

**BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (SBN 287811)

*david@tomorrowlaw.com*

Jeffrey D. Klein (SBN 297296)

*jeff@tomorrowlaw.com*

Vedang J. Patel (SBN 328647)

*vedang@tomorrowlaw.com*

Brandon Chang (SBN 316197)

*brandon@tomorrowlaw.com*

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiffs, ELIZABETH RUIZ and JOSEPH W. DURAN,  
as aggrieved employees, and on behalf of all other aggrieved employees

*[Additional Counsel listed on the next page]*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ELIZABETH RUIZ and JOSPEH DURAN, as  
aggrieved employees and on behalf of all other  
aggrieved employees under the Labor Code  
Private Attorneys General Act of 2004,

Plaintiff,

v.

EDELBROCK FOUNDRY, LLC, a California  
limited liability company; EMPLOYBRIDGE,  
LLC, a California limited liability company;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV19057

[Assigned for all purpose to the Hon. David S.  
Cunningham in Dept. 11]

**DECLARATION OF BRANDON M.  
CHANG IN SUPPORT OF PLAINTIFFS'  
MOTION FOR APPROVAL OF  
REPRESENTATIVE ACTION  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES**

1 **HAINES LAW GROUP, APC**  
2 Paul K. Haines (SBN 248226)  
3 phaines@haineslawgroup.com  
4 Sean M. Blakely (SBN 264384)  
5 sblakely@haineslawgroup.com  
6 Aden M. Khachadorian (SBN 346908)  
7 akhachadorian@haineslawgroup.com  
8 2155 Campus Drive, Suite 180  
9 El Segundo, California 90245  
10 Tel: (424) 292-2350  
11 Fax: (424) 292-2355  
12  
13 Attorneys for Plaintiffs, ELIZABETH RUIZ and JOSEPH W. DURAN,  
14 as aggrieved employees, and on behalf of all other aggrieved employees  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5  
6

7  
8  
9

## O

**1**  
**2**  
**3**  
**4**

5  
6  
7

8  
9  
0  
1  
2

3  
4  
5  
6  
7  
8

1 percent (75%) of which shall be paid to the California Labor and Workforce Development Agency  
2 (“LWDA”) and twenty-five percent (25%) of which will be paid to Aggrieved Employees. These  
3 penalties are genuine and meaningful and fulfill PAGA’s underlying purpose to benefit the public.  
4 Accordingly, Plaintiffs request that the Court approve the Settlement as such awards are reasonable  
5 and warrant approval.

6 7. Defendant represents that there were no more than 55,670 Pay Periods worked by  
7 Aggrieved Employees during the PAGA Period. In the event the number of Pay Periods worked  
8 during the PAGA Period increased by more than 10% or 5,567 Pay Periods (i.e., if there were more  
9 than 61,237 Pay Periods worked during the PAGA Period), Defendant may elect either to: (1) have  
10 the Gross Settlement Amount be increased by the number of Pay Periods greater than 61,237  
11 multiplied by the Pay Period Value; or (2) have the PAGA Period end on the date on which the  
12 number of Pay Periods reaches 61,237. The Pay Period Value would be calculated by dividing the  
13 originally agreed-upon Gross Settlement Amount (\$1,240,000.00) by 55,670. The Parties agreed  
14 that the Pay Period Value and the Settlement amounts to \$22.27 (\$1,240,000.00 Gross Settlement  
15 Amount / 55,670 Pay Periods). Thus, for example, should there be 62,000 Pay Periods worked by  
16 Aggrieved Employees in the PAGA Period and Defendant elects to proceed with the first of these  
17 two choices, then the Gross Settlement Amount would be increased by \$16,992.01 ((62,000 Pay  
18 Periods – 61,237 Pay Periods) x \$22.27/Pay Period).

19 8. I believe these penalties are genuine and meaningful and fulfill PAGA’s underlying  
20 purpose to benefit the public. Accordingly, PAGA Counsel request that the Court approves the  
21 Settlement. I believe such awards are reasonable and warrant approval.

## 22 **Factual And Procedural Background**

### 23 **The Parties**

24 9. I believe plaintiff Elizabeth Ruiz was employed by Defendant in its core finisher  
25 department, with duties that included, but not limited to, cleaning manufactured aluminum and metal  
26 parts, removing investment materials, parting lines or other irregularities such as core vent marks,  
27 ad box wear marks, mud irregularities that appear in casting, and inspecting the core, within  
28 California from around June 5, 2018 through around May 16, 2019.

10. I believe plaintiff Joseph W. Duran was employed by Defendant as a water pump cell machine operator, with duties that included, but not limited to, loading and unloading the water pump, verifying torque sequence, deburring and pressing the start button and e-stop button on the water pump, and operating MAKINO machines, within California from approximately 2020.

11. Based on information provided by Defendant, there are approximately 1,030 Aggrieved Employees in the PAGA Period.

## Procedural History

12. On or around May 15, 2020, plaintiff Elizabeth Ruiz filed with the LWDA and served on Defendant and EmployBridge, LLC, a notice under Labor Code section 2699.3, stating she intended to serve as a proxy of the LWDA to recover civil penalties for various alleged Labor Code violations (the “Ruiz PAGA Notice”).

13. A true and correct copy of the Ruiz PAGA Notice is attached as Exhibit “3” hereto.

14. On or around March 18, 2020, plaintiff Elizabeth Ruiz filed a putative wage-and-hour class action in the Los Angeles County Superior Court, Case No. 20STCV19057, alleging Defendant and EmployBridge, LLC: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay all wages due upon separation from employment; (6) failed to provide accurate and compliant wage statements; (7) failed to indemnify for business expenses; and (8) engaged in unfair competition (the “Ruiz Action”).

15. On or around October 2, 2020, plaintiff Elizabeth Ruiz filed a First Amended Complaint in the Ruiz Action, adding causes of action against Defendant and EmployBridge, LLC, seeking civil penalties under PAGA for the Labor Code violations alleged in the Ruiz PAGA Notice.

16. On or around August 28, 2023, plaintiff Joseph W. Duran filed with the LWDA and served on Defendant a notice under Labor Code section 2699.3, stating he intended to serve as a proxy of the LWDA to recover civil penalties for various alleged Labor Code violations (the “Duran PAGA Notice”). The Ruiz PAGA Notice and the Duran PAGA Notice are hereinafter referred to as the “PAGA Notices.”

/ / /

1        17.        Also, on or around August 28, 2023, plaintiff Joseph W. Duran filed a putative wage-  
2 and-hour class action in the Riverside County Superior Court, Case No. CVRI2304519, alleging  
3 Defendant: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide  
4 meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in  
5 lieu thereof; (5) failed to indemnify for business expenses; (6) failed to provide accurate and  
6 compliant wage statements; and (7) engaged in unfair competition (the “Duran Action”).

7        18.        On or around October 10, 2023, defendant EmployBridge, LLC, was dismissed from  
8 the Ruiz Action without prejudice.

9        19.        On or around November 13, 2023, plaintiff Joseph W. Duran filed a First Amended  
10 Complaint in the Duran Class Action, adding causes of action against Defendant seeking civil  
11 penalties under PAGA for the Labor Code violations alleged in the Duran PAGA Notice (the “Duran  
12 Action”).

13        20.        On or around February 8, 2024, the Parties participated in a full-day mediation before  
14 Jeff Krivis, Esquire, a well-regarded mediator experienced in mediating complex labor and  
15 employment matters, which led to this Agreement to settle the Action. As part of the Settlement, the  
16 Parties agreed to stipulate to plaintiff Elizabeth Ruiz’s filing of a Second Amended Complaint in  
17 the Ruiz Action, adding the PAGA claims brought in the Duran Action and plaintiff Joseph W.  
18 Duran as a named plaintiff, and plaintiff Joseph W. Duran’s filing of a request for dismissal of the  
19 Duran Action, thereby effectively consolidating the Duran Action with the Ruiz Action (the  
20 “Action”). The Second Amended Complaint in the Ruiz Action will be the operative complaint in  
21 the Action (the “Operative Complaint”).

22        21.        Prior to mediation, Plaintiffs obtained, through informal discovery: (1) time and  
23 payroll records for approximately 20% of the estimated 1,030 Aggrieved Employees’ during the  
24 PAGA Period; (2) Defendant’s applicable wage and hour policy documents; (3) all documents  
25 concerning Plaintiffs available to Defendant; and (4) data points, including the number of Aggrieved  
26 Employees, the number of pay periods, and the number of Aggrieved Employees who were  
27 separated from employment with Defendant during the PAGA Period.

28        ///

22. PAGA Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Aggrieved Employees, and, to the extent permitted by law, the State of California, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiffs' allegations, and the substantial benefits to be received by Aggrieved Employees.

23. PAGA Counsel understand from the mediator and the mediation process that Defendant has concluded that, because of the substantial expense of defending against the Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved and the concomitant disruption to their business operations, it is in their best interests to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted against them in the Action. However, Defendant nevertheless desires to settle the Action for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies engendered by the Action.

## Discovery and Investigation

24. In the leadup to mediation, PAGA Counsel investigated Plaintiffs' claims, performed legal research regarding Defendant's defenses and engaged in informal discovery. During that time, Defendant produced: (1) time and payroll records for approximately 20% of the estimated 1,030 Aggrieved Employees' during the PAGA Period; (2) Defendant's applicable wage and hour policy documents; (3) all documents concerning Plaintiffs' available to Defendant; and (4) data points, including the number of Aggrieved Employees, the number of pay periods, and the number of Aggrieved Employees who were separated from employment with Defendant during the PAGA Period.

25. PAGA Counsel believe this yielded sufficient information to determine, for the PAGA Period, the total number of Aggrieved Employees, the total number of shifts and PAGA pay periods, the length of shifts for all Aggrieved Employees, average rates of pay, detailed analysis of

1 alleged meal and rest periods violations, and the policies and practices in play during the PAGA  
2 Period. The documents and information produced enabled PAGA Counsel to analyze the law and  
3 facts relating to Plaintiffs' claims. PAGA Counsel also retained an expert data consultant to review  
4 and analyze the time and payroll records and prepare a model setting forth Defendant's potential  
5 exposure for civil penalties for use in the mediation. The documents and information shared also  
6 enabled PAGA Counsel to evaluate the potential hurdles to recovery, including in connection with  
7 the merits of the claims and manageability. Based on this investigation and discovery, PAGA  
8 Counsel were able to act intelligently and effectively in negotiating the proposed Settlement.

### 9 **Mediation**

10 26. On or around February 8, 2024, the Parties participated in a full-day mediation before  
11 Jeff Krivis, Esquire, a well-regarded mediator experienced in mediating complex labor and  
12 employment matters, which led to this Agreement to settle the Action.

13 27. The Settlement negotiations were at arm's length and, although conducted in a  
14 professional manner, were adversarial. The Parties went into mediation willing to explore the  
15 potential for a settlement of the Action, but each side was also prepared to litigate its position  
16 through trial and appeal if a settlement had not been reached. After several exchanges of draft  
17 settlement agreements, the Parties fully executed the Settlement Agreement, a copy of which is  
18 attached as Exhibit "1" hereto.

19 28. Based on PAGA Counsel's investigation, informal discovery and evaluation of  
20 Plaintiffs' claims, Defendant's defenses regarding the merits of the claims and the manageability of  
21 a trial thereon, Defendant's potential exposure, the expense and time necessary to pursue this action  
22 through trial, the risks and costs of further prosecution of this action, the uncertainties of complex  
23 litigation and developing law, and the benefits that will accrue to the LWDA and the Aggrieved  
24 Employees, the PAGA Counsel believe that a settlement on the terms set forth herein is fair,  
25 reasonable, adequate, and in the best interests of Plaintiffs, Aggrieved Employees, the LWDA and  
26 Defendant.

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

**6**  
**7**  
**8**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PAGA Representatives Service Payments**

33. A PAGA Representative Service Payment in the amount of up to \$7,500.00 will be paid to each plaintiff, for a total of \$15,000.00 to Plaintiffs, for their services on behalf of the State of California (“the State”) and Aggrieved Employees, which included assisting PAGA Counsel with the investigation, litigation, and settlement, as well as participation in mediation and a waiver of rights under California Civil Code Section 1542.

**Settlement Administrator and Expenses Payment**

34. Individual PAGA Payment means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

35. PAGA Counsel have agreed that the Settlement Administrator will be ILYM Group, Inc. The cost of administering the Settlement, including, but not limited to, mailing the Individual PAGA Payments to the Aggrieved Employees, shall not exceed \$6,550.00 and will be paid to the Settlement Administrator from the Gross Settlement Amount.

**PAGA Counsel Fees and Litigation Expenses Payments**

36. The Settlement Agreement provides for an award of attorneys’ fees to PAGA Counsel in an amount not to exceed one third (1/3) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, will be \$413,333.33, as well as reimbursement of litigation expenses reasonably incurred in an amount of \$23,723.63.

**Settlement Administration**

37. Pursuant to the Settlement Agreement, within 14 days of the Effective Date, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, and number of PAGA Pay Periods.

38. The Settlement Agreement states that Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) calendar days after the Effective Date. Within 14 days after Defendant funds the Gross Settlement Amount, the

1 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment,  
2 PAGA Representatives Services Payments, Administration Expenses Payment, PAGA Counsel  
3 Fees Payment and PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA  
4 Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede  
5 disbursement of Individual PAGA Payments.

6 39. "Individual PAGA Payments" refers to the Aggrieved Employee's pro rata share of  
7 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved  
8 Employee worked during the PAGA Period.

9 40. Pursuant to the Settlement Agreement, the Administrator will issue checks for the  
10 Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail,  
11 postage prepaid. The face of each check shall prominently state the date (not less than 180 days after  
12 the date of mailing) when the check will be voided. The Administrator will cancel all checks not  
13 cashed by the void date. Before mailing any checks, the Settlement Administrator must update the  
14 recipients' mailing addresses using the National Change of Address Database. The Settlement  
15 Administrator will mail Individual PAGA Payments to the Aggrieved Employees, along with the  
16 PAGA Payment Letter, the substance of which is attached hereto as Exhibit "2."

17 41. The Settlement Agreement states that, for any Aggrieved Employee whose Individual  
18 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit  
19 the funds represented by such checks to the California Controller's Unclaimed Property Fund in the  
20 name of the Aggrieved Employee.

### 21 **Taxes**

22 42. All settlement payments to Aggrieved Employees will be treated as miscellaneous  
23 income for which an IRS Form 1099 will be issued. Other than the reporting requirements set  
24 forth in the Agreement, the Aggrieved Employees shall be responsible for the reporting and  
25 payment of any federal, state, and/or local income or other tax or any other withholdings, if any,  
26 on any of the payments made pursuant to the Agreement. PAGA Counsel do not expect there to  
27 be any employer side taxes arising from the Settlement because this a settlement of a  
28 representative action for civil penalties. If it is determined that employer side taxes exist on the

1 Gross Settlement Amount, such taxes will be funded by the Gross Settlement Amount.

2 **Release**

3 43. Effective on the date when Defendant fully funds the entire Gross Settlement  
4 Amount, Plaintiffs and Aggrieved Employees are deemed to release, on behalf of themselves and  
5 their respective former and present representatives, agents, attorneys, heirs, administrators,  
6 successors, and assigns, the Released Parties from all claims, rights, demands, liabilities and causes  
7 of action that arose during the PAGA Period for civil penalties under PAGA that were alleged, or  
8 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative  
9 Complaint and the PAGA Notices, whether or not specifically delineated as a claim or cause of  
10 action, including, claims for PAGA penalties relating to Defendant's alleged failure to pay overtime  
11 compensation, failure to provide minimum wages or pay for all hours worked, failure to provide  
12 meal and/or rest periods, failure to pay meal or rest period penalties, failure to reimburse all  
13 business-related expenses, failure to provide and maintain accurate, itemized wage statements, and  
14 claims arising under or relating to the alleged violations of California Labor Code Sections 200,  
15 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 222, 222.5, 223,  
16 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 256, 432, 450 510, 511 512, 516, 550, 552,  
17 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.1, 1198.5, 2698 *et seq.* 2699  
18 *et seq.*, 2800, 2802, and 2810.5, and applicable California Industrial Welfare Commission ("IWC")  
19 Wage Orders, including but not limited to IWC Wage Order No. 4 (Cal. Code Regs., tit. 8, § 11040  
20 ("PAGA Released Claims")), against the Released Parties. Upon approval of the Settlement,  
21 Plaintiffs and the Aggrieved Employees will be forever barred from pursuing against the Released  
22 Parties any and all claims for civil penalties under PAGA based upon alleged violations of the  
23 California Labor Code, Wage Orders, regulations, and/or other provisions of the law alleged or that  
24 could have been alleged to have been violated in, or reasonably related to, the Action.

25 **Escalator Provision**

26 44. Defendant represents that there were no more than 55,670 Pay Periods worked by  
27 Aggrieved Employees during the PAGA Period. In the event the number of Pay Periods worked  
28 during the PAGA Period increased by more than 10% or 5,567 Pay Periods (i.e., if there were more

1 than 61,237 Pay Periods worked during the PAGA Period), Defendant may elect either to: (1) have  
2 the Gross Settlement Amount be increased by the number of Pay Periods greater than 61,237  
3 multiplied by the Pay Period Value; or (2) have the PAGA Period end on the date on which the  
4 number of Pay Periods reaches 61,237. The Pay Period Value would be calculated by dividing the  
5 originally agreed-upon Gross Settlement Amount (\$1,240,000.00) by 55,670. The Parties agreed  
6 that the Pay Period Value and the Settlement amounts to \$22.27 (\$1,240,000.00 Gross Settlement  
7 Amount / 55,670 Pay Periods). Thus, for example, should there be 62,000 Pay Periods worked by  
8 Aggrieved Employees in the PAGA Period and Defendant elects to proceed with the first of these  
9 two choices, then the Gross Settlement Amount would be increased by \$16,992.01 ((62,000 Pay  
10 Periods – 61,237 Pay Periods) x \$22.27/Pay Period).

#### 11 **Uncashed Checks**

12 45. Pursuant to the Settlement Agreement, for any Aggrieved Employee whose  
13 Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the  
14 date of mailing), the Administrator shall transmit the funds represented by such checks to the  
15 California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

#### 16 **Argument**

#### 17 **The PAGA Penalties Secured by the Settlement are Genuine and Meaningful,** 18 **and Fulfill PAGA's Underlying Purpose to Benefit the Public**

19 46. I believe here, the Settlement penalizes Defendant for its alleged violation of  
20 California's labor laws, provides a significant benefit of \$781,393.04 (as the same may be escalated  
21 pursuant to the Settlement) to the State and also provides relief to the Aggrieved Employees that is  
22 genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public.

23 47. I believe the Gross Settlement Amount of \$1,240,000.00, as the same may be  
24 escalated pursuant to the Settlement Agreement, is significant enough to deter Defendant from  
25 future violations. Accordingly, the Settlement fulfills the underlying purpose of the statute and  
26 confers a substantial benefit on the public.

27 ///

28 ///

1                   **The Settlement is Reasonable Given the Risks of Further Litigation**

2           48.           Plaintiff's Counsel obtained a meaningful amount in civil penalties despite facing  
3 significant challenges had the litigation continued.

4           49.           The potential claims for penalties include, failure to pay all wages due, failure to  
5 provide minimum wages or pay for all hours worked, failure to pay overtime compensation, failure  
6 to provide meal and/or rest periods, failure to pay proper meal or rest period premiums, failure to  
7 provide and maintain accurate itemized wage statements, failure to timely pay wages due at  
8 separation of employment, and failure to reimburse all business-related expenses.

9           50.           I am informed and believe that, in this instance, as there was no evidence that  
10 Defendant was provided notice that they were in violation of the Labor Code, initial violation rates  
11 were used to calculate penalties.

12          51.           Based on the records produced by Defendant, Plaintiffs understood there to be 55,670  
13 pay periods in the PAGA Period. While PAGA Counsel are informed and believe that reasonable  
14 minds differ with regard to calculation of PAGA penalties, PAGA Counsel believe one reasonable  
15 calculation of Defendant's maximum exposure in PAGA penalties are as follows:

16          52.           Overtime Wage Violations: Labor Code section 558 prescribes penalties of \$50 for  
17 an initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
18 violations, and a violation every single pay period for every single non-exempt employee in the  
19 PAGA Period, this amounts to a maximum exposure of \$2,783,500. (55,670 pay periods x \$50.)

20          53.           Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of \$100  
21 for an initial violation and \$200 for each subsequent violation. Using the initial pay period rate for  
22 all violations, and a violation every single pay period for every single non-exempt employee in the  
23 PAGA Period, this amounts to a maximum exposure of \$5,567,000. (55,670 pay periods x \$100.)

24          54.           Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
25 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
26 violations, and a violation every single pay period for every single non-exempt employee in the  
27 PAGA Period, this amounts to a maximum exposure of \$2,783,500. (55,670 pay periods x \$50.)  
28

1       55.       Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
2 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
3 violations, and a violation every single pay period for every single non-exempt employee in the  
4 PAGA Period, this amounts to a maximum exposure of \$2,783,500. (55,670 pay periods x \$50.)

5       56.       Waiting Time Penalties: Labor Code section 558 prescribes penalties of \$50 for an  
6 initial violation and \$100 for each subsequent violation. Because this violation is merited only at  
7 separation of employment, a 100% violation rate would likely include be just one violation per  
8 employee. PAGA Counsel understood at mediation through the documents provided by Defendant  
9 that there were approximately 813 terminated Aggrieved Employees during the PAGA Period. This  
10 amounts to a maximum exposure of \$81,300. (813 terminated Aggrieved Employees x \$100.)

11       57.       Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)  
12 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for  
13 wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial  
14 violation and \$200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate  
15 for all violations, and a violation every single pay period for every single Aggrieved Employee in  
16 the PAGA Period, this amounts to a maximum exposure of \$5,567,000. (55,670 pay periods x \$100.)

17       58.       In sum, one calculation of Defendant's total maximum exposure for PAGA  
18 violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay  
19 period and not exercise its discretion to reduce any of those penalties to be approximately  
20 \$19,565,800.

21       59.       On the other hand, PAGA Counsel understand from the mediator and the mediation  
22 process that Defendant argued the following in connection with this claim:

23       60.       Defendant contends that no PAGA penalties are likely to be awarded and, even if  
24 they were, the maximum exposure calculated by Plaintiffs is vastly overstated. First, Defendant  
25 defends that PAGA penalties cannot and should not be stacked and that, even if they could, very  
26 few Courts have ever exercised discretion to stack them. Second, Defendant denies that a violation  
27 for each pay period can be established. Third, Defendant contends that a Court is unlikely to exercise  
28 its discretion to award civil penalties under PAGA where, as here, Defendant contends there is no

1 conduct shown by Plaintiffs that would show any Labor Code violations by Defendant, if any, is  
2 knowing and intentional that would justify PAGA penalties. Finally, Defendant asserts that  
3 individualized issues predominate the PAGA claims, making the claims unmanageable for trial  
4 pursuant to *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746 [*Wesson*].  
5 Thus, Defendant contends that the Court cannot, should not, and will not exercise its discretion to  
6 award any penalties under PAGA.

7 61. While PAGA Counsel are confident in the merits of the case, a legitimate controversy  
8 exists as to each predicate Labor Code violation. For example, Plaintiffs contend that the Aggrieved  
9 Employees were subjected to, *inter alia*, not being paid for all time under Defendant's control,  
10 unlawful meal and rest break policies, and were denied meal and rest break premiums. Defendant  
11 refutes these contentions, claiming, for example, that everyone was paid for all time worked, they  
12 authorized and permitted rest breaks, and provided meal periods.

13 62. PAGA Counsel also considered the fact that continued litigation would be expensive,  
14 time-consuming and an uncertain proposition, involving a trial and possible appeals, and would  
15 delay any recovery to the State and the Aggrieved Employees. There is also a substantial risk that  
16 the Court would reduce the award even if Plaintiffs are successful or otherwise exercise its discretion  
17 not to award penalties at all even if Labor Code violations are found. In contrast, if the Court  
18 approves the Settlement, the Aggrieved Employees will receive timely relief and avoid the risk of  
19 an unfavorable judgment. And, in light of the Court's ruling in *Wesson*, PAGA Counsel had to  
20 account for the real possibility that a Court determines that some or all of the theories advanced by  
21 PAGA Counsel in this Action would not lend themselves to a manageable trial, despite the fact  
22 Plaintiffs deny that there is a manageability requirement under PAGA. (*See, e.g., Estrada v. Royalty*  
23 *Carpet Mills*, (2022) 76 Cal.App.5th 685, 709-710). PAGA Counsel objectively and knowledgably  
24 balanced the strengths and weaknesses of their claims, the likelihood of reaching a trial, and the  
25 likelihood of success at trial against the risk of continued litigation and was able to determine a  
26 realistic range of settlement recovery for PAGA penalties.

27 63. As such, PAGA Counsel believe a 50% discount of this maximum exposure,  
28 resulting in \$9,782,900 to be a reasonable estimate of the likelihood of what Plaintiff may potentially

1 recover at trial for PAGA penalties (\$19,565,800 x .5).

2       64.       Thus, when the risks of litigation, including, without limitation, the burdens of proof  
3 necessary to establish liability, the mixed case law on manageability, as well as the probability of  
4 appeal of a favorable judgment are considered, it is clear that the Settlement is reasonable and in the  
5 best interest of the State and the public. The Settlement therefore accomplishes PAGA's objectives  
6 by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor  
7 Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or  
8 confiscatory." (Lab. Code, § 2699, subd. (e)(2); *Iskanian*, 59 Cal.4th at 384.)

9                               **PAGA Counsel's Hourly Rates are Reasonable**

10       65.       PAGA Counsel's hourly rates for attorneys are: for Bibiyan Law Group, P.C.,  
11 \$1,000, \$900, \$725, \$600, \$500, \$475, \$425, and \$400, with paralegal and legal assistant's hourly  
12 rates are \$175 and \$75, respectively; and for Haines Law Group, APC, \$850, \$750, and \$400, with  
13 paralegal hourly rate of \$175. At this requested rate, this results in a total lodestar amount of  
14 \$352,885.

15       66.       A survey conducted by the National Law Journal for the year 2002 provides a sample  
16 of a billing rate for California Lawyers. In that survey, six California firms provided their hourly  
17 billing rates. Of those six firms, five regularly charge in excess of \$500.00 per hour for their partners.  
18 In fact, four of the firms charge as high as \$600.00, \$620.00, \$650.00, and up to \$850.00 per hour.  
19 These firms are located in Orange County, Los Angeles County, San Francisco County and San  
20 Diego County and are the types of firms that PAGA Counsel regularly oppose in these class action  
21 cases. (See National Law Journal Survey, attached as Exhibit "4" hereto.). The only difference is  
22 that these defense attorneys are paid on a monthly basis and do not have to advance any costs on a  
23 case.

24       67.       Finally, PAGA Counsel attach the Declaration of Richard Pearl in support of the  
25 Motion for Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*, Los  
26 Angeles Superior Court Case No. BC441237, dated January 4, 2011. (See Declaration of Richard  
27 Pearl attached as Exhibit "5" hereto.) Mr. Pearl specializes in issues related to cost-award attorney's  
28 fees, including the representation of parties in fee litigation and appeals, serving as an expert

1 witness, mediator and arbitrator in disputes concerning attorney's fees and related issues. Mr. Pearl  
2 is also the author of California Attorney's Fee Awards (3d ed. Cal. CEB 2010), as well as the author  
3 of the Second Edition, years 1994 through 2008. He has also authored numerous other publications  
4 on attorney's fees, as set forth in his Declaration.

5 68. Mr. Pearl has reviewed the comparable hourly rates of attorney fees in California.  
6 He confirms that courts have approved hourly rates of attorneys as follows:

- 7 • Rates of up to \$875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior  
8 Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- 9 • Rates of up to \$750.00 in *Kashmiri et al. v. Regents of UC*, San Francisco County  
10 Superior Court (before applying a 3.7 multiplier); and
- 11 • Rates of up to \$750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*,  
12 San Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25 multiplier). *Id* at  
13 pages 4 and 5.

14 69. Additionally, Mr. Pearl has reviewed numerous declarations, depositions, and  
15 surveys of legal rates on a non-contingent basis for the year 2009 and found hourly rates of up to  
16 \$775.00, \$795.00, \$800.00, \$855.00, \$950.00, etc. (*Id.* at pp. 6-12). These are non-contingent rates  
17 where payment in full is expected promptly upon billing. (*Id.* at p. 13).

18 70. I believe PAGA Counsel are experienced litigators who specialize in employment  
19 law, with a substantial PAGA and wage and hour class action practice. Moreover, similar rates for  
20 the attorneys and staff of PAGA Counsel have been approved by various California Superior Courts.  
21 Given the skill and experience of PAGA Counsel in this case, and the excellent result achieved for  
22 the State and other Aggrieved Employees, the requested rates are reasonable.

23 **The Settlement Administrator Costs are Reasonable**

24 71. The Settlement Administrator's request for costs of up to \$6,550.00 is reasonable,  
25 given the tasks to be performed by the Settlement Administrator, including but not limited to (a)  
26 processing the data provided by Defendant to be used in calculating the Aggrieved Employees'  
27 payments; (b) preparing, printing and mailing to the 1,030 Aggrieved Employees the PAGA  
28 Payment Letter, as well as following up with reasonable skip tracing; (c) calculating and mailing

1 Aggrieved Employees' payments to Aggrieved Employees; (d) filing any required federal and state  
2 tax forms and related agency reporting; (e) filing any required reports with the Court; (f) establishing  
3 a settlement fund; (g) distributing the Gross Settlement Amount; (h) voiding uncashed or  
4 undeliverable checks to issue those funds to the State Controller's Office; (i) providing necessary  
5 reports and declaration; and (j) all other tasks described in the Settlement Agreement, as to which  
6 the Parties mutually agree. The Settlement Administrator's costs should be approved.

7 **The Requested Service Payment is Reasonable**

8 72. The proposed settlement would not have been made possible without Plaintiffs'  
9 effort and commitment. The requested payment is intended to recognize Plaintiffs' effort in bringing  
10 the Action, serving as private attorney general under PAGA, assisting PAGA Counsel with the  
11 investigation, litigation, and settlement, regularly conferring with Counsel on the status of the case,  
12 reviewing the Settlement Agreement, providing a declaration in support of this Motion, and  
13 providing a broader release to Defendant. For these reasons, the Court should approve the requested  
14 enhancement award of \$7,500.00 to Plaintiff Elizabeth Ruiz and Plaintiff Joseph W. Duran, each,  
15 for a total of \$15,000.00 to Plaintiffs.

16 **Submission to the LWDA**

17 73. On or about May 21, 2024, Bibiyan Law Group, P.C., submitted a copy of the  
18 Settlement Agreement to the California Labor and Workforce Development Agency ("LWDA")  
19 in compliance with Labor Code section 2699, subdivision (1)(2). A true and correct copy of each  
20 confirmation from the LWDA in connection with Plaintiff is attached hereto as Exhibit "6".

21  
22 I declare under penalty of perjury under the laws of the state of California that the  
23 foregoing is true and correct this 24<sup>th</sup> of May, 2024, at Los Angeles, California.

24  
25 

26 Brandon M. Chang  
27  
28

# **EXHIBIT 1**

**BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (SBN 287811)  
david@tomorrowlaw.com  
Jeffrey D. Klein (SBN 297296)  
jeff@tomorrowlaw.com  
Vedang J. Patel (SBN 328647)  
vedang@tomorrowlaw.com  
Brandon Chang (SBN 316197)  
brandon@tomorrowlaw.com  
1460 Westwood Boulevard  
Los Angeles, California 90024  
Tel: (310) 438-5555; Fax: (310) 300-1705

**HAINES LAW GROUP, APC**

Paul K. Haines (SBN 248226)  
phaines@haineslawgroup.com  
Sean M. Blakely (SBN 264384)  
sblakely@haineslawgroup.com  
Aden M. Khachadorian (SBN 346908)  
akhachadorian@haineslawgroup.com  
2155 Campus Drive, Suite 180  
El Segundo, California 90245  
Tel: (424) 292-2350  
Fax: (424) 292-2355

Attorneys for Plaintiffs, ELIZABETH RUIZ and JOSEPH W. DURAN,  
as aggrieved employees, and on behalf of all other aggrieved employees

*[Other Counsel listed on the next page.]*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ELIZABETH RUIZ, an individual, and on  
behalf of herself and all others similarly  
situated,

Plaintiff,

v.

EDELBROCK FOUNDRY, LLC, a  
California limited liability company;  
EMPLOYBRIDGE, LLC, a California  
limited liability company; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO.: 20STCV19057

[Assigned for all purpose to the Hon.  
David S. Cunningham in Dept. 11]

**REPRESENTATIVE ACTION**

**JOINT STIPULATION RE: PAGA  
SETTLEMENT**

Action Filed: May 18, 2020  
Trial Date: None Set

1 **ELKINS EMPLOYMENT LAW**

2 Cynthia Elkins (Cal. Bar. No. 125606)

3 *celkins@employer-law.com*

4 21860 Burbank Blvd., Suite 360 N. Bldg.

5 Woodland Hills, California 91367

6 Telephone: (818) 598-6771; Facsimile: (818) 598-6779

7 **SHEPPARD MULLIN RICHTER & HAMPTON LLP**

8 Greg S. Labate (Cal. Bar. No. 149918)

9 *glabate@sheppardmullin.com*

10 Bianca A. Valencia (Cal. Bar. No. 331104)

11 *bvalencia@sheppardmullin.com*

12 650 Town Center Dr., 10th Floor

13 Costa Mesa, California 92626

14 Tel: (714) 513-5100; Facsimile: (714) 13-5130

15 Attorneys for Defendant, EDELBROCK FOUNDRY, LLC

This Joint Stipulation re: PAGA Settlement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiffs Elizabeth Ruiz and Joseph W. Duran (“Plaintiffs”), individually and on behalf of the Aggrieved Employees, on one hand; and defendant Edelbrock Foundry, LLC (“Defendant”), on the other hand, in the lawsuits entitled *Elizabeth Ruiz v. Edelbrock Foundry, LLC, et al.*, filed in the Los Angeles County Superior Court, Case No. 20STCV19057, and *Joseph W. Duran v. Edelbrock Foundry, LLC*, filed in the Riverside County Superior Court, Case No. CVRI2304519. Plaintiffs and Defendant shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

## **1. DEFINITIONS**

1.1. “**Action**” or “**Actions**” means plaintiff Elizabeth Ruiz’s lawsuit alleging wage and hour violations against Defendant, captioned *Elizabeth Ruiz v. Edelbrock Foundry, LLC, et al.*, Case No. 20STCV19057, initiated on May 18, 2020, and pending in the Superior Court of the State of California, County of Los Angeles (the “Ruiz Action”); and plaintiff Joseph W. Duran’s lawsuit alleging wage and hour violations against Defendant, captioned *Joseph W. Duran v. Edelbrock Foundry, LLC*, Case No. CVRI2304519, initiated on August 28, 2023, and pending in the Superior Court of the State of California, County of Riverside (the “Duran Action”), to be consolidated with the Ruiz Action by filing a Second Amended Complaint in the Ruiz Action, as described in paragraph 2.3 below.

1.2. “**Administrator**” means ILYM Group, Inc., the neutral entity the Parties have appointed to administer the Settlement.

1.3. “**Administration Expenses Payment**” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “**Aggrieved Employee**” means all current and former non-exempt, hourly paid employees by Defendant, either directly or through any subsidiary, staffing agency, or

professional employer organization, who were employed by Defendant in California during the  
PAGA Period.

1.5. **“Aggrieved Employee Data”** means Aggrieved Employee identifying  
information in Defendant’s possession including the Aggrieved Employee’s name, last-known  
mailing address, and number of PAGA Pay Periods.

1.6. **“Aggrieved Employee Address Search”** means the Administrator’s  
investigation and search for current Aggrieved Employee mailing addresses using all reasonably  
available sources, methods and means including, but not limited to, the National Change of  
Address database, skip traces, and direct contact by the Administrator with Aggrieved  
Employees.

1.7. **“Court”** means the Superior Court of California, County of Los Angeles.

1.8. **“Defense Counsel”** means Cynthia Elkins of Elkins Employment Law and Greg  
S. Labate and Bianca A. Valencia of Sheppard Mullin Richter & Hampton LLP.

1.9. **“Effective Date”** means the date by when both of the following have occurred:  
(a) the Court enters a Judgment on its Order Approving the PAGA Settlement (b) the Judgment  
is final; and (c) no timely appeal has been filed within 60 days of when the Court enters a  
Judgment on its Order Approving the PAGA Settlement. In the event that a timely appeal is filed  
within 60 days of the Court entering a Judgement on its Order Approving the PAGA Settlement,  
the Effective Date shall occur when the appeal is adjudicated and no longer subject to further  
judicial review. At no time will Defendant have any obligation to fund the settlement, in whole  
or in part, until after this Effective Date.

1.10. **“Gross Settlement Amount”** means One Million Two Hundred Forty Thousand  
Dollars and Zero Cents (\$1,240,000.00) which is the total amount Defendant agrees to pay under  
the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be  
used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees  
Payment, PAGA Counsel Litigation Expenses Payment, Administrator’s Expenses Payment and  
PAGA Representatives Service Payments.

1.11. **“Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. **“Judgment”** means the judgment entered by the Court based upon the Final Approval.

1.13. **“LWDA”** means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. **“LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. **“Net Settlement Amount”** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Representatives Service Payments, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. **“PAGA Counsel”** means David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel of Bibiyan Law Group, P.C, and Paul K. Haines, and Sean M. Blakely of Haines Law Group, APC, the attorneys representing the Plaintiffs in the Action.

1.17. **“PAGA Counsel Fees Payment”** and **“PAGA Counsel Litigation Expenses Payment”** mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action, as described in paragraph 3.2.1 below.

1.18. **“PAGA Pay Period”** means any Pay Period during which an Aggrieved Employee was employed by Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1.19. **“PAGA Period”** means the period from May 15, 2019 through the date of approval of the PAGA Settlement.

1.20. **“PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. **“PAGA Notice”** or **“PAGA Notices”** means the May 15, 2020 and August 28, 2023 letters of plaintiffs Elizabeth Ruiz and Joseph W. Duran, respectively, to Defendant and the LWDA, providing notice pursuant to the Labor Code section 2699.3, subd. (a).

1.22. **“PAGA Penalties”** means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$191,279.17) and the 75% to LWDA (\$573,837.50) in settlement of PAGA claims.

1.23. **“PAGA Representatives Service Payments”** means the payments to Plaintiffs for providing services in support of the Action and providing a broader release.

1.24. **“Plaintiffs”** means Elizabeth Ruiz and Joseph W. Duran, the named plaintiffs in the Action.

1.25. **“Approval Order”** means the proposed Court Order Granting Approval of PAGA Settlement.

1.26. **“Released PAGA Claims”** means the claims being released by the Plaintiffs and PAGA Counsel and as described in Paragraph 5 below.

1.27. **“Released Parties”** means: Defendant and its former, present and future owners, parents, subsidiaries, affiliated companies, and all their current, former and future officers, directors, managers, executive-level employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives; EmployBridge, LLC; and Real Time Staffing Services, LLC.

1.28. **“Settlement”** means the disposition of the Action effected by this Agreement and the Judgment.

## 2. **RECITALS**

2.1. On May 18, 2020, plaintiff Elizabeth Ruiz commenced this Action by filing a wage and hour Class Action Complaint against Defendant. On October 2, 2020, plaintiff Elizabeth Ruiz filed a First Amended Complaint in her wage and hour class action, adding causes of action against Defendant seeking civil penalties under PAGA for the Labor Code violations alleged in the Ruiz PAGA Notice (the “Ruiz Action”).

1           2.2.    On August 28, 2023, plaintiff Joseph W. Duran filed a wage and hour Class Action  
2 Complaint against Defendant. On October 2, 2020, plaintiff Joseph W, Duran filed a First  
3 Amended Complaint in his wage and hour class action, adding causes of action against Defendant  
4 seeking civil penalties under PAGA for the Labor Code violations alleged in the Duran PAGA  
5 Notice (the “Duran Action”).

6           2.3.    On October 10, 2023, defendant EmployBridge, LLC, was dismissed from the  
7 Ruiz Action without prejudice.

8           2.4.    As part of the Settlement, the Parties agree to stipulate to plaintiff Elizabeth Ruiz’s  
9 filing of a Second Amended Complaint in the Ruiz Action, adding the PAGA claims brought in  
10 the Duran Action and plaintiff Joseph W. Duran as a named plaintiff, and plaintiff Joseph W.  
11 Duran’s filing of a request for dismissal of the Duran Action, thereby effectively consolidating  
12 the Duran Action with the Ruiz Action (the “Action”). The Second Amended Complaint in the  
13 Ruiz Action will be the operative complaint in the Action (the “Operative Complaint”).  
14 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with  
15 the laws identified in the Operative Complaint and denies any and all liability for the causes of  
16 action alleged.

17           2.5.    Pursuant to Labor Code section 2699.3, subd. (a), Plaintiffs gave timely written  
18 notices to Defendant and the LWDA by sending the PAGA Notices.

19           2.6.    On February 8, 2024, the parties participated in an all-day mediation presided over  
20 by Jeff Krivis, Esquire, which led to this Agreement to settle the Action.

21           2.7.    Prior to mediation, Plaintiffs obtained, through informal discovery: (1) time and  
22 payroll records for approximately 20% of the estimated 1,030 Aggrieved Employees’ during the  
23 PAGA Period; (2) Defendant’s applicable wage and hour policy documents; (3) all documents  
24 concerning Plaintiffs’ available to Defendant; and (4) data points, including the number of  
25 Aggrieved Employees, the number of pay periods, and the number of Aggrieved Employees who  
26 were separated from employment with Defendant during the PAGA Period.

27           2.8.    The Parties, PAGA Counsel and Defense Counsel represent that they are not  
28 aware of any other pending matter or action asserting claims that will be extinguished or affected

1 by the Settlement.

2 **3. MONETARY TERMS**

3 3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below,  
4 Defendant promises to pay \$1,240,000.00 and no more as the Gross Settlement Amount.  
5 Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in  
6 Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement  
7 Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of  
8 payment. None of the Gross Settlement Amount will revert to Defendant.

9 3.2. **Payments from the Gross Settlement Amount.** The Administrator will make  
10 and deduct the following payments from the Gross Settlement Amount, in the amounts specified  
11 by the Court in the Final Approval:

12 3.2.1. **To Plaintiffs:** PAGA Representative Service Payment of not more than  
13 \$7,500 to each plaintiff, for a total of \$15,000 to Plaintiffs (in addition to  
14 any Individual PAGA Payments they are entitled to receive as Aggrieved  
15 Employees). Defendant will not oppose Plaintiffs' request for PAGA  
16 Representatives Service Payments that do not exceed this amount. If the  
17 Court approves a PAGA Representative Service Payment less than the  
18 amount requested, the Administrator will allocate the remainder to the Net  
19 Settlement Amount. The Administrator will pay the PAGA Representative  
20 Service Payment using IRS Form 1099. Plaintiffs assume full  
21 responsibility and liability for any taxes owed on the PAGA  
22 Representative Service Payments.

23 3.2.2. **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than one  
24 third (1/3) of the Gross Settlement Amount, subject to escalation pursuant  
25 to section 8.1 of this Agreement and approval by the Court, which is  
26 currently estimated to be \$413,333.33 and PAGA Counsel Litigation  
27 Expenses Payment of not more than \$40,000.00. Defendant will not  
28 oppose requests for Court approval of these payments provided that they

1 do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an  
2 application or motion for PAGA Counsel Fees Payment and PAGA  
3 Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees  
4 Payment and/or a PAGA Counsel Litigation Expenses Payment less than  
5 the amounts requested, the Administrator will allocate the remainder to the  
6 Net Settlement Amount. Released Parties shall have no liability to PAGA  
7 Counsel or any other Plaintiffs' Counsel arising from any claim to any  
8 portion any PAGA Counsel Fees Payment and/or PAGA Counsel  
9 Litigation Expenses Payment. The Administrator will pay the PAGA  
10 Counsel Fees Payment and PAGA Counsel Expenses Payment using one  
11 or more IRS 1099 Forms. PAGA Counsel assume full responsibility and  
12 liability for taxes owed on the PAGA Counsel Fees Payment and the  
13 PAGA Counsel Litigation Expenses Payment and hold Defendant  
14 harmless, and indemnify Defendant, from any dispute or controversy  
15 regarding any division or sharing of any of these Payments. There will be  
16 no additional charge of any kind to Aggrieved Employees or request for  
17 additional consideration from Defendant for such work unless, Defendant  
18 materially breaches this Agreement, including any term regarding funding,  
19 and further efforts are necessary from PAGA Counsel to remedy said  
20 breach, including, without limitation, moving the Court to enforce the  
21 Agreement.

22 3.2.3. **To the Administrator:** An Administrator Expenses Payment not to  
23 exceed \$6,550.00 except for a showing of good cause and as approved by  
24 the Court. To the extent the Administration Expenses are less or the Court  
25 approves payment less than \$6,550.00, the Administrator will retain the  
26 remainder in the Net Settlement Amount.

27 3.2.4. **To the LWDA and Aggrieved Employees:** PAGA Penalties in the  
28 amount of no less than \$765,116.67 to be paid from the Gross Settlement

Amount, with 75% (\$573,837.50) allocated to the LWDA PAGA Payment and 25% (no less than \$191,279.17) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (no less than \$191,279.17) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING PAYMENTS**

4.1. **Aggrieved Employee Pay Periods.** Based on a review of its records as of mediation, Defendant estimates there are approximately 1,030 Aggrieved Employees who worked a total of 55,670 of PAGA Pay Periods.

4.2. **Aggrieved Employee Data.** Within 14 days of the Effective Date, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon

1 as reasonably feasible. Without any extension of the deadline by which Defendant must send the  
2 Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously  
3 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or  
4 omitted Aggrieved Employee Data.

5       **4.3. Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross  
6 Settlement Amount by transmitting the funds to the Administrator no later than thirty (30)  
7 calendar days after the Effective Date.

8       **4.4. Payments from the Gross Settlement Amount.** Within 14 days after Defendant  
9 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA  
10 Payments, the LWDA PAGA Payment, PAGA Representatives Services Payments,  
11 Administration Expenses Payment, PAGA Counsel Fees Payment and PAGA Counsel Litigation  
12 Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel  
13 Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

14               **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments  
15 and send them to the Aggrieved Employees via First Class U.S. Mail,  
16 postage prepaid. The face of each check shall prominently state the date  
17 (not less than 180 days after the date of mailing) when the check will be  
18 voided. The Administrator will cancel all checks not cashed by the void  
19 date. Before mailing any checks, the Settlement Administrator must update  
20 the recipients' mailing addresses using the National Change of Address  
21 Database.

22               **4.4.2.** The Administrator must conduct an Aggrieved Employee Address Search  
23 for all Aggrieved Employees whose checks are returned undelivered  
24 without USPS forwarding address. Within 7 days of receiving a returned  
25 check the Administrator must re-mail checks to the USPS forwarding  
26 address provided or to an address ascertained through the Aggrieved  
27 Employee Address Search. The Administrator need not take further steps  
28 to deliver checks to Aggrieved Employees whose re-mailed checks are

1 returned as undelivered. The Administrator shall promptly send a  
2 replacement check to any Aggrieved Employee whose original check was  
3 lost or misplaced, requested by the Aggrieved Employee prior to the void  
4 date.

5 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is  
6 uncashed and cancelled after the void date, the Administrator shall  
7 transmit the funds represented by such checks to the California Controller's  
8 Unclaimed Property Fund in the name of the Aggrieved Employee.

9 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant  
10 to confer any additional benefits or make any additional payments to the  
11 Aggrieved Employees (such as 401(k) contributions or bonuses) beyond  
12 those specified in this Agreement.

13 **5. RELEASES OF CLAIMS**

14 Effective on the date when Defendant fully funds the entire Gross Settlement Amount,  
15 Plaintiffs and PAGA Counsel will release claims against all Released Parties as follows:

16 5.1. **Plaintiffs' Release.** Plaintiffs and their respective former and present spouses,  
17 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,  
18 and assigns generally, release and discharge Released Parties from all claims, transactions, or  
19 occurrences that occurred during the PAGA Period , including, but not limited to: (a) all claims  
20 that were, or reasonably could have been, alleged, based on the facts contained in the Operative  
21 Complaint and the PAGA Notice ("Plaintiffs' Release"). Plaintiffs' Release does not extend to  
22 any claims or actions to enforce this Agreement, or to any claims for vested benefits,  
23 unemployment benefits, disability benefits, social security benefits, workers' compensation  
24 benefits, wrongful termination, violation of the Fair Employment and Housing Act,  
25 discrimination, harassment, or retaliation related claims that arose at any time, or claims based  
26 on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover  
27 facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes  
28

1 to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all  
2 respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

3 **5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.**

4 For purposes of Plaintiffs' Release, Plaintiffs expressly waive and  
5 relinquishes the provisions, rights, and benefits, if any, of section 1542 of  
6 the California Civil Code, which reads:

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

11 5.1.1.1. However, the foregoing release, including waiver of 1542,  
12 expressly excludes Plaintiffs' claims for wrongful termination,  
13 violation of the Fair Employment and Housing Act,  
14 discrimination, harassment, and retaliation related claims.

15 **5.2. Release by Aggrieved Employees:** All Aggrieved Employees are deemed to  
16 release, on behalf of themselves and their respective former and present representatives, agents,  
17 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims,  
18 rights, demands, liabilities and causes of action that arose during the PAGA Period for civil  
19 penalties under PAGA that were alleged, or reasonably could have been alleged, based on the  
20 PAGA Period facts stated in the Operative Complaint and the PAGA Notices, whether or not  
21 specifically delineated as a claim or cause of action, including, claims for PAGA penalties  
22 relating to Defendant's alleged failure to pay overtime compensation, failure to provide minimum  
23 wages or pay for all hours worked, failure to provide meal and/or rest periods, failure to pay meal  
24 or rest period penalties, failure to reimburse all business-related expenses, failure to provide and  
25 maintain accurate, itemized wage statements, and claims arising under or relating to the alleged  
26 violations of California Labor Code Sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5,  
27 206, 210, 216, 218, 218.5, 218.6, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8,  
28 227.3, 246, 256, 432, 450 510, 511 512, 516, 550, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2,

1 1197, 1197.1, 1198, 1198.1, 1198.5, 2698 *et seq.* 2699 *et seq.*, 2800, 2802, and 2810.5, and  
2 applicable California Industrial Welfare Commission (“IWC”) Wage Orders, including but not  
3 limited to IWC Wage Order No. 4 (Cal. Code Regs., tit. 8, § 11040 (“PAGA Released Claims”),  
4 against the Released Parties. Upon approval of the Settlement, Plaintiffs and the Aggrieved  
5 Employees will be forever barred from pursuing against the Released Parties any and all claims  
6 for civil penalties under PAGA based upon alleged violations of the California Labor Code,  
7 Wage Orders, regulations, and/or other provisions of the law alleged or that could have been  
8 alleged to have been violated in, or reasonably related to, the Action.

9 5.3. **Release by PAGA Counsel:** PAGA Counsel release, on behalf of their present  
10 and former attorneys, employees, agents, successors and assigns, the Released Parties from all  
11 claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA  
12 Period facts stated in the Operative Complaint and the PAGA Notice, except as described herein.

13 **6. MOTION OR APPLICATION FOR APPROVAL OF**  
14 **SETTLEMENT**

15 The Parties agree to Plaintiffs’ filing of a motion for approval of this Settlement.

16 6.1. **Plaintiffs’ Responsibilities.** Plaintiffs will prepare and deliver to Defense  
17 Counsel all documents necessary for obtaining approval of this Settlement under Labor Code  
18 Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA  
19 Settlement; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for  
20 administering the Settlement and attesting to its willingness to serve; competency; operative  
21 procedures for protecting the security of Aggrieved Employee Data; amounts of insurance  
22 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any  
23 actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature  
24 and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii)  
25 a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA  
26 of all necessary PAGA documents (initial notices of violations (Labor Code section 2699.3, subd.  
27 (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code  
28 section 2699, subd. (l)(2))); and (iv) all facts relevant to any actual or potential conflict of interest

1 with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiffs and PAGA  
2 Counsel shall aver that they are not aware of any other pending matter or action asserting claims  
3 that will be extinguished or adversely affected by the Settlement.

4       **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel is responsible for  
5 expeditiously finalizing and filing the motion for approval of this Settlement after the full  
6 execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion  
7 and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for  
8 delivering the Court's Preliminary Approval to the Administrator.

9       **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed  
10 application or motion for approval of this Settlement and/or the supporting declarations and  
11 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of  
12 the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.  
13 If the Court does not grant the motion for approval of this Settlement or conditions its approval  
14 on any material change to this Agreement, PAGA Counsel and Defense Counsel will  
15 expeditiously work together on behalf of the Parties by meeting in person or by telephone, and  
16 in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## 17               **7. SETTLEMENT ADMINISTRATION**

18       **7.1. Selection of Administrator.** The Parties have appointed ILYM Group, Inc.  
19 ("ILYM") to serve as the Administrator and verified that, as a condition of appointment, ILYM  
20 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this  
21 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel  
22 represent that they have no interest or relationship, financial or otherwise, with the Administrator  
23 other than a professional relationship arising out of prior experiences administering settlements.

24       **7.2. Employer Identification Number.** The Administrator shall have and use its own  
25 Employer Identification Number for purpose of calculating payroll tax withholdings and  
26 providing reports state and federal tax authorities.

1           7.3.   **Qualified Settlement Fund.** The Administrator shall establish a settlement fund  
2 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury  
3 Regulation section 468B-1.

4           7.4.   **Administrator Duties.** The Administrator has a duty to perform or observe all  
5 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

6                   **8.    AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR**  
7                   **CLAUSE**

8           Based on its records, Defendant estimates that, as of mediation, there are approximately  
9 1,030 Aggrieved Employees who worked 55,670 Pay Periods during the PAGA Period.

10          8.1.   **Escalator Clause.** Defendant represents that there are no more than 55,670 Pay  
11 Periods worked by Aggrieved Employees during the PAGA Period. In the event the number of  
12 Pay Periods worked during the PAGA Period increases by more than 10% or 5,567 Pay Periods  
13 (i.e., if there are more than 61,237 Pay Periods worked during the PAGA Period), Defendant may  
14 elect either to: (1) have the Gross Settlement Amount be increased by the number of Pay Periods  
15 greater than 61,237 multiplied by the Pay Period Value; or (2) have the PAGA Period end on the  
16 date on which the number of Pay Periods reaches 61,237. The Pay Period Value shall be  
17 calculated by dividing the originally agreed-upon Gross Settlement Amount (\$1,240,000.00) by  
18 55,670. The Parties agree that the Pay Period Value and the Settlement amounts to \$22.27  
19 (\$1,240,000.00 Gross Settlement Amount / 55,670 Pay Periods). Thus, for example, should there  
20 be 62,000 Pay Periods worked by Aggrieved Employees in the PAGA Period and Defendant  
21 elects to proceed with the first of these two choices, then the Gross Settlement Amount shall be  
22 increased by \$16,992.01 ((62,000 Pay Periods – 61,237 Pay Periods) x \$22.27/Pay Period).

23                   **9.    CONTINUING JURISDICTION OF THE COURT**

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

1           **9.1. Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms  
2 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and  
3 PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all  
4 rights to appeal from the Judgment, including all rights to post-judgment and appellate  
5 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary  
6 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such  
7 motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to  
8 perform under this Agreement will be suspended until such time as the appeal is finally resolved  
9 and the Judgment becomes final, except as to matters that do not affect the amount of the Net  
10 Settlement Amount.

11                           **10. ADDITIONAL PROVISIONS**

12           **10.1. No Admission of Liability or Representative Manageability for Other**  
13 **Purposes.** This Agreement represents a compromise and settlement of highly disputed claims.  
14 Nothing in this Agreement is intended or should be construed as an admission by Defendant that  
15 any of the allegations in the Operative Complaint have merit or that Defendant has any liability  
16 for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that  
17 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is  
18 for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,  
19 Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the  
20 right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to  
21 settle the Action will have no bearing on, and will not be admissible in connection with, any  
22 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

23           **10.2. Integrated Agreement.** Upon execution by all Parties and their counsel, this  
24 Agreement together with its attached exhibits shall constitute the entire agreement between the  
25 Parties relating to the Settlement, superseding any and all oral representations, warranties,  
26 covenants, or inducements made to or by any Party.

27           **10.3. Attorney Authorization.** PAGA Counsel and Defense Counsel separately  
28 warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take

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

4       **10.4. Cooperation.** The Parties and their counsel will cooperate with each other and  
5 use their best efforts, in good faith, to implement the Settlement by, among other things,  
6 modifying the Settlement Agreement, submitting supplemental evidence and supplementing  
7 points and authorities as requested by the Court. In the event the Parties are unable to agree upon  
8 the form or content of any document necessary to implement the Settlement, or on any  
9 modification of the Agreement that may become necessary to implement the Settlement, the  
10 Parties will seek the assistance of a mediator and/or the Court for resolution.

11       **10.5. No Prior Assignments.** The Parties separately represent and warrant that they  
12 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,  
13 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
14 action, or right released and discharged by the Party in this Settlement.

15       **10.6. No Tax Advice.** Neither Plaintiffs, PAGA Counsel, Defendant nor Defense  
16 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this  
17 Settlement be relied upon as such within the meaning of United States Treasury Department  
18 Circular 230 (31 CFR Part 10, as amended) or otherwise.

19       **10.7. Modification of Agreement.** This Agreement, and all parts of it, may be  
20 amended, modified, changed, or waived only by an express written instrument signed by all  
21 Parties or their representatives, and approved by the Court.

22       **10.8. Agreement Binding on Successors.** This Agreement will be binding upon, and  
23 inure to the benefit of, the successors of each of the Parties.

24       **10.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits will  
25 be governed by and interpreted according to the internal laws of the state of California, without  
26 regard to conflict of law principles.

1           **10.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and  
2 preparation of this Agreement. This Agreement will not be construed against any Party on the  
3 basis that the Party was the drafter or participated in the drafting.

4           **10.11. Confidentiality.** To the extent permitted by law, all agreements made, and orders  
5 entered during Action and in this Agreement relating to the confidentiality of information shall  
6 survive the execution of this Agreement.

7           **10.12. Use of Aggrieved Employee Data.** Information provided to PAGA Counsel  
8 pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to  
9 PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or  
10 in connection with the Settlement, may be used only with respect to this Settlement, and no other  
11 purpose, and may not be used in any way that violates any existing contractual agreement, statute,  
12 or rule of court.

13           **10.13. Headings.** The descriptive heading of any section or paragraph of this Agreement  
14 is inserted for convenience of reference only and does not constitute a part of this Agreement.

15           **10.14. Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement  
16 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a  
17 weekend or federal legal holiday, such date or deadline shall be on the first business day  
18 thereafter.

19           **10.15. No Credit Toward Benefits Plans.** Payments to Aggrieved Employees as  
20 referenced herein will not be utilized to calculate any additional benefits under any benefit plans  
21 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing  
22 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO  
23 plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement  
24 Agreement will not affect any rights, contributions, or amounts to which any Aggrieved  
25 Employee may be entitled under any benefit plans.

26           **10.16 Nullification of Settlement Agreement.** In the event that: (i) the Court does not  
27 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any  
28

1 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,  
2 will be null and void, and the Parties will be returned to their original respective positions.

3       **10.17 Acknowledgement that the Settlement is Fair and Reasonable.** The Parties  
4 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action  
5 and have arrived at this Settlement after arm's-length negotiations by experienced counsel before  
6 Jeffrey Krivis, an experienced and well-respected mediator. The Parties further acknowledge that  
7 they are each represented by competent counsel and that they have had an opportunity to consult  
8 with their counsel regarding the fairness and reasonableness of this Settlement.

9       **10.18 Waiver.** No waiver of any condition or covenant contained in this Settlement  
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered  
11 to imply or constitute a further waiver by such party of the same or any other condition, covenant,  
12 right or remedy.

13       **10.19 Enforcement Action.** In the event that one or more of the Parties institutes any  
14 legal action or other proceeding against any other Party or Parties to enforce the provisions of  
15 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party  
16 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'  
17 fees and costs, including expert witness fees incurred in connection with any enforcement  
18 actions.

19       **10.20 Binding Agreement.** The Parties warrant that they understand and have full  
20 authority to enter into this Settlement, and further intend that this Settlement Agreement will be  
21 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to  
22 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality  
23 provisions that otherwise might apply under federal or state law.

24       **10.21. Notice.** All notices, demands or other communications between the Parties in  
25 connection with this Agreement will be in writing and deemed to have been duly given as of the  
26 third business day after mailing by United States mail, or the day sent by email or messenger,  
27 addressed as follows:  
28

To Plaintiff:

**BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (SBN 287811)

*david@tomorrowlaw.com*

Jeffrey D. Klein (SBN 297296)

*jeff@tomorrowlaw.com*

Vedang J. Patel (SBN 328647)

*vedang@tomorrowlaw.com*

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

**HAINES LAW GROUP, APC**

Paul K. Haines (SBN 248226)

*phaines@haineslawgroup.com*

Sean M. Blakely (SBN 264384)

*sblakely@haineslawgroup.com*

Aden M. Khachadorian (SBN 346908)

*akhachadorian@haineslawgroup.com*

2155 Campus Drive, Suite 180

El Segundo, California 90245

Tel: (424) 292-2350

Fax: (424) 292-2355

To Defendant:

**ELKINS EMPLOYMENT LAW**

Cynthia Elkins (Cal. Bar. No. 125606)

*celkins@employer-law.com*

21860 Burbank Blvd., Suite 360 N. Bldg.

Woodland Hills, California 91367

Telephone: (818) 598-6771; Facsimile: (818) 598-6779

**SHEPPARD MULLIN RICHTER & HAMPTON LLP**

Greg S. Labate (Cal. Bar. No. 149918)

*glabate@sheppardmullin.com*

Bianca A. Valencia (Cal. Bar. No. 331104)

*bvalencia@sheppardmullin.com*

650 Town Center Dr., 10th Floor

Costa Mesa, California 92626

Tel: (714) 513-5100; Facsimile: (714) 13-5130

10.22. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between

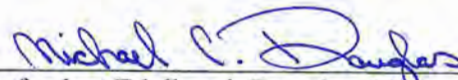
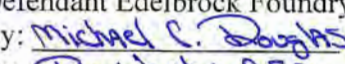
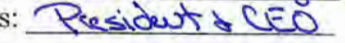
1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to  
2 prove the existence and contents of this Agreement.

3 10.23. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement  
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the  
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement  
7 process.

8 10.24. **Severability.** In the event that one or more of the provisions contained in this  
9 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such  
10 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's  
11 Counsel and PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually  
12 elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been  
13 included in this Agreement.

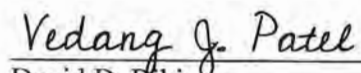
14  
15 **IT IS SO AGREED:**

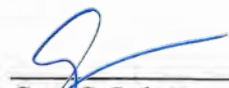
16  
17   
18 Elizabeth Ruiz (May 2, 2024 17:10 PDT)  
19 Plaintiff Elizabeth Ruiz

20  
21   
22 Defendant Edelbrock Foundry, LLC  
23 By:   
24 Its:  President & CEO

25   
26 Joseph Duran (May 16, 2024 15:45 PDT)  
27 Plaintiff Joseph W. Duran

28  
/s/ Cynthia Elkins  
Cynthia Elkins  
Counsel for Defendant Edelbrock Foundry,  
LLC

29   
30 David D. Bibiyan  
31 Vedang J. Patel  
32 Brandon Chang  
33 Counsel for Plaintiffs Elizabeth Ruiz and  
34 Joseph W. Duran

35   
36 Greg S. Labate  
37 Bianca A. Valencia  
38 Co-Counsel for Defendant Edelbrock  
39 Foundry, LLC



---

Paul K. Haines  
Sean M. Blakely  
Aden M. Khachadoorian  
Co-Counsel for Plaintiffs Elizabeth Ruiz and  
Joseph W. Duran

# **EXHIBIT 2**

## **NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION**

***Elizabeth Ruiz, et al. v. Edelbrock Foundry, LLC, et al.***

**Superior Court of the State of California, County of Los Angeles Case No. 20STCV19057**

[Eligible Employee]

[Address]

You are receiving this notice in connection with a Court-approved settlement (the “Settlement”) in the lawsuit entitled *Elizabeth Ruiz, et al. v. Edelbrock Foundry, LLC, et al.*, filed in Superior Court of the State of California for the County of Los Angeles, Case No. 20STCV19057 (the “Action”), brought on a representative basis under the Labor Code Private Attorneys General Act of 2004 codified at California Labor Code section 2698, *et seq.* (“PAGA”). The plaintiffs in the lawsuit are Elizabeth Ruiz and Joseph W. Duran (collectively, “Plaintiffs”) and the defendant is Edelbrock Foundry, LLC (“Defendant”). The Settlement provides for recovery of civil penalties for alleged violations of the California Labor Code on behalf of all Eligible Employees, defined as all current and former non-exempt, hourly paid employees of Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, who were employed by Defendant in California during the period from May 15, 2019 through the date of approval of the PAGA Settlement (“PAGA Period”). The PAGA statute provides that 75% of any recovery pursuant to the Settlement be paid to the State of California and 25% of any recovery be paid to the “aggrieved employee” group, which in this case is the group of Eligible Employees.

Defendant denies all claims and allegations in the Action, denies that it owes any penalties and asserts that it has fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the Action. By settling the lawsuit, Defendant is not admitting that it has done anything wrong.

The Settlement resolves all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under PAGA that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notices, whether or not specifically delineated as a claim or cause of action, including, claims for PAGA penalties relating to Defendant’s alleged failure to pay overtime compensation, failure to provide minimum wages or pay for all hours worked, failure to provide meal and/or rest periods, failure to pay meal or rest period penalties, failure to reimburse all business-related expenses, failure to provide and maintain accurate, itemized wage statements, and claims arising under or relating to the alleged violations of California Labor Code Sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 246, 256, 432, 450 510, 511 512, 516, 550, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.1, 1198.5, 2698 *et seq.* 2699 *et seq.*, 2800, 2802, and 2810.5, and applicable California Industrial Welfare Commission (“IWC”) Wage Orders, including but not limited to IWC Wage Order No. 4 (Cal. Code Regs., tit. 8, § 11040 (“PAGA Released Claims”), against the Released Parties. Upon approval of the Settlement, Plaintiffs and the Aggrieved Employees will be forever barred from pursuing against the Released Parties any and all claims for civil penalties under PAGA based upon alleged violations of the California Labor Code, Wage Orders, regulations, and/or other provisions of the law alleged or that could have been alleged to have been violated in, or reasonably related to, the Action.

The “Released Parties” means Defendant and its former, present and future owners, parents, subsidiaries, affiliated companies, and all their current, former and future officers, directors, managers, executive-level employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives; EmployBridge, LLC; and Real Time Staffing Services, LLC.

By an Order dated [Approval Date], the Superior Court of California approved the Settlement of the Released Claims. By approving the Settlement, the Court did not decide in favor of either Plaintiffs or Defendant.

According to Defendant's records, you are an Eligible Employee and are therefore entitled to a share of the Settlement based upon the Court-approved allocation. Enclosed with this Notice is your settlement check for your share. The settlement check shall remain valid for one hundred eighty (180) days. Thereafter, the settlement check shall be canceled. If your settlement check remains uncashed and is cancelled after the void date, the Administrator shall transmit the fund represented by such check to the California Controller's Unclaimed Property Fund in your name.

Please Note: One hundred percent (100%) of the payment you are receiving in connection with the Settlement will be considered penalties reported on IRS Form 1099, and may be subject to local, state or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your settlement payment. Neither Plaintiffs nor Defendant has made any representations or warranties regarding the taxation of your settlement payment. Nothing in this Notice or any other communication shall constitute or be construed or relied upon as tax advice.

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

**[SETTLEMENT ADMINISTRATOR]**

**[ADDRESS]**

**[PHONE NUMBER]**

**[WEBSITE]**

# **EXHIBIT 3**



**BIBIYAN** LAW GROUP, P.C.

8484 Wilshire Blvd., Suite 500  
Beverly Hills, California, 90211  
310.438.5555 T  
310.300.1705 F  
[www.employmentlawyerla.com](http://www.employmentlawyerla.com)

May 15, 2020

**PAGA NOTICE FILED ELECTRONICALLY**  
**PAGA FILING FEE BY U.S. MAIL**

Department of Industrial Relations  
Accounting Unit  
455 Golden Gate Avenue, 10th Floor  
San Francisco, California 94102  
<https://dir.tfaforms.net/128>

Re: Notice Letter of Elizabeth Ruiz on Behalf of Herself and Aggrieved  
Employees Under California Labor section 2699.3

Employer: Edelbrock Foundry, LLC  
1320 Buena Vista Street  
San Jacinto, California 92583

Employbridge, LLC  
301 Mentro Drive, Suite 210  
Santa Barbara, California 93111

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee made payable to the California Labor and Workforce Development Agency for the PAGA Notice was mailed along with a copy of this PAGA Notice to the Department of Industrial Relations at the above-listed mailing address.

This PAGA Notice concerns Elizabeth Ruiz's ("Ms. Ruiz") employment with her former employers Edelbrock Foundry, LLC ("Edelbrock") and Employbridge, LLC ("Employbridge" and collectively, "Employers"). Ms. Ruiz was a non-exempt employee of Employers, with duties that included, but were not limited to, cleaning manufactured aluminum and metal parts, from approximately January of 2018 through approximately the end of May of 2019. Other aggrieved employees that Ms. Ruiz seeks to represent are all other non-exempt employees of Employers. In return, Employers paid (or purported to pay) Ms. Ruiz and other aggrieved employees an hourly wage for their services.

Ms. Ruiz and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Ms. Ruiz is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of, on occasion, requiring their employees to work more than eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result

of, without limitation, at times, failing to accurately track and/or pay for all minutes actually worked, including but not limited to, minutes spent donning and doffing equipment; paying overtime hours at the regular rate of pay; and detrimentally rounding and/or editing of employee time entries, to the detriment of Ms. Ruiz and other aggrieved employees. Consequently, Ms. Ruiz is informed and believes, and based thereon alleges, that Employers violated Labor Code sections 510, 1194, and applicable Wage Orders based on their practice of, at times, providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Ms. Ruiz and other aggrieved employees to damages. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Ms. Ruiz is informed and believes, and based thereon alleges, that Employers had and have a practice or policy of, at times failing to compensate Ms. Ruiz and other aggrieved employees with minimum wages for all minutes worked or otherwise under Employers' control as a result of, without limitation, at times, failing to accurately track and/or pay for all minutes actually worked, including but not limited to, detrimental rounding and/or editing of employee time entries, minutes spent waiting in lines to clock in and donning and doffing equipment. As such, Ms. Ruiz is informed and believes, and based thereon alleges, that Employers violated, without limitation, Labor Code section 1197 and applicable Wage Orders based on their continued failure to pay minimum wages for all minutes worked, entitling Ms. Ruiz and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employers would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Ms. Ruiz is informed and believes, and based thereon alleges, that Employers had and have a policy or practice of, at times compelling their employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation, by interrupting meal periods, not providing timely meal periods, failing to provide first and second meal periods all together, and/or providing short meal periods. Consequently, Ms. Ruiz is informed and believes, and based thereon alleges, that Employers violated Labor Code section 512, entitling Ms. Ruiz and other aggrieved employees to premium payments under Labor Code section 226.7. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Ms. Ruiz is informed and believes, and based thereon alleges, that Employers maintain policies or practices of, on occasion, compelling their non-exempt employees, including, without limitation, Ms. Ruiz, to work over four-hour periods (or major fractions thereof) without authorizing and permitting their employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties. As such, Ms. Ruiz is informed and believes, and based thereon alleges, that she and other aggrieved employees

are entitled to relief under, without limitation, Labor Code section 226.7. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

In addition to the above, Ms. Ruiz is informed and believes, and based thereon alleges that Employers at times failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Ms. Ruiz and other aggrieved employees to calculate their unpaid wages and/or premium payments. This would entitle Ms. Ruiz and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

As a result of, among other things, Employers' herein-described policy or practice of at times failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods or compensation in lieu thereof; and provide rest periods or compensation in lieu thereof, as described above, Ms. Ruiz is informed and believes, and based thereon alleges, that Employers also intentionally failed and continue to fail to, at times, furnish employees, including, without limitation, Ms. Ruiz, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the name and address of the legal entity that is the employer; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employers intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Ms. Ruiz and other aggrieved employees and the rates of pay at which they were or should have been paid, thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employers would have failed to comply with Labor Code section 226, subdivision (a), Ms. Ruiz and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employers would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Ms. Ruiz is informed and believes, and based thereon alleges, that Employers also failed and refused, and continue to fail and refuse, to on occasion timely pay compensation to Ms. Ruiz and other terminated or resigned employees, including but not limited to, all wages owed as a result of Employers' practice or policy of failing to pay, among other wages, overtime wages, minimum wages, and premium wages. Consequently, Employers would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

///

Ms. Ruiz is informed and believes, and based thereon alleges that Employers also failed and refused, and continue to fail and refuse, to reimburse employees, including, without limitation, Ms. Ruiz and other aggrieved employees, with their costs incurred in purchasing required uniforms, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employers, as required by Labor Code 2802, and other statutory and common law offenses. As a result, Employers are liable to reimburse Ms. Ruiz and aggrieved employees for the cost incurred in purchasing uniforms. In addition, Employers would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Ms. Ruiz is further informed and believes, and based thereon alleges that Employers have on occasion, failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Ms. Ruiz and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employers, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employers under Labor Code section 2810.5. Ms. Ruiz is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employers to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Among other relief, employees may collect from Employers in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Ms. Ruiz is further informed and believes, and based thereon alleges, that Employers at times, have or had a policy or practice of failing to provide Ms. Ruiz and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California law (including, without limitation, Labor Code section 246, *et seq.*), and also did not permit its use upon request as contemplated under California law. As such, Employers would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

Ms. Ruiz is informed and believes, and based thereon alleges that Employers had and have a policy or practice of, on occasion, failing to pay employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Ms. Ruiz is informed and believes and based thereon alleges that Employers did not and do not pay their employees in accordance with Labor Code Section 204. As such, Ms. Ruiz is

California Labor and Workforce Development Agency  
May 15, 2020  
Page 5

informed and believes, and based thereon alleges that Employers violated Labor Code section 204. Employers would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Ms. Ruiz may immediately thereafter file a civil complaint against Employers to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.



David D Bibiyan

cc: Edelbrock Foundry, LLC (via U.S. Certified Mail, Return Receipt Requested)  
Employbridge, LLC (via U.S. Certified Mail, Return Receipt Requested)

# **EXHIBIT 4**



advertise  
on law.com  
click here

# LAW.

First in Legal News and Information

LAWCATA  
COM

**Stand out  
from the crowd!**

**LAW.**

First in Legal News and Information

LAWCATA  
COM

## A Firm-by-Firm Sampling of Billing Rates Nationwide

The *National Law Journal* asked the respondents to its 2002 survey of the nation's 250 largest law firms to provide hourly billing rate information for partners and associates firmwide. The firms that supplied information -- including some firms that are not in the NLJ 250 -- are listed below in alphabetical order. The number after a firm's name indicates the total number of attorneys at that firm. The city listed below the name of a firm is the location of the firm's principal office or largest office.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

### A B C D

**Akin, Gump, Strauss, Hauer & Feld (1,017)**  
(Washington, D.C.)  
Partners \$350-\$600  
Associates \$170-\$330

**Alston & Bird (674)**  
(Atlanta)  
Partners \$330-\$575  
Associates \$170-\$300

**Althelmer & Gray (361)**  
(Chicago)  
Partners \$220-\$525  
Associates \$115-\$360

**Andrews & Kurth (375)**  
(Houston)  
Partners \$310-\$595  
Associates \$170-\$400

**Arent Fox Kintner Plotkin & Kahn (249)**  
(Washington, D.C.)  
Partners \$215-\$560  
Associates \$165-\$360

**Armstrong Teasdale (230)**  
(St. Louis)  
Partners \$210-\$310  
Associates \$105-\$240

**Artor & Hadden (273)**  
(Cleveland)  
Partners \$215-\$450  
Associates \$150-\$285

**Baker, Donelson, Bearman & Caldwell (219)**  
(Memphis, Tenn.)  
Partners \$175-\$480  
Associates \$110-\$275

**Ballard Spahr Andrews & Ingersoll (441)**  
(Philadelphia)

**Kelley Drye & Warren (358)**  
(New York)  
Partners \$300-\$590  
Associates \$180-\$375

**Kramer Levin Nattalis & Frankel (285)**  
(New York)  
Partners \$440-\$625  
Associates \$210-\$440

### L M N

**Lang Powell Spears Lubetkin (175)**  
(Seattle)  
Partners \$225-\$380  
Associates \$170-\$260

**Lewis, Rice & Fingersh (170)**  
(St. Louis)  
Partners \$360-\$355  
Associates \$120-\$270

**Littler Mendelson (395)**  
(San Francisco)  
Partners \$220-\$440  
Associates \$135-\$350

**Locke Liden & Sapp (408)**  
(Houston)  
Partners \$300-\$595  
Associates \$150-\$340

**Loeb & Loeb (175)**  
(Los Angeles)  
Partners \$350-\$650  
Associates \$185-\$325

**Lord, Bissell & Brook (325)**  
(Chicago)  
Partners \$255-\$510  
Associates \$140-\$285

**Lowenstein Sandler (193)**  
(Roseland, N.J.)

04/15/11

Partners \$240-\$525  
Associates \$145-\$300

Bell, Boyd & Lloyd (226)  
(Chicago)  
Partners \$250-\$550  
Associates \$200-\$275

Blackwell Sanders Peper Martin (301)  
(Kansas City, Mo.)  
Partners \$165-\$410  
Associates \$110-\$210

Blank Rome Comisky & McCawley (398)  
(Philadelphia)  
Partners \$285-\$565  
Associates \$175-\$360

Boutt, Cummings, Connors & Barry (89)  
(Nashville, Tenn.)  
Partners \$185-\$375  
Associates \$135-\$235

Bracewell & Patterson (362)  
(Houston)  
Partners \$210-\$600  
Associates \$125-\$325

Bradley, Arant, Rose & White (181)  
(Birmingham, Ala.)  
Partners \$205-\$365  
Associates \$150-\$275

Brinko Hofer Gilson & Lane (138)  
(Chicago)  
Partners \$295-\$500  
Associates \$165-\$290

Bryan Cave (841)  
(St. Louis)  
Partners \$225-\$720  
Associates \$135-\$410

Buchalter, Nemer, Fields & Younger (137)  
(Los Angeles)  
Partners \$310-\$450  
Associates \$160-\$350

Buchanan Ingersoll (302)  
(Pittsburgh)  
Partners \$225-\$720  
Associates \$135-\$360

Buckingham, Doolittle & Burroughs (135)  
(Akron, Ohio)  
Partners \$205-\$360  
Associates \$135-\$260

Burns, Peape, Swicker & Mathis (37)  
(Alexandria, Va.)  
Partners \$300-\$550  
Associates \$175-\$300

Burr & Forman (169)  
(Birmingham, Ala.)  
Partners \$205-\$365  
Associates \$140-\$225

Butter Long (204)  
(Detroit)  
Partners \$205-\$380  
Associates \$135-\$215

Partners \$285-\$525  
Associates \$140-\$295

Lyco, Forward, Hamilton & Scripps (202)  
(San Diego)  
Partners \$310-\$500  
Associates \$150-\$300

Manatt, Phelps & Phillips (244)  
(Los Angeles)  
Partners \$375-\$600  
Associates \$200-\$355

Marshall, Dennehey, Warner, Coleman & Goggin (288)  
(Philadelphia)  
Partners \$130-\$255  
Associates \$115-\$180

Mathews and Branscomb (51)  
(San Antonio)  
Partners \$175-\$325  
Associates \$125-\$195

McCarter & English (270)  
(Newark, N.J.)  
Partners \$250-\$495  
Associates \$140-\$285

McGuireWoods (558)  
(Richmond, Va.)  
Partners \$210-\$575  
Associates \$85-\$325

Michael Best & Friedrich (349)  
(Milwaukee)  
Partners \$180-\$425  
Associates \$120-\$240

Miller, Canfield, Paddock and Stone (301)  
(Detroit)  
Partners \$220-\$475  
Associates \$125-\$230

Miller & Chevalier (123)  
(Washington, D.C.)  
Partners \$320-\$650  
Associates \$175-\$340

Miller Nash (140)  
(Portland, Ore.)  
Partners \$210-\$350  
Associates \$125-\$225

Neisen Mullins Rife & Scarborough (282)  
(Columbia, S.C.)  
Partners \$200-\$390  
Associates \$145-\$270

Nutter, McClennen & Fish (170)  
(Boston)  
Partners \$330-\$480  
Associates \$175-\$300

#### O - R

Obermayer Rebmann Maxwell & Hippel (110)  
(Philadelphia)  
Partners \$300-\$475  
Associates \$145-\$325

Ogletree, Deakins, Nash, Smoak & Stewart (162)

Jenkins & Gilchrist (373)  
(Dallas)  
Partners \$275-\$525  
Associates \$165-\$380

Jenner & Block (390)  
(Chicago)  
Partners \$350-\$625  
Associates \$185-\$350

Jones, Walker, Waechter, Poltavant, Carrère &  
Denègre (217)  
(New Orleans)  
Partners \$170-\$335  
Associates \$110-\$185

Womble Carlyle Sandridge & Rice (437)  
(Winston-Salem, N.C.)  
Partners \$190-\$500  
Associates \$125-\$265

Wyatt, Tarrant & Combs (201)  
(Louisville, Ky.)  
Partners \$150-\$310  
Associates \$100-\$190

(The National Law Journal, December 2002)

---

• [About law.com](#)

• [Privacy Policy](#)

• [Terms & Conditions](#)

Copyright 2003 ALM Properties, Inc. All rights reserved.

11/19/03

# **EXHIBIT 5**

1 JOSEPH E. JARAMILLO, CA Bar No. 178566  
jjaramillo@gdblegal.com  
2 ROBERTA L. STEELE, CA Bar No. 188198  
rsteele@gdblegal.com  
3 GOLDSTEIN, DEMCHAK, BALLER,  
BORGEN & DARDARIAN  
4 300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
5 (510) 763-9800  
(510) 835-1417 (fax)

6 GRAHAM S.P. HOLLIS, CA Bar No. 120577  
ghollis@gracehollis.com  
7 MARTA MANUS CA Bar No. 260132  
mmanus@gracehollis.com  
8 GRACEHOLLIS LLP  
9 3555 Fifth Avenue  
San Diego, CA 92103  
10 (619) 692-0800  
(619) 692-0822 (fax)

11 Attorneys for Plaintiffs ROSA CANTU and  
12 SANDRA CHU

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES  
15

16 ROSA CANTU AND SANDRA CHU,  
individually and on behalf of others similarly  
17 situated,

18 Plaintiffs,

19 vs.

20 PACIFIC BELL TELEPHONE COMPANY  
d/b/a AT&T CALIFORNIA, and Does 1 through  
21 100, inclusive,

22 Defendants.  
23  
24  
25  
26  
27  
28

Case No.: BC441237

CLASS ACTION [Code Civ. Proc. § 382]

REPRESENTATIVE ACTION  
[Labor Code § 2698, et seq.]

DECLARATION OF RICHARD M. PEARL  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND AN AWARD  
OF REASONABLE ATTORNEYS' FEES  
AND COSTS

Date: February 4, 2011  
Time: 9:00 a.m.  
Dept: 324  
Judge: Emilie H. Elias

1 I, Richard M. Pearl, declare:

2 1. I make this Declaration of my own personal knowledge, and if called to testify, I could  
3 and would testify competently to the matters stated herein.

4 A. Background

5 2. I am a member in good standing of the California State Bar. I am in private practice as  
6 the principal of my own law firm, the Law Offices of Richard M. Pearl. I specialize in issues related to  
7 court-awarded attorneys' fees, including the representation of parties in fee litigation and appeals,  
8 serving as an expert witness, and serving as a mediator and arbitrator in disputes concerning attorneys'  
9 fees and related issues. In this case, I have been asked by Plaintiffs' counsel to express my expert  
10 opinion regarding their claim for reasonable attorneys' fees.

11 3. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt Hall  
12 School of Law, University of California, Berkeley, California. After graduation, I spent fourteen years  
13 in federally-funded legal services programs before going into private practice in 1982. From 1977 to  
14 1982, I was Director of Litigation for California Rural Legal Assistance, Inc., a statewide legal services  
15 program with more than fifty attorneys. Since April 1987, I have been a sole practitioner in the San  
16 Francisco Bay Area. Martindale Hubbell rates my law firm "AV." I also have been selected as a  
17 Northern California "Super Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, and 2010. A copy  
18 of my Resume is attached hereto as Exhibit A.

19 4. Since 1982, my practice has been a general civil litigation and appellate practice, with an  
20 emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and written  
21 extensively on court-awarded attorneys' fees. I have been a member of the California State Bar's  
22 Attorneys Fees Task Force and have testified before the State Bar Board of Governors and the  
23 California Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards, (3d  
24 ed Cal. CEB 2010). I also was the author of California Attorney Fee Awards, 2d Ed. (Calif. Cont. Ed.  
25 of Bar 1994), and its 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007,  
26 and 2008 Supplements. This treatise has been cited by the California appellate courts on more than 35  
27 occasions. I also authored the 1984, 1985, 1987, 1988, 1990, 1991, 1992, and 1993 Supplements to its  
28 predecessor, CEB's California Attorney's Fees Award Practice. In addition, I authored a federal

1 manual on attorneys' fees entitled *Attorneys' Fees: A Legal Services Practice Manual*, published by the  
2 Legal Services Corporation. I also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's  
3 *Wrongful Employment Termination Practice*, 2d Ed. (1997).

4 5. More than 90% of my practice is devoted to issues involving court-awarded attorney's  
5 fees. I have been counsel in over 140 attorneys' fee applications in state and federal courts, primarily  
6 representing other attorneys. I also have briefed and argued more than 40 appeals, at least 25 of which  
7 have involved attorneys' fees issues. In the past ten or so years, I have successfully handled four cases  
8 in the California Supreme Court involving court-awarded attorneys' fees: (1) *Delaney v. Baker* (1999)  
9 20 Cal. 4th 23, which held that heightened remedies, including attorneys' fees, are available in suits  
10 against nursing homes under California's Elder Abuse Act; (2) *Ketchum v. Moses* (2001) 24 Cal. 4th  
11 1122, which held, inter alia, that contingent risk multipliers remain available under California attorney  
12 fee law, despite the United States Supreme Court's contrary ruling on federal law (note that in  
13 *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme  
14 Court); (3) *Flannery v. Prentice* (2001) 26 Cal. 4th 572, which held that in the absence of an agreement  
15 to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and  
16 (4) *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, which I handled, along with trial counsel,  
17 in both the Court of Appeal and Supreme Court. I also successfully represented the plaintiffs in a  
18 previous attorneys' fee decision in the Supreme Court, *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, and  
19 represented amicus curiae, along with Richard Rothschild, in the Supreme Court's most recent fee  
20 decision, *Yasquez v. State of California* (2009) 45 Cal. 4th 243. I also have handled several Ninth  
21 Circuit attorneys' fees matters, including *Davis v. City & County of San Francisco* (9th Cir. 1992) 976  
22 F.2d 1536, *Mangold v. CPUC* (9th Cir. 1995) 67 F.3d 1470, *Velez v. Wynne* (9th Cir. 2007) 2007 U.S.  
23 App. LEXIS 2194, and *Camacho v. Bridgeport Financial, Inc.* (9th Cir. 2008) 523 F.3d 973. See  
24 Exhibit A.

25 B. Plaintiffs' Counsel's Rates

26 6. I have been asked by Plaintiffs' counsel to submit this declaration in support of  
27 Plaintiffs' Motion for Final Approval of Class Action Settlement and an Award of Reasonable  
28 Attorneys' Fees and Costs. I submit this declaration to provide the Court information concerning

2  
DECLARATION OF RICHARD M. PEARL IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS - CASE NO. BC041237

234747-2

1 hourly rates for attorneys in the San Francisco Bay Area, and in particular to provide information  
2 demonstrating that the hourly rates requested by Plaintiffs' counsel in this matter are within the range of  
3 market rates being charged in the San Francisco Bay Area and the San Diego market for similar  
4 services, i.e. handling and trying complex class actions on behalf of employees against large employers  
5 like Pacific Bell Telephone Company in this case.

6 7. I understand that Plaintiffs' counsel are requesting an award of attorneys' fees at the  
7 following rates:

8 a. Goldstein Demchak Baller Borgen & Dardarian, Oakland, CA

9

| Name                | Grad Year | Billing Rate |
|---------------------|-----------|--------------|
| Roberta L. Steele   | 1993      | \$600        |
| Laura L. Ho         | 1994      | \$600        |
| Joseph E. Jaramillo | 1995      | \$550        |
| Senior Paralegal    |           | \$195        |
| Paralegal           |           | \$150        |

10  
11  
12

13 b. GraceHollis LLP, San Diego, CA

14

| Name               | Grad Year | Billing Rate |
|--------------------|-----------|--------------|
| Graham S.P. Hollis | 1985      | \$600        |
| Marta Manus        | 2008      | \$175        |
| Senior Paralegal   |           | \$170        |

15  
16

17 8. Through my writing and practice, I have become familiar with the non-contingent  
18 market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in  
19 several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys;  
20 (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys  
21 seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as  
22 surveys and articles on attorney's fees in the legal newspapers and treatises.

23 9. The information I have gathered, some of which is summarized below, shows that the  
24 rates requested by Plaintiffs' counsel in this case are well in line with the non-contingent market rates  
25 charged by litigation attorneys of similar qualifications and experience in San Francisco, San Diego,  
26 and similar markets.

27 ///

28 ///

c. Rates found reasonable in other cases.

Set forth below are rates that were awarded by the courts in the following cases:

2010 Rates

(1) *Savaglio, et al. v. WalMart*, Alameda County Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for Attorneys' Fees, filed September 10, 2010, a wage and hour class action, in which the court found the following hourly rates reasonable (before applying a 2.36 multiplier):

| Years of Experience | Rate        |
|---------------------|-------------|
| 51                  | \$875       |
| 39                  | \$750       |
| 38                  | \$600       |
| 33                  | \$775       |
| 25                  | \$550       |
| 23                  | \$650       |
| 21                  | \$625       |
| 19                  | \$610       |
| 18                  | \$600       |
| 17                  | \$585       |
| 16                  | \$570       |
| 15                  | \$560       |
| 14                  | \$550       |
| 13                  | \$525       |
| 12                  | \$515       |
| 11                  | \$510       |
| 10                  | \$505       |
| 9                   | \$500       |
| 7                   | \$460       |
| 4                   | \$435       |
| Law Clerks          | \$125-\$260 |

2009 Rates

(1) *Center for Biological Diversity v. California Fish & Game Commission*, San Francisco Superior Court No. CPF-08-508759, Order Granting Petitioners' Motion for Attorneys' Fees, filed December 1, 2009, in which the court found reasonable the following hourly rates:

| Years of Experience | Rate  |
|---------------------|-------|
| 25                  | \$650 |
| 8                   | \$375 |
| 4                   | \$250 |
| Law Clerks          | \$150 |

1 (2) *Kashmiri et al v. Regents of U.C.*, San Francisco Superior Court, Order Granting  
2 Plaintiffs' Motion for Common Fund Attorneys' Fees and Expenses, filed September 30, 2008, in  
3 which the court found the following rates reasonable, plus a 3.7 lodestar multiplier:

| Years of Experience | Rate  |
|---------------------|-------|
| 40                  | \$750 |
| 22                  | \$690 |
| 14                  | \$590 |
| 7                   | \$420 |
| 4                   | \$345 |
| 2                   | \$295 |
| Law Clerks          | \$200 |
| Paralegals          | \$195 |

10 (4) *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior  
11 Court No. CGC-06-451832, Order Granting Motion for Court Approval of Parties Joint Stipulated  
12 Judgment, filed September 22, 2008, in which the court found the following hourly rates reasonable in a  
13 Proposition 65 action, plus a 1.25 multiplier:

| Years of Experience | Rate        |
|---------------------|-------------|
| 29                  | \$750       |
| 26                  | \$700       |
| 24                  | \$700       |
| 23                  | \$650       |
| 18                  | \$650       |
| 16                  | \$625       |
| 14                  | \$600       |
| 10                  | \$560       |
| 9                   | \$495-\$575 |
| 8                   | \$475       |
| 7                   | \$450       |
| 6                   | \$395       |
| 4                   | \$325       |
| 2                   | \$300       |
| 1                   | \$250       |
| Paralegals          | \$145-\$175 |
| Interns             | \$125       |

25 (5) *Gardner v. Schwarzenegger*, Alameda County Superior Court No. RG06-278911,  
26 Order After Hearing filed April 20, 2009, aff'd by unpublished opinion, 2010 Cal. App. Unpub. LEXIS  
27 1240, in which the court found the following 2008 rates reasonable, plus a 1.75 multiplier:

| Years of Experience | Rate  |
|---------------------|-------|
| 17                  | \$640 |
| 14                  | \$590 |
| 8                   | \$445 |
| Paralegal           | \$170 |

a. Rate Information from Surveys and Other Cases:

I have reviewed numerous declarations and depositions filed in other cases, as well as various surveys of legal rates. These include the Westlaw CourtExpress Legal Billing Reports for May, August, and December 2009 (attached hereto as Exhibit B). These sources show the hourly rates for litigation undertaken on a non-contingent basis by the following California law firms, listed in alphabetical order:

Altshuler Berzon LLP

2009 Rates:

| Years Experience | Rate  |
|------------------|-------|
| 32               | \$775 |
| 15               | \$625 |
| 8                | \$475 |
| Law Clerks       | \$200 |
| Paralegals       | \$195 |

2007 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| 23               | \$700       |
| 15               | \$550       |
| 5                | \$325       |
| Paralegals       | \$155-\$190 |

Cooley Godward Kronish LLP

2008 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$525-\$980 |
| Associates       | \$285-\$570 |

2007 Rates:

| Years Experience | Rate                           |
|------------------|--------------------------------|
| Partners         | \$470-\$875<br>(average \$673) |
| Associates       | \$250-\$555<br>(average \$403) |

Coughlin Stoia Geller Rudman & Robbins, LLP

2007 Rates:

| Years Experience | Rate  |
|------------------|-------|
| 42               | \$700 |
| 19               | \$650 |
| 14               | \$650 |
| 14               | \$600 |
| 13               | \$585 |
| 11               | \$510 |
| 6                | \$460 |
| 5                | \$285 |

Duane Morris LLP

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$325-\$795 |
| Associates       | \$225-\$450 |

Epstein Becker & Green LLP

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$350-\$855 |
| Associates       | \$180-\$475 |

Fenwick & West

2007 Rates:

| Years Experience | Rate                           |
|------------------|--------------------------------|
| Partners         | \$500-\$775<br>(average \$590) |
| Associates       | \$245-\$500<br>(average \$370) |

Hadsell Stormer

2009 Rates:

| Years Experience | Rate  |
|------------------|-------|
| 35               | \$775 |
| 20               | \$575 |

11/15/11

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

2008 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$515-\$795 |
| Associates       | \$275-\$510 |

2007 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$495-\$775 |
| Associates       | \$275-\$485 |

Litt, Estuar, Harrison & Kitson, LLP

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| 39               | \$800       |
| 16               | \$550       |
| 3                | \$320       |
| 2                | \$285       |
| Paralegals       | \$125-\$235 |
| Law Clerks       | \$225       |

Loeb & Loeb

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$475-\$950 |
| Associates       | \$285-\$450 |

2008 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$450-\$925 |
| Associates       | \$260-\$500 |

2007 Rates:

| Years Experience | Rate                              |
|------------------|-----------------------------------|
| Partners         | \$475-\$875<br>(average<br>\$600) |
| Associates       | \$240-\$500<br>(average<br>\$400) |

Manatt, Phelps & Phillips

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$495-\$850 |
| Associates       | \$250-\$505 |

2008 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$495-\$850 |
| Associates       | \$290-\$505 |

2007 Rates:

| Years Experience | Rate                           |
|------------------|--------------------------------|
| Partners         | \$520-\$785<br>(average \$600) |
| Associates       | \$265-\$480<br>(average \$395) |

Morrison Foerster

2009 Rates:

| Years Experience | Rate  |
|------------------|-------|
| 24               | \$750 |

2008 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| 45               | \$675       |
| 36               | \$725       |
| 33               | \$785       |
| 14               | \$650       |
| 12               | \$600       |
| 9                | \$560       |
| 7                | \$535       |
| 5                | \$485       |
| 1                | \$520       |
| Paralegals       | \$185-\$230 |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2007 Rates:

| Years Experience | Rate  |
|------------------|-------|
| 44               | \$675 |
| 11               | \$550 |
| 8                | \$520 |
| 6                | \$475 |
| 3                | \$250 |

O'Melveny & Myers

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| 36-37            | \$860-\$950 |
| 21               | \$820       |
| 16-18            | \$700-\$710 |
| 14               | \$595-\$675 |
| 10               | \$590       |
| 8                | \$565       |
| 7                | \$540-\$565 |
| 5-6              | \$480-\$520 |
| 2-4              | \$395-450   |
| Paralegals       | \$225-310   |

Reed Smith

2008 Rates:

| Years Experience | Rate                           |
|------------------|--------------------------------|
| Partners         | \$375-\$900<br>(average \$626) |
| Associates       | \$235-\$580<br>(average \$423) |

2007 Rates:

| Years Experience | Rate                           |
|------------------|--------------------------------|
| Partners         | \$350-\$825<br>(average \$558) |
| Associates       | \$200-\$510<br>(average \$374) |

Rudy, Exelrod & Zieff

2009 Rates:

| Years Experience | Rate  |
|------------------|-------|
| Partners         |       |
| 31               | \$700 |
| Associates       |       |
| 3                | \$305 |

2007 Rates:

| Years Experience | Rate  |
|------------------|-------|
| Partners         |       |
| 29               | \$700 |
| 12               | \$500 |
| Associates       |       |
| 10               | \$400 |
| 8                | \$330 |
| Law Clerk        | \$200 |
| Paralegal        | \$150 |

Schoubrun, DeSimone, Seplow, Harris & Hoffman

2009 Rates:

| Years Experience | Rate  |
|------------------|-------|
| 33               | \$750 |
| 25               | \$625 |
| 24               | \$625 |
| 8                | \$375 |
| 6                | \$370 |
| Paralegals       | \$125 |

Sheppard, Mullin, Richter & Hampton

2008 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$475-\$795 |
| Associates       | \$275-\$455 |

2007 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$425-\$795 |
| Associates       | \$260-\$550 |

Townsend and Townsend and Crew

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$480-\$750 |
| Associates       | \$260-\$460 |

Winston & Strawn

2009 Rates:

| Years Experience | Rate        |
|------------------|-------------|
| Partners         | \$400-\$995 |
| Associates       | \$210-\$670 |

10. The hourly rates set forth above pertain largely to law firms headquartered in the San Francisco Bay Area and Los Angeles. To the extent those law firms handle cases in other jurisdictions, like San Diego, they almost always charge the same rates that they do for litigation in the Bay Area. To the extent Plaintiffs' claim is based upon San Diego rates, however, I also am of the opinion that they are in line with the rates charged by lawyers of comparable skill, experience, and reputation for comparable work, *i.e.*, complex representative litigation in San Diego. I base that opinion on the following facts:

a. In a report filed with the California Public Utilities Commission (attached as Exhibit C), the San Diego Gas & Electric Co. reported that in 2003, it hired outside counsel at rates of from \$477-625 per hour for partners with 13 or more years experience, \$435 per hour for partners with 8-12 years of practice, and \$239-425 per hour for associate attorneys with up to 7 years of practice. Hourly rates have increased significantly since then.

b. San Diego law firm Luce, Forward, Hamilton & Scripps reports that in 2010, its partner rates ranged from \$350 to \$670 per hour, and its associate rates ranged from \$245 to \$445 per hour. In 2009, its partner rates ranged from \$360 to \$650 per hour, and its associate rates ranged from \$240 to \$540 per hour.

11. My research regarding attorneys' fees in California has indicated a consistent increase in fees over the last several years. Most firms increased their rates over these periods. Consistent with this market, I raised my rates in 2009 and 2010, and will raise it again in 2011, to reflect both the

1 demand for my services and inflation in costs and legal rates; my rate is still significantly less than  
2 many attorneys with comparable experience, expertise, and skills at other firms.

3 12. The hourly rates set forth above are those charged where full payment is expected  
4 promptly upon the rendition of the billing and without consideration of factors other than hours and  
5 rates. If any substantial part of the payment were to be deferred for any substantial period of time, for  
6 example, or if payment were to be contingent upon outcome or any other factor, the fee arrangement  
7 would be adjusted accordingly to compensate the attorneys for those factors.

8 13. In my experience, fee awards are almost always determined based on current rates, i.e.,  
9 the attorney's rate at the time a motion for fees is made, rather than the historical rate at the time the  
10 work was performed. This is a common and accepted practice to compensate attorneys for the delay in  
11 being paid.

12 C. Plaintiffs' Counsel's Requested Percentage Fee

13 14. I understand that Plaintiffs request an award of fees under the common fund doctrine as a  
14 percentage of the fund recovered in this litigation sufficient to provide them with a reasonable fee. This  
15 is an appropriate request because this is a fully-paid, non-reversionary settlement in which the value of  
16 the class recovery is fully monetized at \$2,000,000, inclusive of fees, expenses, and settlement  
17 administration costs. Under these circumstances, courts award fees as percentages of the common fund  
18 where they are in line with the range of fees freely negotiated in the legal marketplace in comparable  
19 litigation.

20 15. Based on the information I have gathered and my own experience and expertise, it is my  
21 opinion that the 33 1/3% common fund fee recovery requested by Class Counsel is, in the  
22 circumstances of this case, reasonable and consistent with awards approved by other California state  
23 courts reviewing class action settlements, based on the factors discussed below.

24 16. My opinion is based in part on the fact that, as a common fund case with the fund  
25 consisting of \$2 million, Plaintiffs' claimed fee of 33 1/3% is entirely consistent with the legal  
26 marketplace for attorneys' services in contingency fee cases involving similar financial recoveries. In  
27 the course of my practice, I have become familiar with the contingency fee percentages charged by law  
28 firms to sophisticated institutional clients in large damage cases. Based on that knowledge and my

13  
DECLARATION OF RICHARD M. PEARL IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS - CASE NO.: BCW1237

234747-2

1 experience in the attorneys' fees field generally, it is my opinion that if competent and experienced  
2 attorneys and a sophisticated client were to negotiate a contingency fee agreement under the  
3 circumstances where (a) a high risk, complex case was being contemplated, (b) it is anticipated that the  
4 opposition would be vigorous, and (c) the attorneys would not be paid unless and until they were able to  
5 obtain significant relief for the client, the sophisticated client would be more than willing to enter into a  
6 retainer agreement under which the client would pay only the litigation out-of-pocket costs, and the  
7 attorneys could reasonably expect to recover 5% to 35% of the total value of any recovery as fees.

8 17. An award of 33 1/3% of the common fund requested by Class Counsel here is consistent  
9 with legal marketplace for attorneys' services in contingency fee cases because of (a) the high risk  
10 involved in litigating an incentive compensation plan case on behalf of nearly 100 California  
11 employees; (b) the vigorous defense presented by the large defense firm that represents Defendant here;  
12 (c) the relatively small size of the common fund, which weighs toward a higher percentage; and (d) the  
13 fact that here, unlike in the paradigm market practices situation described in the previous paragraph,  
14 Class Counsel were obligated to advance the substantial litigation costs on a contingent basis with risk  
15 of delay in repayment as well as possible non-repayment, and to represent Plaintiffs through appeal of  
16 any judgment in this case. This award would also be appropriate to encourage settlement, reward  
17 counsel for maximizing their clients' recoveries, and promote the private enforcement of the wage and  
18 hour laws Plaintiffs allege were violated.

19 D. Plaintiffs' Counsel's Lodestar Multiplier

20 18. Courts often cross-check a percentage-based fee against a lodestar based fee to determine  
21 if it is reasonable. I understand that Plaintiffs' lodestar here is \$332,383.88 on non-fees work. The  
22 \$666,667 fee award requested represents a 2 multiplier on the non-fees lodestar.

23 19. The expense and risk of public interest litigation has not diminished over the years; to  
24 the contrary, these cases are in many ways more difficult than ever. As a result, fewer and fewer  
25 attorneys and firms are willing to take on such litigation, and the few who are willing to do so can only  
26 continue if their fee awards reflect true market value. Attorneys who litigate on a wholly or partially  
27 contingent basis expect to receive significantly higher effective hourly rates in cases where  
28 compensation is contingent on success. As the case law recognizes, this does not result in any

1 "windfall" or undue "bonus." In the legal marketplace, a lawyer who assumes a significant financial  
2 risk on behalf of a client rightfully expects that his or her compensation will be significantly greater  
3 than if no risk was involved (i.e., if the client paid the bill on a monthly basis), and that the greater the  
4 risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to  
5 reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes  
6 them competitive in the legal marketplace, helping to ensure that meritorious cases will be brought to  
7 enforce important public interest policies and that clients who have meritorious claims will be more  
8 likely to obtain qualified counsel.

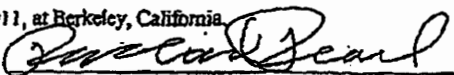
9 20. In my experience, lodestar multipliers of 2 to 4 are typical for class actions such as this  
10 case. Plaintiffs' requested fee falls well within this range.

11 **E. Plaintiffs' Counsel's Out-of-Pocket Expenses.**

12 21. I have reviewed the billing practices of hundreds of attorneys in California. Based on  
13 my experience and knowledge of these billing practices, I am aware that it is a common practice for  
14 firms to bill their clients for out-of-pocket expenses incurred in litigation on a monthly basis as they are  
15 incurred. Such expenses include, but are not limited to, charges incurred for copying, long-distance  
16 telephone calls, postage, messengers, travel, deposition and hearing transcripts, legal and non-legal  
17 computer research services, mediation services, and expert witnesses. I am informed that Plaintiffs  
18 expended \$16,258.08 in out-of-pocket litigation expenses in this case, including \$8,000 for the services  
19 of an experienced and skilled mediator, David Rotman, who brokered the settlement in this case. Based  
20 on my knowledge and experience of such costs and billing practices, it is my opinion that these  
21 expenses are reasonable given the complex nature of this case.

22 If called as a witness, I could and would competently testify from my personal knowledge to the  
23 facts stated herein. I declare under penalty of perjury under the laws of the state of California the  
24 foregoing is true and correct.

25 Executed this 4th day of January, 2011, at Berkeley, California.

26   
27 RICHARD M. PEARL  
28

# **EXHIBIT 6**

## Thank you for your Proposed Settlement Submission

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Tue 5/21/2024 4:43 PM

To:brandon@tomorrowlaw.com <brandon@tomorrowlaw.com>

05/21/2024 04:43:00 PM

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

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)