of
12 California. Ms. Berzin was also a member of the nationally recognized McGeorge Mock Trial Team
13 and went on to coach a high school Mock Trial team in 2018 after graduating from law school. In May
14 2017, Ms. Berzin graduated from the University of the Pacific, McGeorge School of Law with Great
15 Distinction and was inducted into the Order of the Coif, graduating in the top 10% of her class. Ms.
16 Berzin received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil
17 Procedure, Bankruptcy, and Criminal Procedure. Ms. Berzin has been recognized as a Super Lawyer
18 (Rising Star). Ms. Berzin had over seven years of experience working on civil litigation and
19 employment law matters. Most of that experience had been specific to analyzing and litigating wage
20 and hour claims. As an associate, Ms. Berzin worked on a variety of individual, class action, and
21 PAGA cases involving wage and hour claims, such as failure to pay overtime, failure to pay minimum
22 wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful
23 deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all
24 wages upon separation, unfair competition, breach of contract, independent contractor
25 misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases that Ms.
26 Berzin litigated as lead or co-counsel include the following:

- 27 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
28 Sup. Ct.);

- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhausen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);

- 1 • *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup.
2 Ct.);
- 3 • *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac.
4 Sup. Ct.);
- 5 • *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- 6 • *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- 7 • *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 8 • *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup.
9 Ct.);
- 10 • *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- 11 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 12 • *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- 13 • *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- 14 • *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup.
15 Ct.);
- 16 • *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac.
17 Sup. Ct.);
- 18 • *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- 19 • *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

20 22. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
21 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
22 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
23 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
24 identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost
25 of the representation should be born equally amongst all who are receiving these benefits. The
26 settlement recovery provides an excellent result and is the product of substantial time and effort in
27 analyzing the facts and law applicable to this case. Our firm agreed to take this case on a contingency
28 basis and as a representative action with the possibility that we would not receive any compensation for

our time and efforts due to issues regarding the merits and have carried that risk over the course of this case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that the Thirty-Five (35%) fee request is within the accepted ranges. In my experience with contingency cases in employment law cases, the typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action and PAGA litigation, my experience in our firm and working with several other firms has been that the typical percentage negotiated between parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same factors. Awards ranging between 30% and 40% of the fund are generally approved as reasonable in representative litigation settlements below \$10 million. *See, e.g., Martin v. AmeriPride Servs., Inc.*, 2011 WL 2313604, *8 (S.D. Cal. 2011) (collecting cases and noting fee awards may range between 30%-40% where the gross settlement amount is less than \$10 million); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, *8 (S.D. Cal. 2010) (collecting cases wherein the fee awards ranged from 33.33% to 40% of the gross settlement amount, including *Ingalls v. Hallmark Mktg. Corp.*, 08cv4342 VBF (Ex), Doc. No. 77, ¶ 6 (C.D. Cal. Oct. 16, 2009) [awarding 33.33% fee on a \$5.6 million wage and hour class action], *Birch v. Office Depot, Inc.*, Case No. 06cv1690 DMS (WMC), Doc. No. 48, ¶ 13 (S.D. Cal. Sept. 28, 2007) [awarding a 40% fee on a \$16 million wage and hour class action], and *Rippee v. Boston Mkt. Corp.*, Case No. 05cv1359 BTM (JMA), Doc. No. 70, at 7–8 (S.D. Cal. Oct. 10, 2006) [awarding a 40% fee on a \$3.75 million wage and hour class action]). I believe our request of \$34,650 (approximately 35%) for attorneys’ fees is justified given the results obtained on behalf of Aggrieved Employees and the LWDA. Moreover, at this time, my firm has advanced all costs for and has not received any compensation whatsoever for our time expended in this case. The incurred costs to date and the expected costs through overseeing the complete distribution of all settlement proceeds are \$6,412.51. Attached as Exhibit G is a true and correct copy of an itemization of our firm’s incurred costs and expected costs through the complete distribution of all settlement proceeds.

23. I have used several settlement administrator companies in the wage and hour class actions and PAGA actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to administer the proposed class settlement. A true and correct copy of a cost estimate

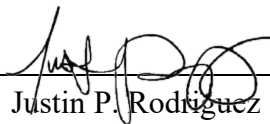
provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. Any difference in the actual costs and the allocated amounts to cover costs will be redistributed to Aggrieved Employees pro rata per the terms of the Agreement.

24. A copy of the proposed Agreement and the entire Motion to Approve the PAGA Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit F.

25. A true and correct copy of the proposed Notice of Settlement to be distributed to Aggrieved Employees informing them of the settlement and all material terms is being filed with this Motion as Exhibit E.

26. Any portion of the Net Settlement Amount allocated to Aggrieved Employees that has not been claimed by Aggrieved Employees by cashing their respective settlement checks before the deadline, it will be forwarded to the California State Controller's Unclaimed Property Fund in the name of the employee who did not cash their individual PAGA payment, pursuant to section 5.5 of the Agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 17, 2024 in Sacramento, California.


Justin P. Rodriguez

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Justin P. Rodriguez (Cal. State Bar No. 278275)
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7 Attorneys for Plaintiff WILLIAM APPEL
individually and on behalf of similarly situated employees
8

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF YOLO**

12 WILLIAM APPEL, individually and on behalf
13 of all other similarly situated employees,

14 Plaintiff,

15 vs.

16 SUNFOODS, LLC, a California Corporation;
17 MATT ALONSO, an individual; and DOES 1
18 to 100, inclusive,

19 Defendants.
20
21
22
23

Case No. CV2023-2012

*Assigned for All Purposes to Hon. Samuel T.
McAdam
Department 14*

**DECLARATION OF WILLIAM APPEL IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Date: January 22, 2025

Time: 9:00 a.m.

Dept.: 14

Judge: Hon. Samuel T. McAdam

Filed: September 25, 2023

Trial Date: None Set

1 I, William Appel, declare:

2 1. I am a competent adult and I have personal knowledge of the facts set forth in this
3 declaration. I am making this declaration on behalf of myself, as a named plaintiff, and in support of
4 Plaintiff's Motion To Approve Private Attorneys General Act Settlement.

5 2. I worked for Defendants Sunfoods, LLC, and Matt Alonso ("Defendants") from
6 approximately November 2016 to March 14, 2023, as a non-exempt employee. I was subject to all of
7 Defendant's policies and practices that have been alleged as unlawful in the complaint and the notice
8 sent to the Labor and Workforce Development Agency ("LWDA"), including the following: the failure
9 to pay overtime, the failure to provide meal and rest periods or pay premiums in lieu thereof, the failure
10 to provide accurate wage statements, the failure to pay final wages, the failure to reimburse expenses,
11 and the failure to provide paid sick leave.

12 3. I have actively participated in the litigation of this case for the benefit of Aggrieved
13 Employees and the LWDA. Prior to obtaining an attorney, I contacted several law offices and
14 researched potential attorneys to bring the claims. I wanted to make sure the law firm chosen to bring
15 the claims had attorneys with experience and skill in bringing those types of claims. I also researched
16 the typical issues raised when litigating the potential claims. I wanted to make sure I could have an
17 informed discussion with an attorney about the claims and have a better idea of what to expect moving
18 forward in litigation and how to help the case proceed. After securing Shimoda & Rodriguez Law, PC,
19 I continued to be actively involved in the case to help ensure a positive outcome.

20 4. My attorneys explained to me the risks and benefits of bringing a claim under the
21 Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a PAGA action meant
22 that it would take substantially longer than pursuing individual claims and that the claims being
23 pursued were for civil penalties, not for individual claims. I understood that I risked getting nothing in
24 the end, but I believed it was important to make sure that Defendants followed the law for everyone. I
25 undertook a professional and financial risk in pursuing the case as a PAGA action because my name
26 would be on a publicly available document showing that I had sued a former employer at a time when I
27 was unemployed and searching for a new job and, if unsuccessful in bringing the claims, I would be
28 obligated to pay Defendants costs incurred over the course of this complex litigation. My

1 understanding is that this is a substantial risk because the costs associated with litigation, in general, are
2 very high and this cost is multiplied many times over in complex litigation like PAGA actions.

3 5. During the course of this litigation, I have given detailed accounts of all the facts related
4 to my employment. I provided my attorneys with extensive documentation that I believe supported the
5 claims brought against Defendants. I met with and assisted my attorneys in understanding these
6 documents and providing context for Defendant's payroll process as it applied to me and how I believed
7 it applied to Defendant's other employees within the scope of the PAGA claim, *i.e.* Aggrieved
8 Employees. I worked there for a long period of time, so I was able to discuss the similarities of the
9 wage and hour policies and practices among all Aggrieved Employees.

10 6. The work I performed for this case included an extensive review of documents and
11 payroll practices to show and explain to my attorneys what was happening and why I thought it was
12 unlawful. For example, I explained to my attorneys my job duties and responsibilities, the type of tasks
13 and work performed in a typical day and any circumstances that would cause relevant differences to my
14 daily work that affected the PAGA claims. We reviewed payroll and personnel file documents to see
15 whether and how any of the documents corroborated the validity of the claims and listed potential
16 witnesses related to any issues raised by the documents. This addressed all the claims alleged and we
17 continued to discuss and review these items throughout the case as more information was provided by
18 Defendants. The review became even more detailed when reviewing and discussing the payroll data
19 sample that was produced as part of informal discovery for mediation.

20 7. I participated in the negotiations and settlement discussions in this case, including
21 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
22 additional information needed to assist the negotiations, and discussing the potential terms of the
23 Agreement to evaluate its adequacy. Throughout the course of this litigation I have asked questions
24 when I needed clarification about various aspects of this case to make sure steps were continually taken
25 to advance the interests of Aggrieved Employees and the LWDA. I have reviewed the final Private
26 Attorneys General Act Settlement, discussed the terms with my attorneys, and asked my attorneys any
27 questions I had. I believe the terms of the Settlement and allocations are fair and reasonable given the
28 facts of the case.

1 8. To date, I estimate that I have spent approximately 65 hours assisting my attorneys in
2 litigating this case. I expect that the amount of time I spend on this case will increase if the Settlement
3 is approved because Aggrieved Employees will likely reach out to me about the Settlement and the
4 nature of the claims that were asserted.

5 9. I have not received any benefits as a result of filing this lawsuit. However, I believe I
6 have experienced several substantial burdens as a result of filing this lawsuit that other Aggrieved
7 Employees were not subject to. As noted above, I took on the professional risk of lengthening my
8 unemployment after working for Defendants because future employers were able to see, from publicly
9 available documents, that I sued my former employer. Additionally, I undertook the risk of having to
10 pay Defendant's litigation costs if the Court or jury ruled against us on the claims. I have spent a
11 substantial amount of time in this case, securing a monetary benefit for Aggrieved Employees and the
12 LWDA. Finally, as part of the Settlement, I am the only individual providing a general release of all
13 my individual claims and waiving the protections of California Civil Code section 1542 for unknown
14 claims. No other Aggrieved Employee is subject to such a broad release and neither is the LWDA. I
15 believe awarding the full Enhancement Payment is warranted given the time I have spent on the case,
16 the benefit secured for Aggrieved Employees and the LWDA, my general waiver of all my individual
17 claims beyond the release for the PAGA claims, and the risks and burdens I have experienced as a
18 result of this litigation.

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

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on 12/17/2024 in Sacramento, California.

23
24 

William Appel (Dec 17, 2024 13:02 PST)

William Appel

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7 Attorneys for Plaintiff WILLIAM APPEL
individually and on behalf of similarly situated employees

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF YOLO**

11 WILLIAM APPEL, individually and on behalf)
12 of all other similarly situated employees,)

13 Plaintiff,

14 vs.

15 SUNFOODS, LLC, a California Corporation;)
16 MATT ALONSO, an individual; and DOES 1)
17 to 100, inclusive,)

18 Defendants.)

Case No. CV2023-2012

*Assigned for All Purposes to Hon. Samuel T. McAdam
Department 14*

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Date: January 22, 2025

Time: 9:00 a.m.

Dept.: 14

Judge: Hon. Samuel T. McAdam

Filed: September 25, 2023

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	ILYM Group, Inc., Quote
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiff's Itemized Costs

Dated: December 17, 2024

Shimoda & Rodriguez Law, PC

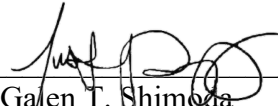
By: 
 Galen T. Shimoda
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EXHIBIT A

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF YOLO

29 WILLIAM APPEL, individually and on behalf
30 of all other similarly situated employees,

31 Plaintiff,

32 vs.

33 SUNFOODS, LLC, a California Corporation;
34 MATT ALONSO, an individual; and DOES 1
35 to 100, inclusive,

36 Defendants.

Case No.: CV2023-2012

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: September 25, 2023

Trial Date: None Set

This Private Attorneys General Act Settlement is made and entered into between the Plaintiff William Appel (“Plaintiff”), on behalf of himself, the Labor and Workforce Development Agency, and Aggrieved Employees, and Defendants Sunfoods, LLC, and Matt Alonso (“Defendants”). This Agreement is subject to the terms and conditions set forth below and approval of the Court.

1. DEFINITIONS

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

1.1 “Action” means the above stated lawsuit, *Appel v. SunFoods, LLC*, Yolo County Superior Court, Case No. CV2023-2012, filed September 25, 2023.

1.2 “Aggrieved Employee(s)” means all individuals who have, or continue to, work for Defendant in California as non-exempt employees from July 18, 2022, up to either (1) the End Date, or (2) sixty (60) days after this Agreement is fully executed, whichever is earlier.

1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Private Attorneys General Act Settlement.

1.4 “Complaint” means the operative Complaint on file in the Action with the Court.

1.5 “Court” means the Yolo County Superior Court.

1.6 “Defendants” means Sunfoods, LLC, and Matt Alonso.

1.7 “Defendants’ Counsel” means Downey Brand LLP.

1.8 “Enhancement Payment” means the amount approved by the Court to be paid to Plaintiff in recognition of the time and effort expended on behalf of Aggrieved Employees for the benefit of Aggrieved Employees, which is in addition to any Individual PAGA Amount paid to Plaintiff as an Aggrieved Employee. This payment shall also be in exchange for a waiver of individual claims by Plaintiff beyond the Private Attorneys General Act, including a waiver of California Civil Code section 1542.

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

1 1.10 "End Date" means the date the Court issues a signed order granting approval of the
2 Agreement.

3 1.11 "Final Approval Date" means the date the Court issues a signed order granting approval of
4 the Agreement.

5 1.12 "Gross Settlement Amount" is the sum of Ninety-Nine Thousand Dollars (\$99,000).

6 1.13 "Individual PAGA Amount" means an individual Aggrieved Employees' allocation of the
7 Net Settlement Amount, as defined in Section 1.15 and 5.8.

8 1.14 "LWDA" means the California Labor and Workforce Development Agency.

9 1.15 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
10 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
11 deduction of Plaintiff's attorneys' fees and litigation costs, Enhancement Payment, and Settlement
12 Administrator Costs.

13 1.16 "Notice of Settlement" means the document substantially in the form attached hereto as
14 Exhibit 1.

15 1.17 "PAGA" means Private Attorneys General Act.

16 1.18 "PAGA Claim Period" means July 18, 2022, up to either (1) the End Date, or (2) sixty (60)
17 days after this Agreement is fully executed, whichever is earlier.

18 1.19 "PAGA Payment" means the 75% share of the Net Settlement Amount paid to the LWDA
19 pursuant to Labor Code section 2699(i).

20 1.20 "Parties" mean Defendants and Plaintiff.

21 1.21 "Plaintiff" means William Appel.

22 1.22 "Plaintiff's Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
23 Shimoda & Rodriguez Law, PC.

24 1.23 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the
25 benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made.
26 Any amounts Defendants have agreed to pay under this Agreement shall remain the property of
27 Defendants until the payments required under the Agreement are made.

1 1.24 “Qualifying Pay Periods” are pay periods worked by Aggrieved Employees during the
2 PAGA Claim Period in California. Defendants shall provide a confidential list to the Settlement
3 Administrator which contains the names, addresses, telephone numbers, and dates of employment of the
4 Aggrieved Employees.

5 1.25 “Released PAGA Claims” means any and all claims for civil penalties that were brought
6 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, that were asserted in Plaintiff’s
7 notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have
8 been brought based on the facts alleged therein during the PAGA Claim Period. Aggrieved Employees
9 cannot opt out of this waiver of claims.

10 1.26 “Plaintiff’s Released Claims” means any and all individual claims, causes of action,
11 debts, liabilities, demands, penalties, obligations, guarantees or damages, in law or equity, tort, contract,
12 by statute, or otherwise which have been or could have reasonably been asserted in the Action, whether
13 known or unknown. These claims include, but are not limited to: individual wage and hour claims,
14 claims of failure to pay overtime compensation and minimum wages, claims of failure to pay overtime
15 compensation and minimum wages, claims of failure to provide meal periods, rest breaks, and recovery
16 periods, claims of failure to provide reimbursements or bonuses, claims of failure to pay all wages due
17 to discharged or quitting employees, claims of failure to maintain required records or furnish accurate
18 itemized statements, claims of failure to provide COVID-19 supplemental paid sick leave, and claims
19 that could have been brought in the Action, all under the Fair Labor Standards Act, the California Labor
20 Code, the Industrial Welfare Commission Wage Orders, or any other state or federal wage and hour
21 laws; individual claims and penalties under Labor Code section 2699 *et seq.* that were asserted in
22 Plaintiff’s notice letter to the LWDA and any additional individual claims for civil penalties under the
23 PAGA that could have been brought based on the facts alleged therein; any other violation of the Fair
24 Labor Standards Act, the California Labor Code, the Industrial Welfare Commission Wage Orders, or
25 any other state or federal wage and hour laws; violation of the California Business and Professions
26 Code, including, but not limited to section 17200, *et seq.*; breach of contract; fraud; discrimination;
27 harassment; retaliation; whistleblowing; violation of the California Fair Employment and Housing Act
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(Government Code section 12940. et seq.); wrongful termination and/or constructive discharge; intentional infliction of emotional distress; and/or any other claim or theories of recovery arising out of Plaintiff's employment relationship with SunFoods, or any termination of any such relationship. It is agreed that this is a general release and is to be broadly construed as a release of all of Plaintiff's current or potential individual claims against the Released Parties prior to the Effective Date. Plaintiff acknowledges and agrees that upon the Effective Date and receipt of funds due under this Agreement, he will have been paid all wages and other sums due to him as required by law and he will not be an "aggrieved employee" as defined in Labor Code section 2699. Plaintiff further acknowledges and agrees that he will not prosecute a lawsuit under PAGA as an "aggrieved employee" for any alleged violations or penalties under Labor Code sections 2699, *et seq.* that predate the PAGA Claim Period. This release includes a waiver of the protections found in California Civil Code section 1542, which states:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

1.27 "Released Parties" means SunFoods, its predecessors in interest, its present and former members, officers, directors, employees, agents, parents, subsidiaries, affiliates, joint employers, related entities, successors and assigns and Matt Alonso.

1.28 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity that will administer the Agreement as outlined in Section 7, or any other third-party administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator.

1.29 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees,

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

2. DESCRIPTION OF THE LITIGATION

2.1 On or about July 18, 2023, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (3) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof (4) Failure to Provide Accurate Wage statements, (5) Failure to Pay Final Wages, (6) Failure to Pay Reimbursement for Expenses, (7) Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), and (8) Failure to Provide Paid Sick Leave. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on September 25, 2023, in Yolo County Superior Court on behalf of himself and Aggrieved Employees for claims alleged in the July 18, 2023, notice to the LWDA.

2.3 Through informal discovery, Defendants and Defendants' Counsel provided Plaintiff's Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees' workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample of Aggrieved Employees.

1 2.4 After Plaintiff's Counsel received the data, the Parties engaged in informal settlement
2 negotiations, but were not able to come to a resolution. On February 22, 2024, the Parties participated in
3 a lengthy mediation with private mediator Russ. J. Wunderli. Although the parties did not achieve
4 resolution at mediation, they continued to rigorously negotiate in the months that followed and eventually
5 resolved the case. At all times, the Parties' settlement negotiations have been non-collusive, adversarial,
6 and at arm's length.

7 2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties, the
8 mediator, document productions, extensive legal analysis, the provision of information by Defendants to
9 Plaintiff and the detailed analysis of the sampled records have permitted each side to assess the relative
10 merits of the PAGA claims and the defenses to those claims.

11 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to
12 incorporate the value of non-discretionary safety bonuses into Aggrieved Employees' regular rates of pay
13 for the purpose of calculating overtime premiums and paid sick time; 2) paying Aggrieved Employees
14 two different rates of pay in the same workweek and failing to use the weighted average method to
15 calculate Aggrieved Employees' regular rates of pay; 3) failing to provide all meal periods, including
16 second meal periods; 4) failing to provide all rest periods, including third rest periods; 5) failing to pay
17 meal premiums and paid sick time at the correct regular rate of pay; 6) failing to reimburse Aggrieved
18 Employees for the use of their personal tools for work, 7) failing to provide meal period and rest period
19 premium pay for missed meal and rest breaks to Aggrieved Employees, 8) failing to provide Aggrieved
20 Employees with accurate wage statements, and 9) failing to pay Aggrieved Employees at termination or
21 separation all wages owed. Defendants have denied each of Plaintiff's claims. The agreed upon Gross
22 Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the PAGA
23 claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the
24 potential liability based on Defendants' factual and legal contentions and defenses.

25 2.7 The Parties agree that the above-described investigation and evaluation, as well as
26 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
27 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff,
28 Plaintiff's Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the

PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis in order for the Court to evaluate and approve the settlement. If the Effective Date does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendants have denied all claims as to liability, damages, penalties, interest, fees, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the asserted PAGA claims in the Action via this Agreement, but, to the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, and are expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge representative or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges, including compelling Appel's individual claims to arbitration.

4. SCOPE OF THE AGGRIEVED EMPLOYEES

4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Aggrieved Employees as defined in Section 1.2.

4.2 Aggrieved Employees entitled to recover under this Agreement will include only those individuals who are identified in Defendants' records as having worked as an Aggrieved Employee.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendants shall pay the Gross Settlement Amount (\$99,000.00). Funding of the Gross Settlement Amount shall occur within twenty-eight (28) calendar days after the Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount represents the maximum amount payable under this Agreement by Defendants, and includes without limitation, the PAGA Payment, all payments to the Aggrieved Employees, all attorneys' fees, costs and litigation expenses directly related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining approval of the Agreement. Under no circumstances shall Defendants pay any amounts in excess of the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Plaintiff's Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$8,500, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Plaintiff's Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$8,500 threshold. The Settlement Administrator will issue Plaintiff's Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Plaintiff's Counsel shall be added to the Net Settlement Amount as defined in section 1.15.

5.3 Enhancement Payment: Plaintiff's Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement Payment to Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000) to compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of

1 this Agreement for Aggrieved Employees and the LWDA. The Enhancement Payment is in addition to
2 the Individual PAGA Amount Plaintiff would otherwise be due under the Agreement as an Aggrieved
3 Employee. This payment is also in exchange for a waiver of individual claims by Plaintiff, including a
4 waiver of Civil Code section 1542. Defendants have agreed to not oppose Plaintiff's Counsel's request
5 for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. For tax
6 reporting and allocation purposes, \$250 of any Enhancement Payment will be designated as wages and
7 reported on an IRS Form W-2 and any remaining amount of any awarded Enhancement Payment will be
8 designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court
9 awards less than the Enhancement Payment amount requested, then any portion of the requested amount
10 not awarded to Plaintiff shall be added to the Net Settlement Amount to be distributed to the Aggrieved
11 Employees on a pro rata basis.

12 5.4 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from
13 the Gross Settlement Amount and shall not exceed \$5,000. The difference between any actual costs and
14 the allocated \$5,000 shall be added to the Net Settlement Amount as defined in section 1.14.

15 5.5 Treatment of Residue: For any portion of the Net Settlement Amount allocated to
16 Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective
17 settlement checks before the deadline to do so, that remaining amount shall be forwarded to the California
18 State Controller's Unclaimed Property Fund in the name of the employee who did not cash their individual
19 PAGA payment. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

20 5.6 No Additional Benefits Contributions: All Individual PAGA Amounts paid to Aggrieved
21 Employees shall be deemed to be income solely in the year in which such amounts were actually received
22 by Aggrieved Employees. It is expressly understood and agreed that the receipt of such Individual PAGA
23 Amounts will not entitle any Aggrieved Employee to any new or additional compensation or benefits
24 under any company bonus or other compensation or benefit plan or agreement in place during the period
25 covered by the Agreement, nor will it entitle any Aggrieved Employee to any increased retirement, 401(k)
26 benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that
27 the Individual PAGA Amounts provided for in this Agreement are the sole payments to be made by
28 Defendants to the Aggrieved Employees in connection with this Agreement (notwithstanding any contrary

language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.7 Tax Allocation: The Parties recognize that the Individual PAGA Amounts to be paid to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of Individual Settlement Amounts to Aggrieved Employees are as follows:

5.7.1 One Hundred percent (100%) of each Aggrieved Employees' Individual PAGA Amount shall be allocated for payment of disputed civil penalties. This portion of the Individual PAGA Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS form 1099-MISC.

5.7.2 Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement. Aggrieved Employees and Plaintiff agree they will assume any tax obligations or consequences that may arise from this Agreement, and will not seek indemnification from Defendants or Defendants' Counsel in this regard. Aggrieved Employees and Plaintiff further agree to hold Defendants and Defendants' Counsel harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, attorney fees or recoveries by any governmental entity for any failure by the Aggrieved Employees and/or Plaintiff to pay taxes due and owing, if any, on the Gross Settlement Amount or Enhancement Payment.

5.8 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs, any Enhancement Payment to Plaintiff, and Settlement Administrator Costs are determined and a Net Settlement Amount has been established, that Net Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount. 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual Aggrieved Employees' Individual PAGA Amount shall be determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount.

1 Payment to Aggrieved Employees of their Individual PAGA Amount will not require the submission of
2 any claim form.

3 5.9 No Additional Contribution by Defendants: Defendants' monetary obligation under this
4 Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses
5 arising out of or in connection with the performance of this Agreement shall be paid from the Gross
6 Settlement Amount, unless expressly provided otherwise herein.

7 **6. RELEASE**

8 6.1 Release by Aggrieved Employees: Upon the Effective Date, Plaintiff and each Aggrieved
9 Employee shall be deemed to fully, finally, and forever release the Released Parties from all Released
10 PAGA Claims.

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

16 **7. SETTLEMENT ADMINISTRATION**

17 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible
18 for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating
19 estimated Individual PAGA Amounts and any and all taxes associated with the Individual Settlement
20 Amount, if any; 3) taking appropriate steps to trace and locate any individual Aggrieved Employees whose
21 address or contact information as provided to the Settlement Administrator is inaccurate or outdated and
22 mailing the Notice of Settlement to Aggrieved Employees; 4) providing notification to the appropriate
23 state officials of this Agreement as required; 5) maintaining the Gross Settlement Amount in a QSF; 6)
24 determining and paying the final amounts due to be paid under the Agreement after resolution of awarded
25 attorneys' fees and costs and Settlement Administrator Costs; 7) paying any residual funds from uncashed
26 checks to the pursuant to Paragraph 5.5; 8) reporting to Plaintiff's Counsel and Defendants' Counsel
27 regarding the statistics of the administration, including (a) the number of initial Notice of Settlements
28 mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of

1 Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces
2 performed for undeliverable Notice of Settlements; (g) the number of Notice of Settlements undeliverable
3 from traced addresses; 9) providing a declaration to the Court regarding the final statistics of the
4 administration and compliance with all payment obligations under the Agreement; 10) completing all
5 necessary tax reporting on the QSF and payment of the Individual PAGA Amounts to Aggrieved
6 Employees; and 11) carrying out other related tasks as necessary to effectuate the terms of this Agreement
7 and any Order of the Court. All disputes relating to the Settlement Administrator's ability and need to
8 perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over
9 the terms and conditions of this Agreement, until all payments and obligations contemplated by the
10 Agreement have been fully executed.

11 7.2 Aggrieved Employee Data: Within seven (7) calendar days after the Effective Date,
12 Defendants shall provide the Settlement Administrator with the name, last known mailing address, last
13 known telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved
14 Employee. The Settlement Administrator shall review the data to determine the number of Qualifying
15 Pay Periods for each Aggrieved Employee. Defendants shall not provide any information for pay periods
16 during which an Aggrieved Employee may have worked as an exempt employee, worked outside
17 California, or worked outside the PAGA Claim Period. The Settlement Administrator shall maintain all
18 information received from Defendants confidential to itself, and Defendants' Counsel. However,
19 Plaintiff's Counsel shall be able to review the breakdown of Qualified Pay Periods and estimated
20 Individual PAGA Amounts for Aggrieved Employees, but not names or other associated identifying
21 information including addresses or phone numbers, prior to mailing for quality assurance.

22 7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:
23 Within seven (7) calendar days after Defendants have provided the Settlement Administrator with
24 information regarding Aggrieved Employees, the Settlement Administrator shall calculate the final Net
25 Settlement Amount, PAGA Payment, and the final Individual PAGA Amounts for Aggrieved Employees,
26 and report the results of these calculations to Plaintiff's Counsel and Defendants' Counsel.

27 7.4 Settlement Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the
28 LWDA: Defendants shall wire the Gross Settlement Amount as described in Section 5.1 to the Settlement

1 Administrator within fourteen (14) calendar days after receiving the funding calculation and report from
2 the Settlement Administrator to be to be held in trust in a QSF. Within seven (7) calendar days after the
3 Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall
4 deliver payment of Plaintiff's Counsels' attorney's fees and costs, the PAGA Payment payable to the
5 LWDA, Settlement Administrator Costs, and payment for Individual PAGA Amounts to Aggrieved
6 Employees as required under this Agreement and approved by the Court. Plaintiff's Counsel shall provide
7 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
8 for the attorney's fees and costs after the Effective Date.

9 7.5 Notice to Aggrieved Employees: Defendants represent and warrant that Aggrieved
10 Employees are able to read and write in English such that no translation of the Notice of Settlement into
11 another language is necessary. The Settlement Administrator will provide a Notice of Settlement,
12 substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with providing
13 payment for Individual PAGA Amounts as described in Sections 5.8 and 7.4. The Notice of Settlement
14 will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement. The
15 Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net
16 Settlement Amount, attorneys' fees and costs allocations, Settlement Administrator Cost allocations,
17 PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent
18 of the Released PAGA Claims.

19 7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Settlement
20 Administrator receives the Gross Settlement Amount, the Settlement Administrator will perform a
21 national change of address ("NCOA") search, update the addresses per the results of the NCOA search
22 and will mail the respective Individual PAGA Amount, as determined in Sections 5.8 and 7.4, and Notice
23 of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

24 7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and
25 Individual PAGA Amount payment is returned to the Settlement Administrator as undeliverable, the
26 Notice of Settlement and Individual PAGA Amount payment shall be sent to the forwarding address
27 affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Settlement
28 Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer

1 or other search using the name, address and/or Social Security number of the individual involved, and
2 shall then perform a single re-mailing within seven (7) calendar days. In the event the procedures in this
3 paragraph are followed and the intended recipient of a Notice of Settlement and Individual PAGA Amount
4 payment still does not receive the Notice of Settlement and/or Individual PAGA Amount payment, the
5 Aggrieved Employee shall still be bound by all terms of the Agreement, including the releases contained
6 in Sections 1.25 and 6.1, 6.2, and any final judgment entered by the Court.

7 7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2
8 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
9 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
10 Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Agreement except as expressly
11 required by the Court.

12 7.9 Settlement Check Expiration and Residue: The Settlement Administrator shall issue
13 Individual PAGA Amounts to Aggrieved Employees in the form of a check, which shall become null and
14 void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred eighty
15 (180) calendar days of issuance, the checks shall be voided and funds from all undeposited checks shall
16 be transmitted as identified in Section 5.5. The Settlement Administrator shall deliver the funds within
17 fourteen (14) calendar days after the check cashing deadline.

18 7.10 Settlement Administrator Declaration Regarding Settlement Administration: Within
19 twenty-one (21) calendar days after the last day for Aggrieved Employees to cash their settlement checks,
20 the Settlement Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with a signed
21 declaration under penalty of perjury providing a complete and detailed report regarding the settlement
22 administration and that all the obligations of the Settlement Administrator have been completed.

23 **8. SETTLEMENT ADMINISTRATION SCHEDULE**

24 8.1 The schedule may be modified depending on whether and when the Court grants
25 necessary approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The
26 schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as
27 described above. In the event of such modification, the Parties shall cooperate to complete the settlement
28

procedures as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual PAGA Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendants to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendants have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks pursuant to Paragraph 5.5	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. MISCELLANEOUS TERMS

1 9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Released
2 PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the Parties to
3 enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party
4 in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and
5 costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for
6 attorney's fees and costs is filed.

7 9.2 Additional Pay Period Contingency: Defendants have represented that there are no more
8 than 1,827 pay periods during the PAGA Claim Period. In the event the number of pay periods during
9 the PAGA Claim Period is more than 2,009.7 (*i.e.*, greater than 10% more than 1,827), then the End
10 Date shall be moved back in time such that the number of Qualifying Pay Periods within the PAGA
11 Claim Period meets, but does not exceed, the 2,009.7 threshold.

12 9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
13 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
14 execution of such other documents and the taking of such other action as may reasonably be necessary to
15 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
16 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
17 order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include
18 modifying and/or resubmitting the Agreement for approval, however under no circumstances shall
19 Defendants pay more than \$99,000.00. Plaintiff's Counsel shall be responsible for drafting the court
20 approval paperwork. All parties agree to act immediately and diligently to perform their obligations under
21 this Agreement, including the review and approval of settlement documents, such that there are no
22 substantial delays in seeking court approval or administration of this settlement. Plaintiff's Counsel shall
23 endeavor to file a motion for approval of this settlement within thirty (30) calendar days of the date this
24 Agreement is signed. Plaintiff's Counsel shall provide Defendants' Counsel with a draft approval motion
25 within 1 week after this Agreement is fully executed. Defendants' Counsel will provide comments and/or
26 proposed revisions within 1 week after receipt of the draft motion.

27 9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
28 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to

1 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
2 Complaint, the representative character of the Action, the validity of any of the claims that were or could
3 have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of
4 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
5 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved
6 Employees, or any other person, and Defendants have specifically disclaimed any liability, culpability,
7 negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the
8 Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

9 9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
10 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
11 the third business day after mailing by United States certified mail, return receipt requested, addressed as
12 follows:

13 To the Plaintiff:

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

20 To Defendants:

21 Cassandra M. Ferrannini
22 Daria A. Gossett
23 Downey Brand LLP
24 621 Capitol Mall, 18th Floor
25 Sacramento, CA 95814
26 Telephone: 916.444.1000
27 Facsimile: 916.444.2100

28 9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
party or its counsel participated in the drafting of this Agreement.

9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the

terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein.

9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms.

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

9.11 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Plaintiff's Counsel, Defendants and Defendants' Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and effect of originals. If any party elects to execute the Agreement with an electronic signature, a Final Audit Report (Adobe E-sign) or an equivalent certificate validating the electronic signature process shall be included as Exhibit 2 to this Agreement.

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

1 9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
3 scope of this Agreement, or any provision thereof.

4 9.14 Integrated Agreement: This Agreement sets forth the entire understanding between the
5 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
6 oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no
7 representation, inducement, promise or agreement which has been made, orally or otherwise, by the other
8 party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this
9 Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are
10 fully understood and voluntarily accepted by the Parties.

11 9.15 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
12 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
13 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

14 9.16 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
15 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
16 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

17 9.17 Waiver of Compliance: No waiver of any condition or covenant contained in this
18 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
19 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

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

22 **For Plaintiff:**

23 Date: 10/30/2024

William Appel
William Appel (Oct 30, 2024 15:34 PDT)
William Appel

25 **For Defendants:**

26 Date: _____

27 By: _____
28 For SunFoods, LLC

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

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

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

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

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

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

For Plaintiff:

Date: _____

William Appel

For Defendants:

Date: 1 November 2024

By: Kate Cooper
For SunFoods, LLC

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Date:

11/5/2024

Matt Alonso



APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____

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

APPROVED AS TO FORM

DOWNEY BRAND LLP

Dated: _____

By: _____

Cassandra M. Ferrannini
Daria A. Gossett
Attorneys for Defendants

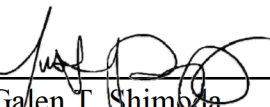
1 Date: _____

2 _____
Matt Alonso

3
4 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

5
6 Dated: 10/30/2024

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

8
9
10 APPROVED AS TO FORM

DOWNEY BRAND LLP

11
12 Dated: 11/08/2024

13 By: 
Cassandra M. Ferrannini
Daria A. Gossett
Attorneys for Defendants

Exhibit 1

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT PAYMENT

William Appel v. SunFoods, LLC et. al, Yolo County Superior Court Case No. CV2023-2012

Why are you receiving this Notice?

This Notice is being provided to you to inform you of a Private Attorneys General Act (“PAGA”) Settlement and your proportional share of the settlement payment in *Appel v. SunFoods, LLC*, Yolo County Superior Court, Case No. CV2023-2012, filed September 25, 2023 (the “Action”). You are receiving this payment because you worked as a non-exempt employee at SunFoods at some point during the time period July 18, 2022 to _____ (“PAGA Period”).

What do you need to do? Nothing. Employees cannot opt out of this settlement.

How was my portion of the settlement calculated? The California Labor Code requires that 75% of the Net PAGA Settlement be paid to the State of California. The remaining 25% is distributed to the employees. Each employee’s share is determined by taking their individual number of pay periods worked between July 18, 2022, up to _____, dividing that number by the number of pay periods worked for all employees that worked at some point between July 18, 2022, up to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount. Enclosed in this mailing, you will find a check containing your share of the Settlement based on this allocation.

What was the case about? Plaintiff William Appel filed a lawsuit seeking penalties, attorneys fees, and costs under PAGA. PAGA is a “representative action,” meaning it is brought on behalf of the State. Plaintiff alleged violations of Labor Code sections 510, 1194, 226.7, 512, 226, 226.3, 201-203, 256, 558, 558.1, 246, 246.5, 248.5, 2802 for the PAGA period.

Did the Court decide who was right? No. This notice is not intended to be, and should not be construed as, an expression of any opinion with respect to the truth of the allegations or the merits of the claims or defenses asserted. Defendant denies engaging in any unlawful conduct in any respect and disputes all of the allegations. By entering into the Settlement, Defendants do not admit any liability.

Exhibit 2

Appel long form PAGA settlement Final For Signature

Final Audit Report

2024-10-30

Created:	2024-10-30
By:	Shaniya Baird (sbaird@shimodalaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAyqRtfDiU0pFFVT9nWSbBDcFgJP7JoXa9

"Appel long form PAGA settlement Final For Signature" History

-  Document created by Shaniya Baird (sbaird@shimodalaw.com)
2024-10-30 - 7:24:50 PM GMT
-  Document emailed to wappelm@hotmail.com for signature
2024-10-30 - 7:24:57 PM GMT
-  Email viewed by wappelm@hotmail.com
2024-10-30 - 8:37:59 PM GMT
-  Signer wappelm@hotmail.com entered name at signing as William Appel
2024-10-30 - 10:34:50 PM GMT
-  Document e-signed by William Appel (wappelm@hotmail.com)
Signature Date: 2024-10-30 - 10:34:52 PM GMT - Time Source: server
-  Agreement completed.
2024-10-30 - 10:34:52 PM GMT

EXHIBIT B

ELECTRONICALLY FILED
by Superior Court of CA,
County of Yolo,
on 9/25/2023 2:07 PM
By: M Gallegos, Deputy

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff WILLIAM APPEL

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF YOLO**

12 WILLIAM APPEL,

13 Plaintiff,

14 vs.

15 SUNFOODS, LLC, a California Corporation;
16 MATT ALONSO, an individual; and
17 DOES 1 to 100, inclusive,

18 Defendants.
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Case No. CV2023-2012

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

1 Plaintiff WILLIAM APPEL (“Plaintiff”), on behalf of himself and other Aggrieved
2 Employees hereby files this Complaint against Defendants SUNFOODS, LLC, a California
3 Corporation; MATT ALONSO, an individual; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as “Defendants”). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a Private Attorneys General Act (“PAGA”) lawsuit brought by Plaintiff based on
7 the following violations of the California Labor Code: 1) failure to pay overtime wages; 2) failure to
8 provide accurate wage statements; 3) failure to pay final wages; 4) failure to pay reimbursements for
9 expenses; 5) violation of Labor Code section 558; 6) failure to provide paid sick leave; 7) failure to
10 provide meal periods or pay premiums in lieu thereof; and 8) failure to provide rest periods or pay
11 premiums in lieu thereof.

12 **JURISDICTION AND VENUE**

13 2. The Yolo County Superior Court has jurisdiction in this matter pursuant to California
14 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code and
15 Wage Order No. 8.

16 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
17 Defendants reside in Yolo County. In addition, some of the wrongful acts and violations of law asserted
18 herein occurred within Yolo County, and Defendants’ obligation to pay wages arose in Yolo County
19 pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

20 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
21 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
22 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
23 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
24 (“LWDA”) on approximately July 18, 2023. Plaintiff provided facts and legal bases for his claims
25 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
26 of action. Plaintiff also submitted the \$75.00 filing fee. The July 18, 2023, notice was also sent via
27 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
28 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies

1 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself
2 and all similarly situated employees, *i.e.*, Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
3 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).
4 Aggrieved Employees includes, but is not limited to, the following: all non-exempt employees who
5 have, or continue to, work for Defendants in California from July 18, 2022 to the present.

6 **PARTIES**

7 5. WILLIAM APPEL is an individual over the age of eighteen (18) and is a resident of
8 the State of California.

9 6. On information and belief, Plaintiff alleges, SUNFOODS, LLC, is now and/or at all
10 times mentioned in this Complaint was a California Corporation and the owner and operator of an
11 industry, business and/or facility doing business in the State of California.

12 7. Plaintiff is informed and believes, and thereupon alleges, that MATT ALONSO is an
13 individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further
14 alleges that MATT ALONSO is an owner, director, officer, and/or managing agent of SUNFOODS,
15 LLC responsible for causing the violations outlined in this action. As such MATT ALONSO is
16 individually liable pursuant to California Labor Code section 558.1.

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

21 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
22 other Defendants and was acting within the course and scope of such agency or employment. The
23 Defendants are jointly and severally liable to Plaintiff.

24 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
25 were members of and/or engaged in a joint employment, joint venture, partnership and common
26 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
27 joint venture, partnership and common enterprise.
28

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

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

5 **GENERAL ALLEGATIONS**

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

8 14. Plaintiff worked for Defendants from approximately November 2016 to March 14, 2023
9 as a non-exempt employee. Defendants operate a rice mill in Woodland, California.

10 15. Defendants paid Plaintiff and Aggrieved Employees different rates of pay within the
11 same workweek. Defendants also paid Plaintiff and Aggrieved Employees nondiscretionary bonuses.
12 Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40)
13 hours in a week. Defendants paid Plaintiff and Aggrieved Employees paid sick time in addition to meal
14 and rest period premiums. Defendants did not correctly calculate Plaintiff's and Aggrieved Employees'
15 regular rates of pay for the purpose of paying Plaintiff's and Aggrieved Employees' overtime wages,
16 meal and rest period premiums and paid sick time, failing to include all non-discretionary remuneration
17 when determining the regular rate of pay. Defendants paid meal and sick leave premiums based on the
18 basic hourly rate and failed to use any weighted average for overtime premiums.

19 16. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all
20 meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work
21 for periods of more than five hours without providing them an off-duty meal period of at least 30
22 minutes. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees
23 with second meal periods when they worked shifts longer than ten (10) hours. Defendants employed
24 Plaintiff and Aggrieved Employees for periods of more than 3.5 hours without providing them 10-
25 minute rest periods. Defendant did not have a policy or practice to provide Plaintiff and Aggrieved
26 Employees with a second rest period or third rest period when they worked shifts longer than ten (10)
27 hours. Defendants did not pay Plaintiff and Aggrieved Employees all missed meal and rest period
28 premiums they were owed.

1 17. Defendants required Plaintiff and Aggrieved Employees to use their own tools for work
2 such as impact drivers, grinders, power tools and hand tools without paying them twice the minimum
3 wage. Defendants also did not reimburse Plaintiff and Aggrieved Employees for the use of their tools.

4 18. Due to the practices and policies outlined above, Defendants did not provide Plaintiff and
5 Aggrieved Employees with accurate wage statements. For example, the wage statements did not include
6 accurate gross and net wages earned, total hours worked by the employees, and all applicable hourly
7 rates in effect during the pay period and the corresponding number of hours worked at each hourly rate
8 by the employees, including but not limited to rates and corresponding hours for overtime wages, paid
9 sick time, and meal and rest period premiums.

10 19. At the time of Plaintiff's and Aggrieved Employees' termination or separation they had
11 wages owed to them, including overtime wages, used but not fully paid sick leave wages, and meal and
12 rest period premiums. To date, these wages remain unpaid.

13 20. Defendant SUNFOODS, LLC identified Defendant MATT ALONSO in its filings with
14 the California Secretary of State during the claim period as its Chief Executive Officer. Plaintiff is
15 informed and believes that MATT ALONSO was responsible for creating and electing to implement
16 SUNFOODS, LLC's payroll and compensation policies and practices or that MATT ALONSO was
17 aware of such policies and practices and ratified them.

18 **CAUSE OF ACTION**
19 **PRIVATE ATTORNEYS GENERAL ACT**
20 **(As to all Defendants)**

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

23 22. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
24 following provisions of the Labor Code in their dealings with Plaintiff and Aggrieved Employees:

- 25 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 8, § 3 (Failure to Pay Overtime
26 Wages)
- 27 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 28 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 8, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 8, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

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

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

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

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and

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d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

Dated: September 22, 2023

Shimoda & Rodriguez Law, PC

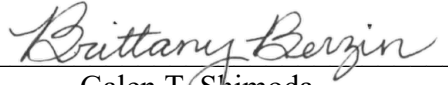
By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

EXHIBIT C



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

July 18, 2023

For Online Filing:

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

Re: *Appel v. SunFoods, LLC*

Dear Labor Commissioner,

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

SunFoods, LLC
1620 E Kentucky Avenue
Woodland, CA 95776

Matt Alonso
194 W Main Street, Suite 202
Woodland, CA 95695

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

A. FACTS

Plaintiff worked for Defendants from approximately November 2016 to March 14, 2023 as a non-exempt employee. Defendants operate a rice mill in Woodland, California.



Defendants paid Plaintiff and Aggrieved Employees different rates of pay within the same workweek. Defendants also paid Plaintiff and Aggrieved Employees nondiscretionary bonuses. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week. Defendants paid Plaintiff and Aggrieved Employees paid sick time in addition to meal and rest period premiums. Defendants did not correctly calculate Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying Plaintiff's and Aggrieved Employees' overtime wages, meal and rest period premiums and paid sick time, failing to include all non-discretionary remuneration when determining the regular rate of pay. Defendants paid meal and sick leave premiums based on the basic hourly rate and failed to use any weighted average for overtime premiums.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants employed Plaintiff and Aggrieved Employees for periods of more than 3.5 hours without providing them 10-minute rest periods. Defendant did not have a policy or practice to provide Plaintiff and Aggrieved Employees with a second rest period or third rest period when they worked shifts longer than ten (10) hours. Defendants did not pay Plaintiff and Aggrieved Employees all missed meal and rest period premiums they were owed.

Defendants required Plaintiff and Aggrieved Employees to use their own tools for work such as impact drivers, grinders, power tools and hand tools without paying them twice the minimum wage. Defendants also did not reimburse Plaintiff and Aggrieved Employees for the use of their tools.

Due to the practices and policies outlined above, Defendants did not provide Plaintiff and Aggrieved Employees with accurate wage statements. For example, the wage statements did not include accurate gross and net wages earned, total hours worked by the employees, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employees, including but not limited to rates and corresponding hours for overtime wages, paid sick time, and meal and rest period premiums.

At the time of Plaintiff's and Aggrieved Employees' termination or separation they had wages owed to them, including overtime wages, used but not fully paid sick leave wages, and meal and rest period premiums. To date, these wages remain unpaid.

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B. ALLEGATIONS AND CHARGES

Count One - Violation of Labor Code §§ 510, 1194; IWC Wage Order 8, § 3 (Failure to Pay Overtime Wages)

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

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

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

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

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

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

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

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

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Matt Alonso was the Chief Executive Officer and/or managing agents of SunFoods, LLC responsible for the violations stated herein as he was responsible for the day to day operations, including reviewing and determining compensation policies, was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

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

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy



Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee’s regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Defendants failed to provide Plaintiff and Aggrieved Employees with all sick leave wages because they were not paid for all hours worked, did not receive the proper accrual of sick leave hours, and Defendants failed to incorporate shift differentials into the regular rate of pay for sick leave pay.

Count Seven - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 8, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 8, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 8, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Eight – Violation of Labor Code § 226.7 and Wage Order No. 8, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 8, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

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

Very truly yours,

Shimoda & Rodriguez Law, PC

By: *Brittany Berzin*
Brittany Berzin

BVB

cc: Client via e-mail

1 *Appel v. SunFoods, LLC*

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

5 I, Shaniya Baird, declare that:

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

8 On July 18, 2023, I served the following documents on the party below:

- 9 • Private Attorney General Act Letter

SunFoods, LLC 1620 E Kentucky Avenue Woodland, CA 95776	Matt Alonso 194 W Main Street, Suite 202 Woodland, CA 95695
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13 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
14 and processing of correspondence for mailing with the United States Postal
15 Service and that each day's mail is deposited with the United States Postal
16 Service that same day in the ordinary course of business. On the date set forth
17 above, I served the aforementioned document(s) on the parties in said action by
18 placing a true copy thereof enclosed in a sealed envelope with postage thereon
19 fully prepaid, for collection and mailing on this date, following ordinary business
20 practices, at Salt Lake City, Utah addressed as set forth above.

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

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

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct, and that this declaration was executed on July 18, 2023, at Salt Lake City, Utah.

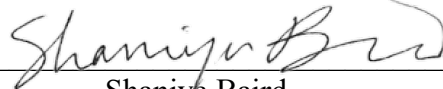
27
28

Shaniya Baird

EXHIBIT D

Case Name: Appel v. Sunfoods

Thursday, May 2, 2024

Requesting Attorneys Name:

Justin Rodriguez

E-Mail:

jrodriguez@shimodalaw.com

ILYM Contact:

Lisa Mullins

E-Mail:

Lisa@ilymgroup.com

Contact Number:

714.878.8836

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	81
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	No
NCOA	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup: \$1,099.26
Distribution (Includes EIN, Bank Acct * /QSF Setup): \$2,280.74
Case Conclusion: \$570.00

Total ILYM Fees & Expenses: \$3,950.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Appel v. Sunfoods

Thursday, May 2, 2024

Requesting Attorneys Name:

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	1	\$120.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$30.00	1	\$30.00
Toll-Free Call Center	Flat Rate	\$49.26	1	\$49.26

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$1,099.26

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	1	\$150.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	81	\$121.50
USPS First Class 1oz Postage	Per Piece	\$0.64	81	\$51.84
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	16	\$32.40
Preparation of Taxes	Hourly	\$150.00	2	\$300.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,280.74

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds	Flat Fee	\$350.00	1	\$350.00
Declaration	Hourly	\$120.00	1	\$120.00

Subtotal \$570.00

Total Case Estimate: \$3,950.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT PAYMENT
William Appel v. SunFoods, LLC et. al, Yolo County Superior Court Case No. CV2023-2012

Why are you receiving this Notice?

This Notice is being provided to you to inform you of a Private Attorneys General Act (“PAGA”) Settlement and your proportional share of the settlement payment in *Appel v. SunFoods, LLC*, Yolo County Superior Court, Case No. CV2023-2012, filed September 25, 2023 (the “Action”). You are receiving this payment because you worked as a non-exempt employee at SunFoods at some point during the time period July 18, 2022 to _____ (“PAGA Period”).

What do you need to do? Nothing. Employees cannot opt out of this settlement.

How was my portion of the settlement calculated? The California Labor Code requires that 75% of the Net PAGA Settlement be paid to the State of California. The remaining 25% is distributed to the employees. Each employee’s share is determined by taking their individual number of pay periods worked between July 18, 2022, up to _____, dividing that number by the number of pay periods worked for all employees that worked at some point between July 18, 2022, up to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount. Enclosed in this mailing, you will find a check containing your share of the Settlement based on this allocation.

What was the case about? Plaintiff William Appel filed a lawsuit seeking penalties, attorneys fees, and costs under PAGA. PAGA is a “representative action,” meaning it is brought on behalf of the State. Plaintiff alleged violations of Labor Code sections 510, 1194, 226.7, 512, 226, 226.3, 201-203, 256, 558, 558.1, 246, 246.5, 248.5, 2802 for the PAGA period.

Did the Court decide who was right? No. This notice is not intended to be, and should not be construed as, an expression of any opinion with respect to the truth of the allegations or the merits of the claims or defenses asserted. Defendant denies engaging in any unlawful conduct in any respect and disputes all of the allegations. By entering into the Settlement, Defendants do not admit any liability.

EXHIBIT F

EXHIBIT G

Date	Description	Amount
7/18/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
7/18/2023	Administration/Copy Fee: Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
7/19/2023	Certified Mail - PAGA Letter to Employers.	\$17.54
9/25/2023	One Legal Service Fee - First paper filed	\$11.99
9/26/2023	One Legal Service Fee - \$1000 complex fee, \$435 complaint fee, \$54.48 filing fee	\$1,494.73
1/9/2024	One Legal Service Fee -Case management order	\$19.14
1/23/2024	Mediation - Mediator fees	\$4,125.00
4/22/2024	One Legal Service Fee -Case management	\$19.14
6/5/2024	One Legal Service Fee - Notice of Settlement Order	\$13.85
12/6/2024	One Legal Fee - Case Management Conference Statement Filing	\$19.14
Anticipated	One Legal Fee - PAGA Approval Motion Filing	\$78.70
Anticipated	One Legal Fee - Case Management Conference Statement Filing	\$19.14
Anticipated	One Legal Fee - Compliance Declaration Filing	\$19.14
TOTAL:		\$6,412.51

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
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3 9401 East Stockton Boulevard, Suite 120
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5 Email: attorney@shimodalaw.com
jrodriguez@shimodalaw.com
6 rkonini@shimodalaw.com

7 Attorneys for Plaintiff WILLIAM APPEL
individually and on behalf of similarly situated employees
8
9

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF YOLO**

12 WILLIAM APPEL, individually and on behalf
of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 SUNFOODS, LLC, a California Corporation;
16 MATT ALONSO, an individual; and DOES 1
17 to 100, inclusive,

18 Defendants.
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Case No. CV2023-2012

*Assigned for All Purposes to Hon. Samuel T. McAdam
Department 14*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Date: January 22, 2025

Time: 9:00 a.m.

Dept.: 14

Judge: Hon. Samuel T. McAdam

Filed: September 25, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on January 22, 2025 at 9:00 a.m., in Department 14 before the
4 Honorable Samuel T. McAdam, presiding. Plaintiff William Appel (“Plaintiff”) filed this Private
5 Attorneys General Act (“PAGA”) action on September 25, 2023. The operative Complaint alleges that
6 SunFoods, LLC, and Matt Alonso (“Defendants”) violated California law by failing to pay overtime
7 wages, failing to provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or
8 pay premiums in lieu thereof, failing to provide accurate wage statements, failing to pay final wages,
9 failing to pay reimbursements for expenses, violating Labor Code sections 558, 558.1 regarding
10 provisions regulating hours and days of work in any Industrial Welfare Commission Order, and failing
11 to provide sick leave. The Complaint further alleges that Defendants are liable for civil penalties under
12 the PAGA as a result of the alleged violations. Defendants have denied all of Plaintiff’s allegations.
13 Plaintiff sought attorneys’ fees and costs as part of this Action.

14 The parties have agreed to settle the PAGA claims. Defendants will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the PAGA Settlement
16 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
17 in the Agreement. The Court, having received and considered Plaintiff’s Motion, the declarations in
18 support, the Agreement, the Notice of Settlement, and other evidence, HEREBY ORDERS AND
19 MAKES DETERMINATIONS AS FOLLOWS:

20 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
21 **EMPLOYEES**

22 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
23 PAGA claims asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and
24 Workforce Development Agency (“LWDA”) with respect to the PAGA claims being released under the
25 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the
26 Agreement, its releases, and all rights and obligations thereunder include the following:

27 All individuals who have, or continue to, work for Defendant in California
28 as non-exempt employees from July 18, 2022, up to either (1) the End
Date, or (2) January 7, 2025, whichever is earlier.

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

4 **II. APPROVING THE AGREEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
6 A. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and
7 arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and
8 measures to weigh the potential value of the disputed claims against the risks of continued litigation.
9 The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as
10 required under California Labor Code sections 2698 *et seq.* Based on the potential penalties at issue, the
11 risk of loss on the merits, the risk of being able to prove violations in each pay period as to each
12 individual as required by statute for damages purposes, and the Court's statutorily authorized discretion
13 to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees and the
14 LWDA. The Court also finds that the Agreement provides a recovery that creates an effective,
15 substantial deterrent to any potential future non-compliance, furthering the purpose of the LWDA in
16 enforcing the California Labor Code. Thus, the Court approves the Agreement and terms stated therein,
17 which is incorporated by reference in its entirety, as if stated here in full, including the \$99,000 Gross
18 Settlement Amount.

19 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein the Net
20 Settlement Amount will be paid to Aggrieved Employees and the LWDA as civil penalties pursuant to
21 division set forth in California Labor Code section 2699(i).

22 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
23 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the
24 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
25 Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
26 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
27 Gross Settlement Amount. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul*,
28

1 *Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444
2 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other than
3 . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”). The Court finds the
4 attorney’s fees request of Thirty-Five (35%) of the Gross Settlement Amount, *i.e.* \$34,650, to be
5 appropriate compensation for Plaintiff’s Counsel. The fees request is within the range of percentages
6 that have been approved by other Courts in similar cases and is reasonable in light of the circumstances
7 of this case, the substantial and beneficial results obtained on behalf of Aggrieved Employees and the
8 LWDA, and the contingent nature of the recovery over the course of this case, which included potential
9 loss at summary judgment and/or trial proceedings. Additionally, the Court orders that \$6,412.51 of the
10 Gross Settlement Amount will be paid to Plaintiff’s Counsel for reasonable costs incurred in this case.

11 The Court orders that Plaintiff will receive an Enhancement Payment of \$10,000 from the Gross
12 Settlement Amount for his work on behalf of the Aggrieved Employees and the LWDA and in exchange
13 for the general release of all his individual claims in addition to any amount Plaintiff may be entitled to
14 under the Agreement’s pro rata distribution formula.

15 The Court orders that ILYM Group, Inc., will act as the Settlement Administrator in this case.
16 The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are not to
17 exceed \$3,950. Any difference between the actual Settlement Administrator Costs and the approved
18 amount will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved
19 Employees consistent with the allocations and formulas set forth in the Agreement.

20 The Court approves of the distribution plan wherein any checks issued to Aggrieved Employees
21 that are not cashed by the deadline shall be forwarded to the California State Controller’s Unclaimed
22 Property Fund in the name of the employee who did not cash their Individual PAGA Amount payment.
23 No portion of the Gross Settlement Amount will revert to Defendants for any reason.

24 The releases and waivers for Aggrieved Employees (*i.e.* the Released PAGA Claims) and
25 Plaintiff (*i.e.* “Plaintiff’s Released Claims”) are also approved by the Court as set forth in the
26 Agreement.
27
28

1 **III. APPROVAL OF THE NOTICE OF SETTLEMENT AND METHOD FOR**
2 **DISTRIBUTING THE NOTICE OF SETTLEMENT**

3 The Court finds that the proposed Notice of Settlement, filed with Plaintiff's Motion as Exhibit E
4 and incorporated by reference, fairly and adequately advises Aggrieved Employees about the Agreement
5 and its effect. The Court further finds that the Notice of Settlement and distribution of such notice by
6 first class mail to each identified Aggrieved Employees at his or her most recent address based on a
7 National Change of Address database search from the Aggrieved Employees' last known address and a
8 skip trace on any Aggrieved Employees who have their notice returned as "undeliverable" or "not at this
address" comport with all constitutional requirements, including those of due process.

9 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
10 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion on
11 privacy rights, the sharing of employment information as set forth in the Agreement is not a serious
12 intrusion on their privacy rights. Hence, the Court orders Defendants to provide Aggrieved Employee
13 information to the Settlement Administrator as set forth in the Agreement and any other information the
14 Settlement Administrator needs to effectuate notice to Aggrieved Employees. The Aggrieved Employee
15 information will be provided to the Settlement Administrator only, and not to Plaintiff or Plaintiff's
16 Counsel, as contemplated within the Agreement and approved by this Order. The Settlement
17 Administrator shall only use this information for the purposes identified in the Agreement and shall keep
18 this information confidential consistent with the terms of the Agreement.

19 **IV. IMPLEMENTATION SCHEDULE**

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

22

23 Last day for Defendants to provide Settlement 24 Administrator with Aggrieved Employee 25 information	Within 7 calendar days after the Effective Date
26 Last day for Settlement Administrator to calculate 27 and report to the Parties the Net Settlement 28 Amount, PAGA Payment, and Individual PAGA Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information

Last day for Defendants to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendants have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks pursuant to Paragraph 5.5	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this settlement approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. Upon the Effective Date, the Action will be dismissed with prejudice, with the Court retaining jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court