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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV006533

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

CLASS ACTION

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

Date: October 25, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: August 10, 2023

FAC Filed: December 13, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on October 25, 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 23 of the above-entitled Court, Plaintiff John Willis, individually
4 and on behalf of all other similarly situated individuals, will, and hereby does, move for entry of an
5 Order for the following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff John Willis as Class Representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorney's General Act settlement, in the
10 gross amount of \$135,000, which is incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
12 \$47,250;
- 13 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of
14 \$12,610.41;
- 15 7. Approving the Class Representative Enhancement Payment of \$10,000 to Plaintiff John
16 Willis;
- 17 8. Approving the appointment of ILYM Group, Inc. as the Settlement Administrator and for
18 payment to ILYM Group, Inc. for administering said class action settlement in the amount of
19 \$7,650;
- 20 9. Determining that the class notification procedure and process complied with Class Members'
21 due process rights;
- 22 10. Directing that any amount from settlement checks that were not cashed by the check cashing
23 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
24 Rights under the doctrine of *cy pres*;
- 25 11. Approving and adopting the Proposed Order and its implementation schedule, which is filed
26 herewith and incorporated by reference.

27 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
28 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the preliminarily approved

1 class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class
2 Members and should be approved by the Court. This motion will be based on the notice of motion,
3 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of John
4 Willis, the Declaration of Nathalie Hernandez, exhibits, the record and files of this case, and any further
5 oral or documentary evidence introduced at the hearing of this motion.

6
7 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
8 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
9 **department may be downloaded off the court's website. If the party does not have online access,**
10 **they may call the dedicated phone number for the department as referenced in the local telephone**
11 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
12 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
13 **court day before the hearing, no hearing will be held.**

14 Dated: October 1, 2024

Shimoda & Rodriguez Law, PC

15 By: 
16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Renald Konini
19 Attorneys for Plaintiff

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CLASS ACTION

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

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff John Willis (“Plaintiff”) seeks final approval of a non-reversionary wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$135,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated employees who worked for Defendants GFP Enterprises, LLC, Donald Pollard, and Ray Keener, (“Defendants”) (Plaintiff and Defendants sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are 335 Class Members.

Plaintiff has alleged that Defendants violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide accurate wage statements, 4) failing to timely pay wages, including final wages, and 5) engaging in unfair competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 3, 10-11. Plaintiff has also alleged Defendants are liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendants have denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 6. Defendants have also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, informal discovery exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 7-11; Declaration of John Willis (“Decl. Willis”), ¶ 10.

The reaction of Class Members to the preliminarily approved Agreement has been overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations therein being fair, reasonable, and adequate. Only one Class Member opted out of the settlement and there have been zero objections to the Agreement. *See* Decl. Nathalie Hernandez (“Decl. Hernandez”), ¶¶ 11-12. It is well within the discretion of this Court to grant final approval of the proposed settlement, which satisfies all applicable criteria under California law. Accordingly, Plaintiff requests that the

1 Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3) find that the
2 procedures used to notify Class Members complied with due process; (4) Grant Plaintiff's request for
3 attorney's fees and costs, the Enhancement Payment to the Class Representative, and Settlement
4 Administrator Costs; and (5) approve and adopt the proposed order granting final approval, which is
5 filed concurrently herewith.

6 **II. PROCEDURAL AND LITIGATION HISTORY**

7 Plaintiff filed a class action complaint on approximately August 10, 2023, in Sacramento
8 County Superior Court against Defendants. Plaintiff exhausted administrative remedies under the
9 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
10 2699.3(a), (c); Decl. Rodriguez, ¶ 4. Then, Plaintiff filed a First Amended Class Action Complaint on
11 approximately December 13, 2023, to include a PAGA claim. *See id.*; Exhibit B. The facts alleged in
12 the PAGA notice letter to the LWDA are the same as those alleged in the operative Complaint.
13 *Compare* Exhibit B with Exhibit C; Decl. Rodriguez, ¶ 4. There is no date set for a motion for
14 certification or trial in this matter. *See* Decl. Rodriguez, ¶ 5.

15 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

16 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
17 potential damages for such claims. *See id.* at ¶¶ 4, 7-11; Decl. Willis, ¶¶ 5-7. Plaintiff worked during
18 the time all of Defendants' policies and practices at issue in the Complaint were in effect and provided
19 information regarding these policies and practices, enabling pre-filing investigations to take place. *See*
20 Decl. Willis, ¶¶ 2-3 5-7. The Parties engaged in informal discovery and exchange of documents,
21 including a representative sampling of employee data, such as timecards, paystubs, payroll data, and
22 relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The
23 discovery covered all aspects of the asserted claims, including certification issues, merits issues,
24 damages, the scope and configuration of Class Members, the content and implementation of the wage
25 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
26 *See* Decl. Rodriguez, ¶¶ 7-8, 10-11. The information allowed Plaintiff to determine the extent and
27 frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages
28 model to assess the reasonableness of any settlement. *See id.*

1 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

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

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

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

11 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
12 which include all non-exempt employees who worked for Defendants in California at any time between
13 August 10, 2019, up to April 23, 2024; and (b) Aggrieved Employees, which include all non-exempt
14 employees who worked for Defendants in California at any time between August 9, 2022, up to April
15 23, 2024. *See* Exhibit A, ¶¶ 1.2, 1.5. There are 335 Class Members and 159 Aggrieved Employees.
16 *See id.*

17 2. Defendants will pay the Gross Settlement Amount of \$135,000, which is exclusive of
18 the employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
19 revert to Defendants. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
20 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

21 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
22 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
23 5.4.

24 4. At preliminary approval, the Court approved appointing ILYM Group, Inc. to act as the
25 Settlement Administrator, whose final costs are \$7,650. *See* Decl. Hernandez ¶ 16; Exhibit A, ¶ 1.33;
26 Decl. Rodriguez, ¶ 24.

27 5. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
28 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to

the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. See Exhibit A, ¶ 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the presence of what may likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff believes the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-compliance given the facts of this case. See Decl. Rodriguez, ¶¶ 6-11; see also *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

1 6. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount
2 (\$47,250) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendants
3 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
4 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
5 approved by the Court in the of \$12,610.41. *See id.* See Exhibit D (Plaintiff's Counsel's Itemized
6 Costs.

7 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, an
8 Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will
9 remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata
10 basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out
11 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶
12 5.1-5.5.

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

17 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
18 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
19 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
20 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
21 doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that
22 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See*
23 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
24 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
25 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
26 including providing representation for employees in wage claims before the California Labor
27 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 26-35.

1 **c. Allocation of Settlement Funds**

2 Payment to Participating Class Members and Aggrieved Employees will not require the
3 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
4 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
5 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
6 the Court. Each Class Member's share will be determined by dividing their total weeks worked within
7 the Class Period by the total weeks worked by all Class Members within the Class Period. That
8 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
9 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
10 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
11 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
12 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
13 Aggrieved Employee's individual share. *See* Exhibit A, ¶¶ 1.17, 1.24, 1.29, 5.5, 5.8.

14 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
15 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

16 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
17 Court on June 20, 2024. To comply with the class members' due process rights, the parties enlisted an
18 exhaustive method to ensure the best practical means possible was used to provide notice to the class.
19 The parties provided the class action administrator the names, last known address, and social security
20 numbers for the class. The class action administrator then updated this information by doing an address
21 trace for each individual using this information. *See* Decl. Hernandez, ¶¶ 5-7. If the notice mailings
22 were returned as undeliverable, further investigation was performed and they were re-mailed using
23 updated information. *See* Decl. Hernandez, ¶ 8. Of the 335 notice mailings, only 22 were
24 undeliverable after use of these methods. *See id.* at ¶¶ 9-10. The Notice of Settlement included
25 information regarding the requested attorneys' fees, costs, payment to the LWDA, administration costs,
26 and tax allocations. *See* Exh. A to Decl. Hernandez. The average distribution to participating class
27 members is approximately \$142.18, the maximum distribution is approximately \$691.01. *See id.* at ¶
28

1 15. No objections to the preliminarily approved settlement have been made and only one Class
2 Member opted out. *See* Decl. Hernandez, ¶¶ 11-12.

3 It is not required that Class Members be given actual notice of a class settlement; instead, the
4 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
5 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
6 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, *12-14 (N.D. Cal. 2017); *Wright v.*
7 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
8 1994), the Court rejected a class member's argument that he had not received due process because he
9 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
10 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
11 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
12 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable notices in this case, the
13 Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not
14 receive actual notice due to their mailings being deemed undeliverable were still properly held to be
15 part of the class settlement because they received the best notice practicable under the circumstances.
16 *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-
17 984 (2019), the California Supreme Court noted that California has adopted a similar approach
18 regarding providing notice to class members.

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

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

4 A class action may not be dismissed, compromised, or settled without Court approval and the
5 decision to approve or reject a settlement is committed to the Court's sound discretion. See Cal. Rules
6 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th
7 224, 234-35 (2001); see also Cal. Lab. Code §§ 2699(l)(2). However, "[d]ue regard should be given to
8 what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to
9 the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
10 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
11 is fair, reasonable and adequate to all concerned.'" See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
12 1801 (1996); see also *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2009); *In re*
13 *Microsoft I-V Cases*, 135 Cal.App.4th at 723; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581. The law
14 favors settlement of lawsuits, particularly class actions and other complex cases where substantial
15 resources can be conserved by avoiding the time, expense, and rigors of formal litigation. See
16 *Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1117-1118; *In re Microsoft I-V Cases*, 135
17 Cal.App.4th at 723 n.14; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581; see also *Neary v. Regents of*
18 *Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992).

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

19 The purpose of the Court's final evaluation of a proposed class action settlement is to determine
20 only whether it is within the range of reasonableness. See *Wershba*, 91 Cal.App.4th at 234-35. If the
21 Court finds a proposed settlement falls within "the range of reasonableness," it should grant final
22 approval of the class action settlement. See, e.g., *North County Contr. 's Assn., Inc. v. Touchstone Ins.*
23 *Svcs.*, 27 Cal.App.4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
24 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate
25 include the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further
26 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
27

28

¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. See *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 extent of discovery completed and the stage of the proceedings, the experience and views of counsel,
2 the presence of a governmental participant, and the reaction of the class members to the proposed
3 settlement. *See Dunk*, 48 Cal.App.4th at 1801. However, this Court should begin its analysis with a
4 presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the
5 settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to
6 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
7 the percentage of objectors is small.” *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL
8 1594403, *10 (C.D. Cal. 2005) (“It is established that the absence of a large number of objectors to a
9 proposed class action settlement raises a strong presumption that the terms of a proposed class
10 settlement action are favorable to the class members”).

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

13 Settlement of this case was reached only after substantial litigation and extensive arm’s length
14 negotiations lasting nearly eleven (11) months, which included a full day mediation. *See Decl.*
15 *Rodriguez*, ¶¶ 6-9. At all times, the negotiations were adversarial, although still professional in nature.
16 *See id.*

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

19 The Parties were in possession of all necessary information during the negotiations. The Parties
20 engaged in substantial informal discovery, which included all necessary components for evaluating the
21 class claims and creating an accurate damages model. *See id.* at ¶¶ 7-11. Plaintiff was in possession of
22 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to
23 make a reasonable estimation of Defendants’ potential liability. *See id.* For these reasons, the
24 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
25 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
26 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

27 //

28 //

1 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

2 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
3 actions. *See* Decl. Rodriguez, ¶¶ 13-19. Thus, Plaintiff's counsel are qualified to evaluate the class
4 claims, the value of settlement versus moving forward with litigation, and viability of possible
5 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
6 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
7 benefit to Class Members. *See id.*

8 **iv. No Class Members Objected and Only One Class Member Opted Out**

9 The reaction by Class Members to the Agreement and all the terms and allocations stated
10 therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement
11 and only one has opted out. *See* Decl. Hernandez, ¶¶ 11-12. This provides strong evidence that the
12 settlement is fair, reasonable, and adequate. *See In re Heritage Bond Litig.*, 2005 WL 1594403, *10
13 ("It is established that the absence of a large number of objectors to a proposed class action settlement
14 raises a strong presumption that the terms of a proposed class settlement action are favorable to the
15 class members"); *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D.
16 Cal. 2004) ("That unanimous, positive reaction to the Proposed Settlement is compelling evidence that
17 the Proposed Settlement is fair, just, reasonable, and adequate").

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

20 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
21 were heavily disputed by Defendants. *See* Decl. Rodriguez, ¶¶ 6-11. Based on the records and facts of
22 this case, Plaintiff has secured a gross recovery of approximately 3% of the maximum value of the
23 claims in this matter and between 18% and 80% of the more realistic range of recovery. *See* Decl.
24 Rodriguez, ¶¶ 10-11. The net recovery represents approximately 1% of the maximum value of the
25 claims in this matter and between 6% and 28% of the more realistic range of recovery. The average net
26 award is approximately \$142.18, and the maximum award is \$691.01. *See* Decl. Hernandez ¶ 15.

27 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
28 percentile ranges of the total available damages that have been approved in other class settlements. *See*

1 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
2 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
3 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
4 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than
5 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
6 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
7 (approving a settlement where the net recovery to class members was approximately 7.5% of the
8 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
9 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
10 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
11 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
12 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
13 *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, *48 (E.D. Cal. 2012) (“Class Members
14 will receive an average of approximately \$198.70, with the highest payment to a Class Member being
15 \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact
16 that there was no objection to the settlement amount or the attorneys’ fees requested.”); *Gardner v. GC*
17 *Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case were
18 very favorable. Class members are provided with immediate monetary relief, with an average award of
19 around several hundred dollars and a minimum award of \$50”).

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

21 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
22 information be presented in class action settlements “to ensure that the recovery represents a reasonable
23 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
24 risks and expenses of attempting to establish and collect on those claims by pursuing the
25 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
26 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
27 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
28 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff

1 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that
2 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

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

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

14 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
15 defined community of interest in the questions of law and fact involved affecting the parties to be
16 represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three
17 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
18 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
19 Here, the Court conditionally certified the settlement class on June 20, 2024, and nothing has happened
20 in the interim that would warrant changing that decision. *See Garcia v. City of King City*, 2017 WL
21 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4 (N.D. Cal
22 2017). The Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit
23 A.

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

25 The proposed settlement class is ascertainable because all putative Class Members can be
26 readily identified through employee personnel and payroll files. *See Noel*, 7 Cal.5th at 980; *Rose v.*
27 *City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal.App.4th 1325, 1334
28 (2008). The numerosity requirement is met because there are 334 individuals who fall within the

1 definition of Participating Class Member, which makes joinder of all members impracticable. *See Gay*
2 *v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir.
3 1982); *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no set minimum to meet the
4 numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these
5 requirements are satisfied.

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

7 The commonality requirement is met when there are questions of law or fact regarding the class
8 as a whole. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Commonality requires
9 only that some common legal or factual questions exist; Plaintiff need not show that all issues in the
10 litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v.*
11 *Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate
12 over individual questions and class-wide treatment of a dispute must be superior to individual
13 litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently
14 cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality
15 requirement is met when claims of the named representative are typical of those of the class, though
16 "they need not be substantially identical." *Id.* at 1020; *Classen v. Weller*, 145 Cal.App.3d 27, 46-47
17 (1983).

18 The common questions of law and fact in this case stem from Plaintiff's contention that
19 Defendants violated California law by 1) failing to incorporate the value of non-discretionary
20 remuneration (*e.g.* bonuses, additional hourly rates/differentials) in addition to the basic hourly rate
21 when calculating the regular rate of pay for overtime and sick leave wage premiums, 2) failing to pay
22 any overtime and/or correctly calculate the regular rate of pay for overtime and sick leave when
23 Plaintiff earned daily rates and/or provided lodging in addition to their base hourly and/or daily rates of
24 pay, 3) failing to keep accurate time records and utilizing rounding when calculating Plaintiff's and
25 similarly situated employees' hours worked because a crew chief, instead of employees, recorded times
26 for all employees without input and verification from employees, 4) maintaining policies and
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 procedures that prevented Plaintiff and similarly situated employees from clocking in and out leading to
2 Plaintiff and similarly situated employees worked off-the-clock since Defendants did not keep track of
3 their start and stop times, 5) failing to pay Plaintiff and similarly situated employees timely wages. *See*
4 Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are derivative of these
5 violations. *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under
6 these specific circumstances, the commonality and predominance requirements are satisfied. Regarding
7 the typicality requirement, Plaintiff contends he suffered from the same unlawful policies, treatment,
8 and circumstances as Class Members did, will request the same remedies, and will rely on the same
9 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
10 satisfied for settlement purposes.

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

12 The adequacy of representation requirement is met if the named representative and counsel have
13 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
14 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
15 Cal.App.3d 442, 450-451 (1976). Those standards are met here. Under the proposed Agreement,
16 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
17 number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any settlement class
18 member who wished to opt-out of the settlement was able to do so, and he or she was also able to
19 dispute the number of workweeks stated in the Notice of Settlement.

20 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
21 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
22 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
23 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
24 engaged Defendants' counsel in settlement discussions over the course of approximately eleven (11)
25 months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims.
26 Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the
27 adequacy requirement is met. *See generally* Decl. Rodriguez.

1 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS, AN**
2 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND**
3 **SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE**
4 **APPROVED**

5 The Notice of Settlement sent to Class Members specifically identified the allocations for
6 attorney’s fees and costs, the Enhancement Payment, and Settlement Administrator Costs. *See* Exh. A
7 to Decl. Hernandez. The reaction of Class Members to these requested amounts provides useful
8 evidence of whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403, *21 (“The
9 absence of objections or disapproval by class members to Class Counsel’s fee request further supports
10 finding the fee request reasonable”). As noted above, there were no objections raised to the Agreement
11 or any term or allocation therein whatsoever. *See* Decl. Hernandez, ¶ 12. In addition to the Class
12 Members’ reactions supporting the requested amount, the facts and applicable case law also support
13 awarding these amounts in full.

14 An award of attorney’s fees should include compensation for all hours reasonably spent. *See*
15 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431
16 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client).
17 California has not adopted any “benchmark” percentage utilized by several federal courts. *See Emmons*
18 *v. Quest Diagnostics Clinical Lab’ys, Inc.*, 2017 WL 749018, *7 (E.D. Cal. 2017) (“Notably, while the
19 California Supreme Court recognized the Ninth Circuit’s 25 percent benchmark for percentage awards
20 in common fund cases, it did not adopt such a benchmark for California cases”). Instead, “[t]he
21 benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61
22 Cal.App.5th 734, 744 (2021).

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

26 An award of attorney’s fees under the common fund doctrine is appropriate in this case as there
27 is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be
28 accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class
Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,
lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016);

1 *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van*
2 *Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of
3 persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”).
4 The requested fee, 35% of the common fund, is within ranges awarded in other cases. *See Martin v.*
5 *Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
6 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
7 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
8 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
9 action settlement).

10 To the extent there may be some Courts that have granted fees at a percentage less than 35%,
11 that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the
12 treatises or cases discussing these percentages are relying on federal decisions guided by a
13 “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See*
14 *Emmons*, 2017 WL 749018, *7. This artificially lowers the average percentage of fees awarded.
15 Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement
16 fund to begin with, which will generally correspond to a lower percentage of fees being deemed
17 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an
18 appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of
19 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on
20 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as
21 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,
22 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular
23 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference
24 to all the circumstances of the case”).

25 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
26 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of
27 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at
28 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind

1 normally billed to a fee-paying client). Class Counsel will have spent approximately 138.8 hours
2 performing tasks that would normally be billed to any fee playing client in complex litigation after
3 monitoring the disbursement of all funds and compliance hearing(s). See Decl. Rodriguez, ¶ 21;
4 Exhibit F; *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) (“Because time records are
5 not required under California law ... , there is no required level of detail that counsel must achieve.”)
6 (internal quotations omitted). At the prevailing market rates for Class Counsel’s level of experience
7 and this type of complex litigation, this equates to a lodestar of approximately \$77,570. See Decl.
8 Rodriguez, ¶¶ 21-22; *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting
9 rates were reasonable where they were “within the range of reasonable rates charged by and judicially
10 awarded comparable attorneys for comparable work”).

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

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

19 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
20 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
21 winning the case, must make up in compensation in the cases they win for the lack of compensation in
22 the cases they lose.” *Id.* at 1300-01; see also *Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
23 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
24 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
25 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or
26 even higher”). Yet, Class Counsel’s requested fee of \$47,250 would actually result in a negative
27 multiplier. As a result, a lodestar cross check validates the common fund percentage requested and the
28 Court should grant Plaintiff’s Counsel’s fee request. See Decl. Rodriguez, ¶¶ 21-22.

1 **b. Class Counsel's Expenses and Costs Were Necessarily Incurred to Achieve the Benefit**
2 **Obtained**

3 The appropriate analysis in determining whether particular costs are compensable is whether
4 they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*
5 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees
6 those out-of pocket expenses that 'would normally be charged to a fee paying client'"); *Abrams v.*
7 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8
8 F.3d 722, 725-726 (10th Cir. 1993). The categories of expenses for which Class Counsel seek
9 reimbursement here are categories normally charged to hourly clients and, therefore, should be
10 reimbursed out of the common fund. *See Decl. Rodriguez*, ¶ 23; Exhibit D.

11 **c. Class Counsel's Request for A Class Representative Enhancement Payment Is**
12 **Justified In Light of The Results Achieved for the Class**

13 A service payment to a named plaintiff is intended to recognize their time and effort on behalf
14 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the
15 services they provide and the risks they incurred during the course of the class action litigation. *See*
16 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved
17 incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to
18 the class by responding to discovery, participating in the mediation process, and taking the risk of
19 stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*,
20 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone*
21 *Termination Fee Cases*, 186 Cal.App.4th at 1393 (approving \$10,000 awards to each of the four (4)
22 named plaintiffs).

23 To date, Plaintiff has spent approximately 52-62 hours providing substantial support in helping
24 to secure payment to Class Members. Plaintiff provided and explained a substantial number of
25 documents critical to helping establish important facts central to this case and participated in substantial
26 amount of informal discovery. *See Decl. Willis*, ¶¶ 5-8. Payment of \$10,000.00 to Plaintiff is
27 appropriate given the risk, assistance, time required, and burden experienced in bringing and resolving
28 this case, especially since this amount was identified in the Notice of Settlement and no objections to it
have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, *7-*8, *12, *27

(E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class members were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, *9-*10, *15-*16 (D. Nev. 2013) (awarding a \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class members).

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

Since being preliminarily approved as the Settlement Administrator, ILYM Group, Inc., has carried out its duties as set forth in the Court's order and the Agreement. *See generally* See Decl. Hernandez. Under the Agreement, a maximum of \$10,000 was set aside for potential Settlement Administrator Costs. ILYM Group, Inc.'s, final costs are \$7,650.00, well under the potential maximum Class Members were given notice of. Plaintiff requests that the Court approve payment to the Settlement Administrator in the amount of \$7,650.00 to compensate it for the costs of administration as part of the final order approving the Settlement.

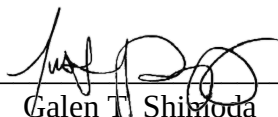
VIII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class for settlement purposes; grant final approval of the proposed settlement, including the Enhancement Payment, the payment to the LWDA under PAGA, payment of Settlement Administrator Costs, and Class Counsel's application for reasonable attorneys' fees and costs; find that the Notice of Settlement, and administration process satisfied Class Members' due process rights; and approve the proposed order submitted concurrently herewith.

Shimoda & Rodriguez Law, PC

Dated: October 1, 2024

By: _____


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Justin P. Rodriguez
Renald Konini
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Attorneys for Plaintiff JOHN WILLIS
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER, an
individual; and DOES 1 to 100, inclusive,
Defendants.

Case No. 23CV006533

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

CLASS ACTION

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

Date: October 25, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: August 10, 2023

FAC Filed: December 13, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff John Willis (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Final Approval of Class Action and PAGA Settlement (“Motion”). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) in
7 this matter is filed with this Motion as Exhibit A.

8 2. Pursuant to the Rule 2.99.05 of the Local Rules for the Superior Court of California,
9 County of Sacramento, I have reviewed the Court’s class action and PAGA settlement checklist and
10 believe I have prepared the moving papers in compliance with the checklist as well as the California
11 Rules of Court.

12 3. This case was brought as a wage and hour class action based on Plaintiff’s contention
13 that Defendants GFP Enterprises, LLC, Donald Pollard, and Ray Keener, (“Defendants”) violated
14 California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to
15 provide accurate wage statements, 4) failing to timely pay all final wages, and 5) engaging in unfair
16 competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
17 (“PAGA”). These claims were based on allegations that Defendants violated California law by 1)
18 failing to incorporate the value of non-discretionary remuneration (*e.g.* bonuses, additional hourly
19 rates/differentials, etc.) in addition to the basic hourly rate when calculating the regular rate of pay for
20 overtime and sick leave wage premiums, 2) failing to pay any overtime and/or correctly calculate the
21 regular rate of pay for overtime and sick leave when Plaintiff earned daily rates and/or was provided
22 lodging in addition to their base hourly and/or daily rates of pay, 3) failing to keep accurate time
23 records and utilizing rounding when calculating Plaintiff’s and similarly situated employees’ hours
24 worked because a crew chief, instead of employees, recorded times for all employees without input and
25 verification from employees, 4) maintaining policies and procedures that prevented Plaintiff and
26 similarly situated employees from clocking in and out leading to Plaintiff and similarly situated
27 employees worked off-the-clock, and 5) failing to timely pay Plaintiff and similarly situated employees
28

1 their wages, including final wages. The PAGA, waiting time penalty, wage statement violation, and
2 unfair competition claims are derivative of these violations.

3 4. Plaintiff is the only named representative in this matter. From our initial investigations
4 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
5 class action. We filed the action on or about August 10, 2023. Plaintiff exhausted administrative
6 remedies through the Labor and Workforce Development Agency ("LWDA") prior to amending the
7 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on August 9, 2023, setting
8 forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is
9 being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendants via
10 certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response
11 by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65
12 days. As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a
13 First Amended Complaint on December 13, 2023. A true and correct copy of Plaintiff's operative
14 Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA
15 on April 9, 2024, after we received an endorsed copy back from Court. The facts alleged to support the
16 PAGA claim in the LWDA notice are the same as the facts alleged in the Complaint.

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

18 6. Defendants are represented in this matter by Steven W. Moore and Cody T. Stroman of
19 Fox Rothschild LLP. From the beginning, Defendants have contested the merits of this case, the
20 suitability of the case for class action or representative treatment, the manageability of the case at trial,
21 and Plaintiff's ability to prove a violation in each pay period for each employee among other defenses
22 and contentions they made challenging the propriety of this action. Defendants further contended, even
23 assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely
24 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
25 attempts to comply with California Labor Code obligations by Defendants. Defendant also contends
26 that California law would not even apply to many of the weeks worked by Class Members to the extent
27 they were weeks worked outside of California during the pay periods at issue in this case and, as such,
28 California law would not apply pursuant to *Sullivan v. Oracle Corp.*, 51 Cal.4th 1191 (2011).

1 Notwithstanding its agreement to settle this matter, Defendants believe the practices Plaintiff is
2 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state
3 and federal employment laws with respect to Plaintiff and Class Members. Also, Defendants have
4 contended that this matter is not appropriate for class certification outside of this proposed class
5 settlement.

6 7. Based on the expected testimony from Plaintiff and Class Members, a review of
7 Defendants' policies and procedures and other documents relating to the alleged claims, information on
8 the number of Class Members, Class Members' dates of employment and work performed in California,
9 and a representative sample of Class Members' time and payroll data, the scope of the potential damages
10 to Plaintiff and Class Members in light of the claims alleged, the uncertainty in the law with regard to
11 certification, and the negotiations that have taken place, I am convinced that the proposed settlement is
12 in the best interest of the class. The length and risks of trial and other normal perils of litigation that
13 impact the value of the claims were also considered and weighed in reaching the Agreement. In
14 addition, I carefully considered the prospect of potential class certification issues as well as the
15 uncertainty of class certification, the difficulties of complex litigation, and the lengthy process of
16 establishing specific damages and various possible delays and appeals in agreeing to the proposed
17 settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the
18 discretion of the Court even if Plaintiff was successful on proving those claims and there was risk that a
19 Court could find no willfulness in the failure to pay wages at separation, which would eliminate the
20 value of the waiting time penalty claim entirely. Overall, I believe it is more beneficial to secure a
21 guaranteed benefit to the class now rather than to proceed with litigation and potentially obtain zero
22 funds to the class due to legal or factual issues in the case.

23 8. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
24 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
25 and potential damages for such claims. The parties engaged in informal discovery and exchange of
26 documents, including a 20% representative sampling of employee data, covering timecards, paystubs,
27 payroll data and relevant handbooks, bulletins, and memoranda containing Defendants' policies for the
28 entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects

1 of the asserted claims, including certification issues, merits issues, damages, the scope and configuration
2 of Class Members, the content and implementation of the wage and hour policies at issue, issues relating
3 to manageability concerns at trial, among other relevant areas. From this production we were able to
4 determine information critical to a reliable damages analysis such as the average hourly rate, daily hours
5 worked, shifts eligible for meal and rest periods and the number of potential shifts that may correspond
6 to liability under our theories of liability, the average number of workweeks and pay periods that had
7 potential violations based on the asserted claims, the frequency with which violations occurred in a
8 given week and/or pay period, and the number of former employees. This information allowed my
9 office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in
10 all aspects of this litigation including providing factual information relating to Plaintiff's and Class
11 Members' employment conditions, providing a substantial number of documents, and answering
12 questions regarding Defendants' factual contentions in this matter. This was important because it
13 directly related to our ability to maintain this case as a class action and our ability to obtain a favorable
14 settlement for the class.

15 9. Throughout this litigation our office had numerous communications with Defendants'
16 Counsel discussing our respective positions. Although we did not file the case until August 10, 2023,
17 our pre-filing investigation of the wage and hour claims and interviews began in May 2023, including
18 reviewing documents and seeking out potential witnesses to interview. This investigation and compiling
19 of supporting facts and documents continued up to and through the August filing date. Prior to agreeing
20 to engage in mediation, our office prepared written discovery to go out and start the formal discovery
21 process. However, prior to the formal written discovery being served, the parties were able to begin
22 discussing the possibility of mediation and utilizing informal discovery exchanges instead of formal
23 discovery. The parties engaged in mediation on February 23, 2024, using an experienced mediator,
24 Michael J. Loeb, Esq. It was only after approximately eleven (11) months of investigations and
25 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
26 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
27 professional in nature.

1 10. The following represents the potential maximum recovery for each of Plaintiff's claims
2 based on my office's analysis of Defendants' relevant policies and the data produced by Defendants,
3 including a sample of time and payroll records for Class Members. There were 3,770 workweeks in the
4 Class Period, 393 pay periods in the PAGA and statutory penalty statute of limitations, an average base
5 hourly rate of \$26 and an average overtime rate of \$39.

6 a) Unpaid Minimum Wages: This claim is based on allegations that Defendant failed to
7 pay Plaintiff and Class Members all minimum wages due to Defendants not keeping
8 accurate time records and utilizing rounding when calculating Plaintiff's and similarly
9 situated employees' hours worked. Plaintiff contended Defendants did not keep
10 accurate records because Plaintiff and similarly situated employees did not record their
11 own hours worked. Instead, Crew Chiefs recorded times for all employees on site and
12 Plaintiff and similarly situated employees did not review or approve these entries as
13 accurate. Based on interviews and the documents provided, Class Members did not
14 work the same set schedule every week. The number of days worked and hours per day
15 varied depending on the number and type of emergency response being provided by the
16 company. On average, Class Members worked approximately four (4) days per week.
17 Based on the interviews and documents provided, Plaintiff estimated that there was an
18 average of approximately 15 minutes per shift worked off-the-clock, which equals
19 approximately one hour per week. The maximum damages for this claim are \$50,895,
20 which is entirely comprised of liquidated damages under California Labor Code section
21 1194.2 and based on a weighted average minimum wage rate of \$13.50 per hour.
22 Plaintiff is only claiming liquidated damages under this claim because Plaintiff has also
23 assumed that all unpaid hours also qualified for overtime compensation. Thus, only
24 liquidated damages are claimed to avoid double recovery of substantive wage loss. This
25 amount does not take into account any potential risks with respect to Plaintiff proving
26 the merits or damages. Defendants heavily disputed that Plaintiff and similarly situated
27 employees worked off-the-clock, citing the regular payment of substantial regular and
28 overtime hours worked each pay period. Additionally, Defendants contended that, to the

1 extent any rounding of time did occur based on the method of timekeeping used, it was
2 always rounded in the favor of employees, creating an overpayment of hours worked
3 rather than underpayment. Finally, Defendants have asserted that a substantial majority
4 of Class Members deployed in California were not California residents. More than 50%
5 of the pay periods in the sample group had hours worked outside California in the same
6 pay period as hours worked inside California. These facts created substantial risks that
7 California law would not apply to all weeks worked by Class Members pursuant to
8 *Sullivan v. Oracle Corp.*, 51 Cal.4th 1191 (2011), greatly reducing the amount of
9 potential damages available for all of Plaintiff's claims. Given the factual and legal
10 disputes, it is likely that a Court would find a good faith dispute, which entirely wipes
11 out a claim for liquidated damages. See Cal. Lab. Code § 1194.2(b). Taking these
12 factors into account, it is more realistic that there would not be any recovery for this
13 claim.

- 14 b) Unpaid Overtime Wages (Off-the-Clock): The off-the-clock theory of overtime liability
15 is based on the same factual allegations that formed the basis for the minimum wage
16 claims, which are stated above. The maximum damages for this claim are \$147,030
17 ([3,770 workweeks x 1 hour off-the-clock per week] x \$39 average overtime rate).
18 Plaintiff has assumed that all unpaid hours qualified as overtime. This amount does not
19 take into account any potential risks with respect to Plaintiff proving the merits or
20 damages. Because this theory of liability is based on the same facts supporting the
21 minimum wage claims, it is subject to the same risks identified above. Pursuant to
22 *Sullivan* and the fact that more than 50% of the applicable workweeks may not be
23 subject to California's wage and hour laws, I believe a more realistic range of recovery
24 for this theory of liability is between \$36,757.50 to \$73,515 (50% to 75% reduction
25 based on risk).
26 Unpaid Overtime based on RROP: This theory of liability for unpaid overtime is based
27 on allegations that Defendant failed to calculate overtime on daily rate payments or
28 incorporate the value of bonuses, additional hourly rate payments in lieu of health and

welfare benefits, and value of lodging when calculating the regular rate of pay for premium purposes such as overtime. The maximum damages for this claim is \$409,438.49. Daily rates were only paid in approximately 9.3% pay periods and caused an average of approximately \$243.75 in unpaid overtime for each instance. Over 1,885 bi-weekly pay periods, this equates to approximately \$42,730.59. The remaining overtime underpayments arose from the failure to incorporate the value of hourly payments in lieu of health and welfare benefits and lodging. There were no bonuses paid within the sample group. The average amount of unpaid overtime per week based on these payments was approximately \$97.27, which equals a total of \$366,707.90 in unpaid overtime. These amounts do not take into account any potential risks with respect to Plaintiff proving the merits or damages, which was heavily disputed. For example, Defendants contended that since they provide services under Federal contracts, the Service Contract Act does not allow for fringe benefit payments to be included in the calculation for the regular rate of pay. *See* 41 U.S.C. § 6707(e); *Naranjo v. Spectrum Security Services, Inc.*, 172 Cal.App.4th 654, 662 (2009). This presented a substantial risk to this claim since because these types of payments were the most frequent and of the highest amounts paid. Removing the value of hourly payments in lieu of health and welfare benefits from the regular rate of pay calculation would reduce this category of damages by approximately 90%. Taking these factors into account, I believe a more realistic range of recovery for this theory of liability is between \$79,401.38 to \$226,084.54 (50% to 90% reduction based on risk for amounts associated with the health and welfare benefits payments plus the daily rate damages calculation).

- c) Wage Statement Violations: This claim is derivative of Plaintiffs' overtime, and minimum wage claims. The maximum exposure for this claim is \$19,650, which is calculated based on an initial violation \$50 per pay period per employee (393 pay periods x \$50 = \$19,650). Based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation

purposes and the exposure analysis here is based on an “initial violation” valuation being adopted by any fact finder if this matter went to trial. This amount does not take into account the potential risks associated with this claim and assumes a violation in every pay period. Because this claim is derivative of Plaintiff’s other claims, the same risks identified above for Plaintiff’s minimum wages and overtime claims equally apply here, substantially affecting the potential value of this claim. As noted above, the Defendants heavily disputed whether there was any underpayment of wages resulting from off-the-clock work and whether California law would even apply to the majority of workweeks at issue in this case. Given the recent case of *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056 (2024), it is likely that a good faith dispute will be found for the majority of claimed violations. If limited to the regular rate violations based on the failure to calculate overtime on daily rate payments, this would reduce the wage statement violation rate to 9.3% of pay periods. Taking these factors into account, a more realistic range of recovery for this claim is \$0 to \$1,827.45 ([393 pay periods x 9.3%] x \$50 per pay period).

- d) Sick Leave: This claim was based on the allegations that Defendants failed to correctly calculate the regular rate of pay for sick leave. However, review of the sample did not reveal any violations for this claim as there was no sick leave paid in the sample group. Thus, there was no separate value associated with this claim.
- e) Waiting Time Penalties: This claim is derivative of the minimum wage and overtime claims above. Review of the sample did not reveal any instances where individuals were being paid final wages only at normal pay period intervals rather than at termination or within 72 hours of resignation. There were approximately 159 former employees within the waiting time penalty statute of limitations and the average shift length was approximately 12.68 hours. The daily rate of pay for these individuals is approximately \$399.36 ([8 regular hours x \$26 average hourly rate] + [4 overtime hours x \$39 average overtime rate] + [.68 double time hours x \$52 average double time rate]). This equates to a maximum exposure of \$1,904,947.20. However, this amount does not

1 take into account the potential risks associated with this claim. Because this claim is
2 derivative, the same risks mentioned above also apply to this claim. Similar to the
3 liquidated damages for minimum wage violations, there is a good faith dispute defense
4 to waiting time penalty claims. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th
5 859, 868 (2018). Based on the facts of this case, it is more realistic that there would be a
6 good faith dispute to a substantial majority of the claims. Approximately 15% of
7 individuals were paid a daily rate at some point in their employment. I believe that the
8 failure to calculate overtime for daily rate payments is the strongest claim alleged. Thus,
9 I believe a more realistic range of recovery for this claim is between \$0 and
10 \$285,742.08.

11 f) PAGA: This claim is derivative of the Labor Code violations identified above and would
12 be subject to all the same risks as the underlying claims it is based on. Additionally,
13 based on our research, we did not find any prior Labor Commissioner or court decisions
14 that stated Defendants' practices and/or policies were improper. As such, a "subsequent
15 violation" may not be found for penalty calculation purposes, and the exposure analysis
16 here is based on an "initial violation" valuation being adopted by any fact finder if this
17 matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
18 1209 (2008). Based on Class Members' payroll data and the violations alleged to the
19 LWDA, the maximum exposure for this claim is \$2,121,997.20. This amount does not
20 take into account any of the risks in proving the merits of the underlying claims that the
21 PAGA claim is based on. Beyond the risks on the merits, the correct valuation of civil
22 penalty amounts for certain claims under PAGA were in dispute. For example, our
23 damages calculation valued civil penalties for failure to pay final wages under Labor
24 Code section 256 (which provides the civil penalty amount will not exceed 30 days' pay
25 as waiting time under the terms of Section 203) for a total of \$1,904,947.20 instead of
26 \$15,900 based on the default \$100 per violation for the final pay period for each
27 employee who we alleged was not timely paid final wages. An adverse finding on this
28 single issue would drastically reduce the PAGA damages from \$2,121,997.20 to

1 \$232,950. Using the same reductions based on risk for the underlying claims the PAGA
2 claim is based on and the default PAGA penalty calculation for waiting time penalty
3 violations, total PAGA damages would be reduced to \$134,679.90. In addition to the
4 risks on the merits and disputes regarding the proper valuation of the penalty amounts, I
5 believe the Court may exercise its discretion to reduce PAGA penalties in this case since
6 Courts are statutorily authorized to use discretion to reduce penalties and the range of
7 discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203
8 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S.
9 DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). The 82% reduction
10 equates to roughly \$9-\$50 worth of civil penalties per pay period per employee
11 depending on the total potential value of the civil penalty, which is more in line with
12 actual awards based on my experience and review of awards in other cases. Thus, the
13 total exposure may be cut further to approximately \$24,242.38 (82% reduction) to
14 \$94,275.93 (30%) or lower. It is important to note that this discretionary reduction is
15 completely separate and in addition to any risks on the merits. Given the substantial
16 risks associated with the claims, we believe the amount that might ultimately be awarded
17 under this claim would be significantly lower than our maximum exposure calculation.
18 Allocating \$10,000 to the PAGA claims in this case is appropriate, especially in light of
19 amounts that Courts have approved as reasonable valuations in other cases. *See*
20 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
21 the resolution of PAGA claims based on their being disputed and being part of a class
22 settlement which was evaluated based on the terms of the agreement overall);
23 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022)
24 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
25 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving
26 settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);
27 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving
28 \$10,000 PAGA settlement allocation where total PAGA penalty exposure was

approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

11. In summary, the maximum recovery for the asserted claims is \$4,793,151.24 and the more likely range of recovery for the claims is between \$169,456.89 and \$756,385.93. These amounts are inclusive of interest on unpaid wages. Plaintiff's gross recovery of \$135,000 under the Agreement equals approximately 3% of the maximum value of the claims and between 18% and 80% of the more realistic range of recovery. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative, Settlement Administrator Costs, and the PAGA Payment, the net recovery under the Agreement, \$47,489.59, represents approximately 1% of the maximum value of the claims in this matter. The net recovery also represents between 6% and 28% of the more realistic range of recovery, and is the

1 equivalent of \$12.60 per workweek.. The average net award is approximately \$142.18. I believe the
2 Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this
3 case. The ability to secure a guaranteed settlement now and ensure Class Members receive some
4 compensation, rather than proceed to further litigation and potentially recover nothing, was a
5 motivating factor in reaching this Agreement. To the extent final approval is granted, we will file a
6 notice of entry of judgement regarding final approval and upload a filed copy to the webpage created by
7 the Settlement Administrator for effectuating notice to Class Members.

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

23 13. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
24 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
25 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
26 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
27 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
28 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris

1 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
2 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
3 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
4 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
5 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
6 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
7 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
8 and an officer for the Latino Law Students Association from 2009 to 2010.

9 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
10 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
11 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
12 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I was
13 recognized as a Super Lawyer (Rising Star). Beginning in 2024, I have been recognized as a Super
14 Lawyer. I have been a panel speaker and presented a number of seminars covering issues in wage and
15 hour litigation in general and complex class and PAGA litigation in particular. These engagements
16 include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in
17 California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc.
18 of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial
19 Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part
20 of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging
21 Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World
22 (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association
23 Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive
24 committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee
25 for Sacramento County Superior Court since August 2020. My practice focuses on complex civil
26 litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act
27 ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm.
28

1 Class and/or PAGA actions I have litigated or am currently litigating, including this case, includes, but
2 is not limited to, the following:

- 3 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 4 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 5 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 6 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 7 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
8 (San Joaquin Sup. Ct.);
- 9 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 10 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 11 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
12 Sup. Ct.);
- 13 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
14 Ct.);
- 15 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 16 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
17 00271174 (Sac. Sup. Ct.);
- 18 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
19 Ct.);
- 20 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
21 Ct.);
- 22 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
23 Sup. Ct.);
- 24 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 25 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
26 Ct.);
- 27 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 28 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-

00209613 (Sac. Sup. Ct.);

- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snvir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);

- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

16. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the

1 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
2 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
3 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
4 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
5 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
6 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
7 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
8 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
9 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
10 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
11 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
12 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
13 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
14 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
15 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
16 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
17 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
18 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
19 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
20 as a Super Lawyer from 2014 to present.

21 17. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
22 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
23 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
24 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
25 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
26 Federal Courts, including up to certification, settlement, preliminary and final approval, and
27 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
28

1 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
2 include the following:

- 3 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 4 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 5 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 6 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 7 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 8 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 9 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 10 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 11 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
12 Sup. Ct.);
- 13 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 14 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
15 Ct.);
- 16 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
17 Ct.);
- 18 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
19 Sup. Ct.);
- 20 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 21 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
22 Ct.);
- 23 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 24 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
25 00209613 (Sac. Sup. Ct.);
- 26 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 27 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 28 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)

- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);

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

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

19. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on written discovery and depositions, calculating class-wide damages, communicating with class representatives, drafting briefs and motions, and more. Mr. Konini worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander*

1 *Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly*
2 *Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et
3 al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental*
4 *Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072
5 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool*
6 *Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case
7 No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No.
8 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.
9 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
10 Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
11 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac. Sup. Ct). Mr.
12 Konini's practice largely revolves around wage and hour matters, including PAGA claims.

13 20. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant
14 to *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v.*
15 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980).
16 Plaintiff and Plaintiff's Counsel have been able to secure an identifiable benefit on behalf of the class
17 and equity counsels that the cost of the representation should be born equally amongst all class
18 members receiving these benefits. The settlement recovery provides a good result and is the product of
19 substantial time and effort in analyzing the facts and law applicable to this case. There was substantial
20 risk in agreeing to take this case on a contingency basis and as a class action with the possibility that
21 our firm would not receive any compensation their time and efforts due to issues regarding the merits
22 and/or certification and have carried that risk over the course of the case. In my experience, the
23 attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically
24 approved in wage and hour class action litigation. This includes awards in Sacramento County
25 Superior Court.

26 21. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this
27 case. The total lodestar is approximately \$77,570 based on approximately 138.8 hours, which includes
28 approximately 10 hours of time for myself preparing for and attending the final approval hearing,

ensuring compliance and the disbursement of funds consistent with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Konini and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. A true and correct copy of the summary chart is being filed with this Motion as Exhibit F. In reviewing the entries, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	15.8	\$725	\$11,455
Justin P. Rodriguez	69.2	\$625	\$43,250
Renald Konini	53.8	\$425	\$22,865
Total:	138.8	--	\$77,570

22. I believe the requested rates are within the prevailing market rates for Sacramento County and elsewhere. Mr. Konini, myself, and Mr. Shimoda have approximately 8 years, 13 years, and 21 years of experience, respectively, litigating complex wage and hour class and PAGA actions. This Court approved these rates for myself and Mr. Shimoda in November 2022. *See Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). Mr. Konini was approved at the requested rate in connection with a wage and hour class action in Sacramento County Superior Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Awarding fees at the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the

request of \$47,250 (35%) for attorneys' fees is justified given the results obtained on behalf of the class.

23. Although the Agreement set out a maximum of \$14,000.00 for potential attorney's costs, the total costs incurred through a compliance hearing by Class Counsel is \$12,610.41. A true and correct copy of my firm's itemized costs incurred prior to the filing of this Motion and the expected costs incurred through the final approval and compliance hearings is attached to this declaration as Exhibit D. The difference in the actual costs and the maximum amount allocated under the Agreement will be added to the Net Settlement Amount and disbursed to Participating Class Members.

24. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to administer the proposed class settlement. ILYM Group, Inc. has procedures in place to protect the security of class data as well as insurance. Under the settlement the difference between the originally allocated \$10,000 and the actual administration costs of \$7,650 will be paid to Participating Class Members on a pro rata basis.

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

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

27. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent, primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo, San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced, Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services

1 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
2 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
3 Superior Court.

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

14 29. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
15 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
16 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
17 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
18 workers and advises them as to the available legal remedies. In addition to individual counseling on
19 employment issues, the CFWR educates workers, unions, and community members about workplace
20 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

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

1 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
2 respect to those wage claims.

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

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

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

15 34. Galen T. Shimoda has volunteered for both organizations on and off over the past several
16 years through either presenting wage and hour seminars to law students who staff the free advice clinics
17 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
18 work with either organization since approximately March 2020. Mr. Shimoda has never received
19 payment or compensation of any kind in connection with any work he's done with either of the proposed
20 *cy pres* beneficiaries.

21 35. Renald Konini has never done any work, volunteer or otherwise with Capital Pro Bono,
22 Inc. or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, nor Mr. Shimoda have
23 ever received any compensation, direct or indirect, for designating CFWR or CPB as *cy pres*
24 beneficiaries or in connection with any of the volunteer work we have done with the organizations.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct. Executed on October 1, 2024, in Sacramento, California.

27
28 
Justin P. Rodriguez

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

Attorneys for Plaintiff JOHN WILLIS
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER,
an individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV006533

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

CLASS ACTION

**DECLARATION OF NATHALIE HERNANDEZ
OF ILYM GROUP, INC., IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: October 25, 2024
Time: 9:00 a.m.
Dept.: 23
Judge: Hon. Jill H. Talley

Filed: August 10, 2023
FAC Filed: December 13, 2023
Trial Date: None Set

1 I, Nathalie Hernandez, declare as follows:

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

8 2. ILYM Group has extensive experience in administering Class Action Settlements,
9 including direct mail services, database management, claims processing and settlement fund distribution
10 services for class actions ranging in size from 26 to 4.5 million settlement class members.

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

24 4. On June 17, 2024, ILYM Group received the Court approved text for the Notice of
25 Settlement from Counsel for Plaintiff. ILYM Group prepared a draft of the formatted Notice of
26 Settlement, which was approved by the Parties’ Counsel prior to mailing.

27 5. On July 12, 2024, ILYM Group received the class data file from Counsel for Defendants,
28 which contained the name, social security number, last known mailing address, last known telephone

1 number, workweeks and pay periods for each Class Member (“Class List”). The data file was uploaded
2 to our database and checked for duplicates and other possible discrepancies. The Class List contained
3 335 individuals.

4 6. As part of the preparation for mailing, all 335 names and addresses contained in the Class
5 List were then processed against the National Change of Address (“NCOA”) database, maintained by the
6 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses
7 of the Class Members before mailing the Notice of Settlement. The NCOA contains requested change of
8 addresses filed with the USPS. To the extent that an updated address was found in the NCOA database,
9 the updated address was used for mailing the Notice of Settlement. To the extent that no updated address
10 was found in the NCOA database, the original address provided by Counsel for Defendants was used for
11 mailing the Notice of Settlement.

12 7. On July 19, 2024, the Notice of Settlement was mailed, via U.S First Class Mail, to all
13 335 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct copy of
14 the mailed Notice of Settlement.

15 8. As of the date of this declaration, 40 Notice of Settlement mailings have been returned to
16 our office as undeliverable. ILYM Group performed a computerized skip trace on the 40 returned mailings
17 that did not have a forwarding address, in an effort to obtain an updated address for purpose of re-mailing
18 the Notice of Settlement. As a result of this skip trace, 18 updated addresses were obtained and the Notice
19 of Settlement was promptly re-mailed to those Class Members, via U.S First Class Mail.

20 9. As of the date of this declaration, a total of 18 Notice of Settlement mailings have been re-
21 mailed. Specifically, 18 have been re-mailed as a result of ILYM Group’s skip tracing efforts.

22 10. As of the date of this declaration, a total of 22 Notice of Settlement mailings have been
23 deemed undeliverable. Specifically, 22 have been deemed undeliverable as no updated address was found
24 notwithstanding the skip tracing.

25 11. As of the date of this declaration, ILYM Group has received one request for exclusion
26 from Michael Fleek. The deadline to request exclusion from the Settlement was September 17, 2024.

27 12. As of the date of this declaration, ILYM Group has not received any objections to the
28 Settlement. The deadline to file an objection to the Settlement was September 17, 2024.

13. As of the date of this declaration, ILYM Group will report a total of 334 Participating Class Members, representing 99.70% of the 335 Class Members.

14. Participating Class Members will receive a proportional share of the Net Settlement Fund through individual settlement payments, based on the number of workweeks worked by Class Members during the Class Period. The Net Settlement Fund is the amount remaining after deduction of the Court-approved payments from the Gross Settlement Fund for attorney's fees and costs, the Enhancement Payment, Settlement Administrator Costs to ILYM Group, and the PAGA Payment, e.g.,

Gross Settlement Fund	\$ 135,000.00
Class Counsel Fees	\$ 47,250.00
Class Counsel Litigation Costs	\$ 12,610.41
Enhancement Award – J.Willis	\$ 10,000.00
Administration Fees	\$ 7,650.00
PAGA Payment	\$ 10,000.00
Net Settlement Fund (estimated)	\$ 47,489.59

15. To determine a Participating Class Member's individual share of the Net Settlement Amount, the Net Settlement amount will be divided by the total number of workweeks worked by all Participating Class Members during the Class Period, multiplied by the number of workweeks worked by that Participating Class Member. Based on these calculations, the Participating Class Members will receive an estimated average gross payment of \$142.18, with the estimated highest gross payment being \$691.01.

16. ILYM Group's total fees and costs for services in connection with the administration of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are \$7,650.00. ILYM Group's work in connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM Group to perform.

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1 I declare under penalty of perjury under the laws of the State of California and the United States
2 that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed
3 this 1st day of October 2024, at Tustin, California.

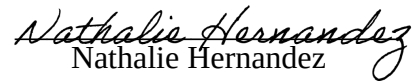
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EXHIBIT “A”

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO COUNTY

JOHN WILLIS, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon Limited
Liability Company; DONALD POLLARD, an
individual; RAY KEENER, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. **23CV006533**

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

ATTENTION: all non-exempt employees who worked for Defendants in California at any time between August 10, 2019, to April 23, 2024 (the “Class Members”).

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

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

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

I. BACKGROUND OF THE CASE

On August 10, 2023, Plaintiff filed a Complaint against Defendants in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 23CV006533. The Class Period is from August 10, 2019, to April 23, 2024 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendants violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide accurate wage statements, 4) failing to pay all final wages, 5) failing to maintain accurate records, 6) failing to provide paid sick leave, 7) failing to pay timely wages, 8) engaging in unfair competition, and 9) committing PAGA violations. Defendants have denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an

exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation. The Agreement applies to any and all Class Members, which are defined as all non-exempt employees who worked for Defendants in California at any time between August 10, 2019, to April 23, 2024. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who worked for Defendants in California at any time between August 9, 2022, to April 23, 2024. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of One Hundred Thirty-Five Thousand Dollars (\$135,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$14,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative’s Enhancement Payment of \$10,000, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

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

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

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

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

Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked in California within the PAGA Claim Period by the total weeks worked in California by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as August 9, 2022, up to April 23, 2024. Defendants' records indicate that you worked «PAGA_Workweeks» weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be \$«PAGA_Estimated_Settlement_Amount_». This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendants' records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked in California by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than September 17, 2024. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

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

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

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

The individuals released ("Released Parties") include Defendants, as well as Defendants' parent companies, subsidiaries, officers, shareholders, directors, predecessors, successors, affiliates, assigns, agents, employees, attorneys, and insurers.

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

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

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by September 17, 2024. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or want to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Willis v. GFP Enterprises, LLC*, 23CV006533); (d) be signed; and (e) be post-marked no later than September 17, 2024. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781
Fax: 888-845-6185

If you submit a request to opt out which is not postmarked by September 17, 2024, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* *Willis v. GFP Enterprises, LLC*, 23CV006533); (e) be signed; and (f) be post-marked no later than September 17, 2024. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendants at the addresses identified in Section VI of this notice.

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

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at its Public Portal. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 23, 720 9th St Sacramento, CA 95814 on October 25, 2024 at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

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

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>.

To join by phone: (833) 568-8864 / ID: 16108301121.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at its Public Portal (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=Home>). Follow the prompts to create your free online account, click "Search," then click "Case Number Search." Enter the case number, 23CV006533, and select "unlimited civil" for case type in the appropriate fields. This search will result in a clickable link taking you to the register of actions and all filed documents in this case. You can also contact Class Counsel or Defendants' Counsel as follows:

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

Cody T. Stroman
Steven W. Moore
Fox Rothschild LLP
345 California Street, Suite 2200
San Francisco, CA 94104-2670
Telephone: 415-364-5540
Facsimile: 415-391-4436
On behalf of Defendants

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

BY ORDER OF THE COURT

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
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Elk Grove, CA 95624
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Attorneys for Plaintiff JOHN WILLIS
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV006533

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

CLASS ACTION

**DECLARATION OF JOHN WILLIS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: October 25, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: August 10, 2023

FAC Filed: December 13, 2023

Trial Date: None Set

1 I, John Willis, declare:

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

5 2. I worked for Defendants GFP Enterprises, LLC, Donald Pollard, and Ray Keener
6 ("Defendants") in California from August 7, 2022, to September 3, 2022, as a non-exempt employee. I
7 was subject to all of Defendants' policies and practices that have been alleged as unlawful in the
8 Complaint and the notice sent to the Labor and Workforce Development Agency, including the
9 following: failure to pay overtime, failure to pay minimum wages, failure to provide accurate wage
10 statements, failure to timely pay final wages, and violation of Labor Code section 558, failure to pay all
11 sick wages owed, and untimely payment of wages.

12 3. I have actively participated in the litigation of this case for the benefit of all Class
13 Members. Prior to obtaining an attorney, I researched the claims and attorneys that I felt would do a
14 good job bringing the claims. I did this so I could be sure I understood what the important pieces of
15 information were and be able to discuss those topics with the attorneys during our initial discussions
16 assessing the claims. I wanted to make sure I also had a good idea of what to expect during the case
17 and how it would proceed to trial. After securing Shimoda & Rodriguez Law, PC, I continued to be
18 actively involved in the case to help ensure a positive outcome.

19 4. My attorneys explained to me the risks and benefits of bringing a class action and a
20 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
21 class and PAGA action meant that it would take substantially longer than pursuing my claims
22 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
23 nothing in the end, but I believed it was important to make sure that Defendants followed the law for
24 everyone. I also understood that there was a professional and financial risk in pursuing the case as a
25 class and PAGA action rather than pursuing my claims individually as there was a risk of having to pay
26 Defendants' costs if we were unsuccessful in bringing our claims.

27 5. During the course of this litigation, I have given detailed accounts of all the facts related
28 to my employment. I provided my attorneys with documentation that I believe supported the claims

1 brought against Defendants, including emails, employer policies, payroll records, and timecards
2 regarding the wage and hour issues raised in the litigation. I met with and assisted my attorneys in
3 understanding these documents and providing context for Defendants' payroll process as it applied to
4 me and how I believed it applied to Defendants' other employees. I worked for Defendants at several
5 different locations in California with different crew compositions, which I believe enabled me to
6 discuss the similarities of the wage and hour policies and practices among all Class Members.

7 6. The work I performed for this case included an extensive review of documents and
8 payroll practices to show and explain to my attorneys what was happening and why I thought it was
9 unlawful. For example, I searched for and reviewed many documents and work-related documents to
10 show and explain to my attorneys what was happening and why I believed certain practices were
11 unlawful. I helped review and explain to my attorney's different documents such as paystubs and time
12 records, payroll policies, bonus policies, employee handbooks, and timesheets. I also went through each
13 document to describe how they all fit into the typical workday, the claims, potential witnesses to
14 corroborate each issue, and other ways in which I felt they were important. A substantial amount of
15 time was spent discussing the bonus compensation plans, additional hourly rates/differentials, and
16 alternative compensation plans such as daily rates and lodging payments when calculating overtime and
17 sick leave wage payments. I believe going through the various elements of the bonus plan, hourly rate
18 differentials, daily rates, and lodging to support our contention that it was non-discretionary and should
19 have been included in the regular rate of pay for overtime and sick leave wages, was very important to
20 the claims because it had an impact for all the derivative claims like wage statement violations, waiting
21 time penalties, and PAGA penalties. Going over the differing ways any such bonuses, different rates,
22 daily rates, and lodging could be earned, conversations regarding the terms that I had with management
23 and supervisors, and the factual circumstances surrounding each paid bonus and/or pay rate and lodging
24 was critical. I went through my pay history with my attorneys to explain how the payments were
25 documented on our paystubs and what other indicators they could look for in the records to demonstrate
26 the type of bonuses and pay rates paid and circumstances surrounding the bonus and additional hourly
27 rates differentials. Also, I explained to my attorneys how Defendants kept time records and how
28 rounding hours worked happened when calculating my and other similarly situated employees' owed

1 wages. Additionally, I explained how Defendants' policies prevented myself and other similarly
2 situated employees from clocking in and out which led to working off-the-clock. Further detail and
3 review were required when my attorneys asked me questions about the payroll data sample that was
4 produced as part of informal discovery to engage in mediation.

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

11 8. Overall, I have spent approximately 52-62 hours assisting in the prosecution of the wage
12 and hour claims in this case.

13 9. I have not received any benefits as a result of filing this lawsuit. I have, however,
14 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
15 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendants' costs
16 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
17 because the costs associated with litigation, in general, are very high and this cost is multiplied many
18 times over in complex litigation like class actions. I have spent a substantial amount of time in this
19 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
20 have the opportunity to receive it. Rather than spend this time with friends and family, I have spent this
21 time for the benefit of Class Members. I have also experienced a substantial amount of stress as a result
22 of this litigation and feel that I have lost employment opportunities because of this lawsuit. This hazard
23 response and firefighting industry is relatively small for employment opportunities and having sued one
24 of the few employers in this field I think has made it less likely a future employer would consider
25 hiring me. Finally, as part of the Settlement, I am the only individual providing a broad, general release
26 of all my individual claims, whether known or unknown. No other Class Member is subject to such a
27 broad release.

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

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

7 12. I have no interest in Capital Pro Bono, Inc., the Center for Workers' Rights, or in their
8 governance.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct. Executed on 09/30/2024, in Elk Grove, California.

11
12 
13 _____
14 John Willis

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
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Facsimile: (916) 760-3733

Attorneys for Plaintiff JOHN WILLIS
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER, an
individual; and DOES 1 to 100, inclusive,
Defendants.

Case No. 23CV006533

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

CLASS ACTION

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

Date: October 25, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: August 10, 2023

FAC Filed: December 13, 2023

Trial Date: None Set

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

Dated: October 1, 2024

Shimoda & Rodriguez Law, PC

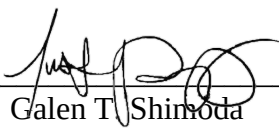
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

Exhibit A

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
3 **Shimoda & Rodriguez Law, PC**
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5 Facsimile: (916) 760-3733

6 Attorneys for Plaintiff JOHN WILLIS individually and on behalf of similarly situated employees

7 Steven W. Moore (SBN 193068)
Cody T. Stroman (SBN 303413)
8 Fox Rothschild LLP
345 California Street, Suite 2200
9 San Francisco, CA 94104-2670
Telephone: 415-364-5540
10 Facsimile: 415-391-4436

11 Attorneys for GFP ENTERPRISES, LLC,, DONALD POLLARD, and RAY KEENER

12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF SACRAMENTO COUNTY**

14 JOHN WILLIS, individually and on behalf of
15 all other similarly situated employees,

16 Plaintiff,

17 vs.

18 GFP ENTERPRISES, LLC, an Oregon Limited
19 Liability Company; DONALD POLLARD, an
individual; RAY KEENER, an individual ; and
20 DOES 1 to 100, inclusive,

21 Defendants.

Case No.: 23CV006533

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

Filed: August 10, 2023
FAC Filed: December 13, 2023
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff John Willis ("Plaintiff"), on behalf of himself, the Labor and Workforce
3 Development Agency, Class Members, and Aggrieved Employees, and Defendants GFP Enterprises, LLC,
4 Donald Pollard, and Ray Keener, ("Defendants"). This Agreement is subject to the terms and conditions
5 set forth below and the approval of the Court.

6 **1. DEFINITIONS**

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

8 1.1 "Action" means the above stated lawsuit, *Willis v. GFP Enterprises, LLC*, Sacramento
9 County Superior Court, Case No. 23CV006533, filed August 10, 2023.

10 1.2 "Aggrieved Employee(s)" means all non-exempt employees who worked for Defendants in
11 California at any time between August 9, 2022 up to either (1) the date a signed order preliminarily
12 approving the settlement is filed, or (2) April 23, 2024, whichever is earlier. The estimated number of
13 Aggrieved Employees is 159.

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

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

18 1.5 "Class Member(s)" means all non-exempt employees who worked for Defendants in
19 California at any time between August 10, 2019, up to either (1) the date a signed order preliminarily
20 approving the settlement is signed, or (2) April 23, 2024, whichever is earlier. The estimated number of
21 Class Members is 335.

22 1.6 "Class Period" means from August 10, 2019, up to either (1) the date a signed order
23 preliminarily approving the settlement is signed, or (2) April 23, 2024, whichever is earlier.

24 1.7 "Class Representative" means Plaintiff John Willis .

25 1.8 "Class Representative's Released Claims" means all claims arising from, could have been
26 asserted, or related in any way to the Class Representative's employment with Defendants, under federal,
27 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
28

1 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common
2 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,
3 unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable
4 relief or other similar relief or claims. The Class Representative's Released Claims exclude claims for
5 workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a
6 matter of law.

7 1.9 "Complaint" means the operative Complaint on file in the Action with the Court.

8 1.10 "Court" means the Sacramento County Superior Court.

9 1.11 "Defendants" means GFP Enterprises, LLC, Donald Pollard, and Ray Keener.

10 1.12 "Defendants' Counsel" means Fox Rothschild LLP.

11 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
12 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
13 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
14 Representative as a Participating Class Member.

15 1.14 "Effective Date" means the Final Approval Date unless there is a timely objection lodged
16 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
17 after a signed order approving this settlement has been filed provided no appellate proceeding having been
18 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
19 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
20 further remedies or relief, whichever is later.

21 1.15 "Final Approval Date" means the date a signed order granting final approval of this
22 Agreement is filed with the Court.

23 1.16 "Gross Settlement Amount" is the sum of One Hundred Thirty Five Thousand (\$135,000).

24 1.17 "Individual Settlement Amount" means an individual Class Member's and Aggrieved
25 Employee's allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
26 Sections 1.19, 1.23, 5.5, and 5.8.

27 1.18 "LWDA" means the California Labor and Workforce Development Agency.

1 1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
2 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
3 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
4 Payment to the Class Representative.

5 1.20 “Notice of Settlement” means the document substantially in the form attached hereto as
6 Exhibit 1.

7 1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
8 Settlement to Class Members and Aggrieved Employees.

9 1.22 “PAGA” means Private Attorneys General Act.

10 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
11 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

12 1.24 “PAGA Claim Period” means from August 9, 2022, up to either (1) the date a signed order
13 preliminarily approving the settlement is filed, or (2) April 23, 2024, whichever is earlier.

14 1.25 “Parties” mean Defendants and Plaintiff.

15 1.26 “Participating Class Member” means any and all Class Members who have not made any
16 timely request to opt-out of the Agreement.

17 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
18 of this Agreement is filed with the Court.

19 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
20 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
21 under this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement
22 shall remain the property of Defendants until the payments required under the Agreement are made.

23 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
24 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class
25 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
26 Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of
27 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class
28

1 Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member
2 and/or Aggrieved Employee was actively employed in California in a particular workweek shall be
3 construed from Defendants' records.

4 1.30 "Released Class Claims" means any and all class claims that are alleged in the Complaint,
5 and any additional wage and hour claims that could have been brought based on the facts alleged in the
6 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
7 The Released Class Claims exclude claims for workers' compensation or unemployment insurance
8 benefits. This release will cover all Class Members who do not opt out.

9 1.31 "Released PAGA Claims" means any and all claims that were brought under the Private
10 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage
11 and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during
12 the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

13 1.32 "Released Parties" means Defendants, as well as Defendants' parent companies,
14 subsidiaries, officers, shareholders, directors, predecessors, successors, affiliates, assigns, agents,
15 employees, attorneys, and insurers.

16 1.33 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity
17 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
18 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
19 Parties each represent that they do not have any financial interest in the Settlement Administrator.

20 1.34 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
21 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
22 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
23 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
24 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
25 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
26 Members and/or Aggrieved Employees, Class Counsel, and Defendants' Counsel; all costs and fees
27 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
28

1 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
2 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
3 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
4 other filings required by any governmental taxing authority or agency; all costs and fees associated with
5 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
6 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
7 in connection with the execution of its duties under this Agreement.

8 **2. DESCRIPTION OF THE LITIGATION**

9 2.1 On or about August 9, 2023, Plaintiff sent notice to the LWDA to exhaust administrative
10 remedies under the PAGA for (1) Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure
11 to Pay Overtime Wage), (2) Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16 § 4 (Failure
12 to Pay Minimum Wages), (3) Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
13 Statements), (4) Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages), (5) Violation of
14 Labor Code §§ 558, 558.1 (Provision Regarding Hours and Days of Work in Any Industrial Welfare
15 Commission Order), (6) Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records),
16 (7) Violation of Labor Code §§ 246, 246.5 248.5 (Failure to Provide Paid Sick Leave), and (8) Violation
17 of Labor Code §§ 204, 210 (Untimely Payment of Wages). The LWDA did not respond to the notice
18 within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private
19 Attorneys General on all alleged PAGA claims.

20 2.2 On or about August 10, 2023, Plaintiff filed a class action Complaint in Sacramento County
21 Superior Court on behalf of himself and Class Members alleging claims for (1) Failure to Pay Overtime
22 Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Accurate Wage Statements, (4) Failure
23 to Pay Final Wages, and (5) Unfair Competition. Plaintiff filed a First Amended Complaint on
24 approximately December 13, 2023 to add a PAGA cause of action based on the violations alleged in the
25 August 9, 2023 notice to the LWDA on behalf of himself and Aggrieved Employees.

26 2.3 Through informal discovery, Defendants and Defendants' Counsel provided Class
27 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
28

1 information on Class Members including, but not limited to, Class Members' workweeks, dates of
2 employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data
3 and payroll reports for a randomly selected sample of Class Members.

4 2.4 After Class Counsel received the data, the Parties engaged in informal settlement
5 negotiations, but were not able to come to a resolution. On February 23, 2024, the Parties participated in
6 a lengthy mediation with private mediator Michael J. Loeb, Esq. At the conclusion of the mediation, the
7 Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-
8 collusive, adversarial, and at arm's length.

9 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
10 productions, extensive legal analysis, the provision of information by Defendants to Plaintiff and the
11 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
12 merits of the claims and the defenses to those claims.

13 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to
14 incorporate the value of non-discretionary remuneration (*e.g.* bonuses, additional hourly rates/differentials)
15 in addition to the basic hourly rate when calculating the regular rate of pay for overtime and sick leave
16 wage premiums, 2) failing to pay any overtime and/or correctly calculate the regular rate of pay for
17 overtime and sick leave when Plaintiff earned daily rates and/or provided lodging in addition to their base
18 hourly and/or daily rates of pay, 3) failing to keep accurate time records and utilized rounding when
19 calculating Plaintiff's and similarly situated employees' hours worked because a crew chief, instead of
20 employees, recorded times for all employees without input and verification from employees, 4) failing to
21 maintain policies and procedures that prevented Plaintiff and similarly situated employees from clocking
22 in and out leading to Plaintiff and similarly situated employees worked off-the-clock since Defendants did
23 not keep track of their start and stop times, 5) failing to pay Plaintiff and similarly situated employees
24 timely wages. Plaintiff also alleges that these policies and practices resulted in wage statement violations,
25 waiting time penalties, and derivative PAGA penalties. Defendants have denied each of Plaintiff's claims
26 and Defendants have denied that this Action is appropriate for class certification for anything other than
27 settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties'
28

1 theories of potential exposure for the underlying claims and the class data supporting these claims. The
2 Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability
3 based on Defendants' factual and legal contentions and defenses.

4 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
5 and the information exchanged to date, are more than sufficient to assess the merits of the respective
6 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
7 Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be settled in a
8 manner and upon such terms and conditions set forth herein in order to avoid further expense,
9 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
10 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
11 Plaintiff, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for
12 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
13 circumstances.

14 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

15 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
16 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
17 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
18 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
19 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
20 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
21 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
22 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
23 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
24 evidence that may be applicable.

25 3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties,
26 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants
27 have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
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the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

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

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

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

4.4 If Defendants agree that the person listed in a data request is a Class Member and/or Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All

provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

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

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendants shall pay the Gross Settlement Amount (\$135,000). Funding of the Gross Settlement Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendants' tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)

1 on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement
2 Amount.

3 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
4 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have
5 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
6 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
7 exceed \$14,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not
8 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
9 exceed the \$14,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099
10 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than
11 the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
12 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
13 a pro rata basis.

14 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
15 Gross Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
16 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
17 Members on a pro rata basis.

18 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
19 an Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
20 (\$10,000) to compensate for the risks, time, and expense of his involvement in the Action and securing the
21 benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual
22 Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member.
23 Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff
24 so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a
25 non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than
26 the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
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Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.5 PAGA Payment: Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

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

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

5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net

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

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

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

5.9.2 Eighty Percent (80%) of each Participating Class Members' Individual Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted

1 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
2 which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and this
3 payment shall be divided equally among the 1099-MISC and 1099-INT designations.

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

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

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

1 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
2 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
3 establishing class certification have been met and are met.

4 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
5 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
6 Aggrieved Employees.

7 **6. RELEASE**

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

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

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

23 **7. SETTLEMENT ADMINISTRATION**

24 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
25 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
26 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
27 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
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any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if

1 necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until
2 all payments and obligations contemplated by the Agreement have been fully executed.

3 7.2 Notice to Class Members and Aggrieved Employees: Defendants represent and warrant that
4 Class Members and Aggrieved Employees are able to read and write in English such that no translation of
5 the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class
6 Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how
7 to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying
8 Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class
9 Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed
10 attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement
11 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and
12 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for
13 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's
14 and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will
15 provide information on how to access electronic copies online of the Notice of Settlement, any motions for
16 approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents
17 as the Court directs.

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

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

7.5 Responses to Notice of Settlement:

7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be

1 excluded from the settlement; (c) identify the case name and number (i.e. Willis v. GFP Enterprises, LLC,
2 Case No. 23CV006533); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice
3 Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request
4 to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the
5 postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request
6 to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will
7 not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal
8 or comment thereon. The name of any Class Member who submits a valid and timely opt out request will
9 be specifically identified in any proposed order granting final approval. Class Members who fail to submit
10 a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final
11 judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member, they
12 will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this
13 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

14 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
15 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
16 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
17 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
18 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
19 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
20 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
21 number (i.e. Willis v. GFP Enterprises, LLC, Case No. 23CV006533); (e) be signed; and (f) be post-marked
22 no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The
23 Notice of Settlement will inform the Class Member that they should also file a notice of intent to appear
24 with the Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at
25 the final approval hearing.

26 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
27 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)

1 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
2 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
3 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
4 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the
5 dispute. Defendants' records shall presumptively control unless the Class Member can produce
6 documentation evidencing other periods of employment worked. If Defendants agree with submitted
7 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
8 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
9 Class Member's Individual Settlement Amount. If Defendants disagree with the submitted information,
10 Defendants' Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
11 documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class
12 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
13 Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot
14 timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

15 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
16 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
17 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
18 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
19 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
20 letter, whichever is later.

21 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
22 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
23 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
24 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

25 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
26 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
27 Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete
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1 and detailed report regarding the statistics and responses of settlement administration to date and all the
2 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

3 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
4 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
5 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
6 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
7 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
8 Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
9 calculations Class Counsel and Defendants' Counsel. Defendants shall wire the Gross Settlement Amount
10 and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement
11 Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a
12 QSF. Within seven (7) calendar days after Defendants fund the settlement, the Settlement Administrator
13 shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to
14 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
15 and payment to Participating Class Members and/or Aggrieved Employees as required under this
16 Agreement and approved by Court.

17 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
18 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
19 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
20 after the Final Approval Date.

21 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
22 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
23 requested by Class Counsel.

24 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
25 Individual Settlement Amount.

26 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
27 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
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Agreement. Defendants agree to reasonably cooperate with the Settlement Administrator to the extent necessary to determine the amount of the payroll tax payment required.

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

7.10 Settlement Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

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

Last day for Defendants to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
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1	Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendants
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4	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
5		
6		
7	Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
8		
9		
10	Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
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12		
13		
14	Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
15		
16		
17	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
18		
19		
20		
21	Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
22		
23	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
24		
25		
26	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline
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1 **9. DUTIES OF THE PARTIES**

2 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
3 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
4 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class
5 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
6 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
7 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
8 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
9 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
10 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
11 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
12 Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments and/or
13 proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class
14 Counsel. With regard to the final approval documents, a similar one-week maximum review and response
15 time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this
16 Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
17 Settlement.

18 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
19 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice
20 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing
21 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
22 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
23 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
24 reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
25 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
26 approved as fair, reasonable and adequate as to the Class Members.

1 9.1.2 Defendants shall not oppose Plaintiff's motion for approval of the proposed
2 Agreement.

3 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
4 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
5 appropriate to assure effective communication to individual Class Members of information about their
6 rights and obligations under this Agreement.

7 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
8 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
9 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
10 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
11 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
12 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
13 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
14 request to opt out during the Notice Period.

15 9.2.1 Class Counsel and Defendants shall work in good faith to draft a mutually agreeable
16 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The
17 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
18 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
19 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
20 Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award
21 of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement
22 Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and
23 enforcement of the terms of the Agreement and the Court's orders.

24 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
25 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
26 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
27 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
28

the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each other and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

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

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

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendants may rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendants. Defendants have represented that there are no more than 3,770 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 4,147 (*i.e.*, greater than 10% more than 3,770), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 3,770, multiplied by the pay period value. For example, if there were 11,900 workweeks represented to exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks – 11,900 workweeks = 3,100 workweeks x \$5.00/workweek). In the alternative, Defendants may opt to reduce the Class Period to an earlier date such that the workweeks will not exceed 4,147. To the extent Defendants opt to select

1 reducing the number of workweeks, the PAGA Claim Period will be similarly reduced to have the same
2 ending date.

3 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
4 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
5 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
6 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
7 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
8 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
9 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
10 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
11 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
12 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
13 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
14 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
15 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
16 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
17 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
18 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
19 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
20 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
21 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
22 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
23 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
24 THIS AGREEMENT.

25 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
26 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
27
28

any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged in this Agreement.

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

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

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

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

10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,

1 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
2 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into
3 this Stipulation with the intention to avoid further disputes and litigation.

4 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
5 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
6 third business day after mailing by United States certified mail, return receipt requested, addressed as
7 follows:

8 To Plaintiff and the Class:
9 Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
10 Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
11 Elk Grove, CA 95624

12 To Defendants:
13 Steven W. Moore
Cody T. Stroman
Fox Rothschild LLP
14 345 California Street, Suite 2200
San Francisco, CA 94104-2670
15 Telephone: 415-364-5540
16 Facsimile: 415-391-4436

17 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
18 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
19 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
20 party or its counsel participated in the drafting of this Agreement.

21 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
22 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
23 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
24 as expressly provided in this Agreement.

25 10.12 No Modifications: This Agreement may be amended or modified only by a written
26 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
27 discharged except by performance in accordance with its terms.

1 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
3 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
4 to effectuate its terms and to execute any other documents required to effectuate the terms of this
5 Agreement.

6 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
7 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
8 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
9 may be executed on behalf of all Class Members by the Class Representative.

10 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
11 undersigned. Plaintiff, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement
12 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
13 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
14 and effect of originals.

15 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
16 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
17 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
18 and governed by, the substantive laws of the State of California without giving effect to that State's choice
19 of law principles.

20 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
21 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
22 this Agreement, or any provision thereof.

23 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
24 construed as retaliation against any Class Members for participating or seeking to participate in this class
25 action settlement. The Parties will not discourage any class member from participating or seeking to
26 participate in this class action settlement. This is a material term of the Agreement and non-breaching
27 Parties will seek court intervention if this provision is breached.

1 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
 2 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
 3 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
 4 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
 5 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
 6 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

7 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
 8 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

9 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
 10 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
 11 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

12 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
 13 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
 14 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

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

17 **For Plaintiff:**

18 Date: 4/9/2024

DocuSigned by:
 John Willis
 09837D61BCD4FA...

21 **For Defendants:**

22 Date: _____

23 By: _____
 24 For GFP Enterprises, LLC

25 Date: _____

26 By: _____
 27 For Donald Pollard

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

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

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

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

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

For Plaintiff:

Date: 4/9/2024

DocuSigned by:
John Willis
John Willis
D9837DB1E3D4FA...

For Defendants:

Date: 4/30/2024

Donald R. Pollard
By:
For GFP Enterprises, LLC

Date: 4/30/2024

Donald R. Pollard
By:
For Donald Pollard

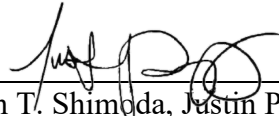
1 Date: _____

By:
For Ray Keener

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4 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

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6 Dated: April 5, 2024

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

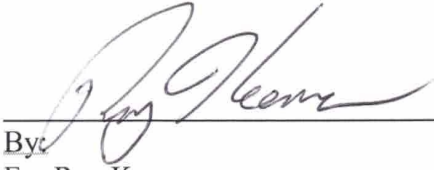
7
8
9 APPROVED AS TO FORM

FOX ROTHSCHILD LLP

10
11 Dated: _____

By: _____
Cody T. Stroman
Attorney for Defendants

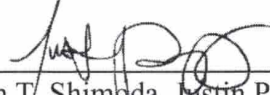
1 Date: May 6, 2024

By: 
For Ray Keener

2
3
4 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

5
6 Dated: April 5, 2024

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

7
8
9 APPROVED AS TO FORM

FOX ROTHSCILD LLP

10
11 Dated: May 6, 2024

By: 
Cody T. Stroman
Attorney for Defendants

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EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO COUNTY

JOHN WILLIS, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon Limited
Liability Company; DONALD POLLARD, an
individual; RAY KEENER, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. **23CV006533**

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

ATTENTION: all non-exempt employees who worked for Defendants in California at any time between August 10, 2019, to the present [REDACTED] (the "Class Members").

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

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

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

I. BACKGROUND OF THE CASE

On August 10, 2023, Plaintiff filed a Complaint against Defendants in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 23CV006533. The Class Period is from August 10, 2019, to [REDACTED] (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendants violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide accurate wage statements, 4) failing to pay all final wages, 5) failing to maintain accurate records, 6) failing to provide paid sick leave, 7) failing to pay timely wages, 8) engaging in unfair competition, and 9) committing PAGA violations. Defendants have denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting

the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees who worked for Defendants in California at any time between August 10, 2019, to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all non-exempt employees who worked for Defendants in California at any time between August 9, 2022, to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of One Hundred Thirty-Five Thousand Dollars (\$135,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount, attorneys’ costs not to exceed \$14,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representative’s Enhancement Payment of \$10,000, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

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

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

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

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked in California within the Class Period by the total weeks worked by all Participating Class Members in California within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked in California within the PAGA Claim Period by the total weeks worked in California by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as August 9, 2022, up to [REDACTED]. Defendants’ records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your

share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

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

D. Release of Claims

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

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

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

The individuals released ("Released Parties") include Defendants, as well as Defendants' parent companies, subsidiaries, officers, shareholders, directors, predecessors, successors, affiliates, assigns, agents, employees, attorneys, and insurers.

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

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

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Willis v. GFP Enterprises, LLC*, 23CV006533); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

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

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Willis v. GFP Enterprises, LLC*, 23CV006533); (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendants at the addresses identified in Section VI of this notice.

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

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at its Public Portal. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

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

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

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept23>.

To join by phone: (833) 568-8864 / ID: 16108301121.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at its Public Portal (<https://prod-portal-sacramento-ca.journaltech.com/public-portal/?q=Home>). Follow the prompts to create your free online account, click "Search," then click "Case Number Search." Enter the case number, 23CV006533, and select "unlimited civil" for case type in the appropriate fields. This search will result in a clickable link taking you to the register of actions and all filed

documents in this case. You can also contact Class Counsel or Defendants' Counsel as follows:

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

Cody T. Stroman
Steven W. Moore
Fox Rothschild LLP
345 California Street, Suite 2200
San Francisco, CA 94104-2670
Telephone: 415-364-5540
Facsimile: 415-391-4436
On behalf of Defendants

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

BY ORDER OF THE COURT

Exhibit B

Filed
Superior Court of California,
Sacramento
12/13/2023
woltmos
By _____, Deputy
23CV006533

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

9 Attorneys for Plaintiff JOHN WILLIS
10 individually and on behalf of similarly situated employees

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO COUNTY**

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV006533

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Wage Statement Violations
4. Waiting Time Penalties
5. Unfair Competition
6. Private Attorneys General Act

DEMAND FOR JURY TRIAL

BY FAX

Plaintiff JOHN WILLIS ("Plaintiff"), on behalf of himself and all other similarly situated employees, hereby files this First Amended Complaint against Defendants GFP ENTERPRISES, LLC, an Oregon Limited Liability Company; DONALD POLLARD, an individual; RAY KEENER, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

FIRST AMENDED CLASS ACTION COMPLAINT

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INTRODUCTION

1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for failure to provide overtime wages, minimum wages, wage statement violations, waiting time penalties, and unfair competition.

JURISDICTION AND VENUE

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 16.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2, and 395.5, in that foreign entities and have not designated any county in California as being where they maintain their principal offices. In addition, some of the wrongful acts and violations of law asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

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

PARTIES

5. JOHN WILLIS is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, GFP ENTERPRISES, LLC, is now and/or at all times mentioned in this Complaint was an Oregon Limited Liability Company and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. On information and belief, Plaintiff alleged, DONALD POLLARD, is now and/or at all times mentioned in this Complaint was an individual and the owner and operator of an industry, business and/or facility doing business in the State of California. Plaintiff is informed and believes, and thereupon alleges, that DONALD POLLARD is an individual over the age of eighteen (18) and is a resident of the State of Oregon. Plaintiff further alleges that DONALD POLLARD is an owner, director, officer, and/or managing agent of GFP ENTERPRISES, LLC, responsible for causing the violations outlined in the first through fourth causes of action. As such DONALD POLLARD is individually liable pursuant to California Labor Code section 558.1. Pursuant to California Labor Code section 558.1, GFP ENTERPRISES, LLC, and DONALD POLLARD, are jointly and severally liable for each cause of action asserted herein. On information and belief, Plaintiff alleges that DONALD POLLARD trained subordinate staff to implement and carry out the policies and practices identified herein. As a result, whether directly or indirectly, DONALD POLLARD caused the violations identified herein. DONALD POLLARD was responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead.

8. On information and belief, Plaintiff alleges, RAY KEENER, is now and/or at all times mentioned in this Complaint was an individual and the owner and operator of an industry, business and/or facility doing business in the State of California. Plaintiff is informed and believes, and thereupon alleges, that RAY KEENER is an individual over the age of eighteen (18) and is a resident of the State of Arizona. Plaintiff further alleges that RAY KEENER is an owner, director, officer, and/or managing agent of GFP ENTERPRISES, LLC, responsible for causing the violations outlined in the first through fourth causes of action. As such RAY KEENER is individually liable pursuant to

1 California Labor Code section 558.1. Pursuant to California Labor Code section 558.1, GFP
2 ENTERPRISES, LLC, and RAY KEENER, are jointly and severally liable for each cause of action
3 asserted herein. On information and belief, Plaintiff alleges that RAY KEENER trained subordinate
4 staff to implement and carry out the policies and practices identified herein. As a result, whether
5 directly or indirectly, RAY KEENER caused the violations identified herein. RAY KEENER was
6 responsible for the violations stated herein as he was in a position of authority with the power and
7 responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them
8 instead.

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

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

16 11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
17 were members of and/or engaged in a joint employment, joint venture, partnership and common
18 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
19 joint venture, partnership and common enterprise.

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

22 13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
23 wrongs, complaints, injuries and/or damages alleged in this Complaint.

24 **CLASS ALLEGATIONS**

25 14. Plaintiff brings the First through Fifth Causes of Action on behalf of himself and all
26 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
27 The class which Plaintiff seeks to represent is composed of, and defined, as follows:
28

1 All non-exempt employees who worked for Defendants in California at
2 any time between August 10, 2019, to the present.

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

6 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
7 is impracticable under the circumstances of this case. While the exact number of class
8 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
9 Defendants have employed as many as fifty (50) individuals falling within the above
10 stated class definition throughout the State of California during the applicable statute of
11 limitations, who were subjected to the policies and practices outlined in this Complaint.
12 As such, joinder of all members of the putative class is not practicable.

13 (b) Common Questions Predominate: Common questions of law and fact exist as to all
14 members of the putative class and predominate over questions that affect only individual
15 members of the class. These common questions of law and fact include, without
16 limitation, the following:

- 17 (1) Whether Defendants maintained accurate payroll records;
18 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
19 class members were not paid all overtime wages owed;
20 (3) Whether Defendants failed to correctly calculate the regular rate of pay for
21 premium wage purposes such as overtime, double time, and sick leave wages;
22 (4) Whether as a result of Defendants' policies and practices Plaintiff's and putative
23 class members received all wages, due and owing, at the time of their termination
24 or separation; and
25 (5) Whether Defendants provided Plaintiff's and putative class members with wage
26 statements that complied with Labor Code section 226.

27 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
28 class. The putative class also sustained damages arising out of Defendants' common

1 course of conduct in violation of the law as complained of herein. Plaintiff and all
2 members of the putative class were non-exempt employees who were not paid all
3 overtime wages owed, minimum wages owed, and sick pay wages owed, as a result of
4 Defendants' policies and practices resulting in inaccurate wage statements that did not
5 itemize the accurate overtime wages owed, minimum wages owed, and sick leave wages.
6 Additionally, Defendants issued Plaintiff and all members of the putative class wage
7 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
8 each member of the putative class will have suffered the same type of harm and seek the
9 same type of recovery based on the same legal theories.

10 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
11 putative class. For all relevant times, Plaintiff resided in California and worked for
12 Defendants in California. Moreover, Plaintiff is an adequate representative of the
13 putative class as Plaintiff has no interests that are adverse to those of putative class
14 members. Additionally, Plaintiff has retained counsel who has substantial experience in
15 complex civil litigation and wage and hour matters.

16 (e) Superiority: A class action is superior to other available means for the fair and efficient
17 adjudication of the controversy since individual joinder of all members of the putative
18 class is impracticable. Class action treatment will permit a larger number of similarly
19 situated persons to prosecute their common claims in a single forum simultaneously,
20 efficiently, and without the unnecessary duplication of effort and expense that numerous
21 individual actions would engender. Further, as damages suffered by each individual
22 member of the class may be relatively small, the expenses and burden of the individual
23 litigation would make it difficult or impossible for individual members of the class to
24 redress the wrongs done to them, and an important public interest will be served by
25 addressing the matter as a class action. The cost to the court system of adjudication of
26 such individualized litigation would be substantial. Individualized litigation would also
27 present the potential for inconsistent or contradictory judgments.
28

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

3 **GENERAL ALLEGATIONS**

4 17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully
5 set forth herein.

6 18. Plaintiff worked for Defendants from August 7, 2022, to about September 3, 2022, and
7 from March 20, 2023, to March 24, 2023, as a non-exempt employee. Defendants operate a disaster
8 response company that responds to fires, floods, hurricanes, and other disasters or emergencies. They
9 provide disaster response such as moving debris from disaster areas, providing trailers and catering in
10 disaster areas, and providing fire protection such as moving wood and debris to certain areas to break
11 fires and help in extinguishing fires. In the fall of 2022, Plaintiff worked in Eureka, California for
12 approximately two weeks. In March of 2023, Plaintiff worked in Coachella, California for Defendants.
13 Over the course of employment Plaintiff and similarly situated employees held positions as firefighters
14 and wild land firefighters. Some of their duties included cutting trees down to avoid fires, mop up hot
15 spots on the ground, cool hot spots on the ground, drive and/or assist heavy equipment to clear out
16 debris from natural disasters or to construct barricades to break fires, set up catering trailers at disaster
17 zones or sites, and assist in disaster emergency response.

18 19. In addition to their base hourly rate, Plaintiff and similarly situated employees were paid
19 additional sums per hour, *e.g.*, \$4.60 per hour, depending on where they worked, including in California.
20 Plaintiff and similarly situated employees were also paid flat daily rates, *e.g.*, \$325 per day, depending
21 on where they worked, including in California. Defendants also paid various types of bonuses to
22 employees depending on whether they obtained different types of work-related certifications, ranging
23 from \$100 to \$150 per bonus. Plaintiff and similarly situated employees usually worked over eight
24 hours per day and over forty (40) hours per week. Most of the time, Plaintiff and similarly situated
25 employees worked between twelve (12) and sixteen (16) hours per day. Defendants failed to incorporate
26 the value of the additional hourly rates into the base rate when calculating the regular rate of pay for
27 overtime and sick leave wage premiums. Defendants also failed to correctly calculate the regular rate of
28

1 pay for overtime and sick leave when Plaintiff earned daily rates and/or provided lodging in addition to
2 their base hourly and/or daily rates of pay.

3 20. Furthermore, Defendants did not keep accurate time records and utilized rounding when
4 calculating Plaintiff's and similarly situated employees' hours worked. Plaintiff and similarly situated
5 employees did not record their own hours worked. Instead, Crew Chiefs recorded times for all
6 employees on sites. The crew consisted of ten (10) to twenty (20) employees. Defendant maintained
7 policies and procedures that prevented Plaintiff and similarly situated employees from clocking in and
8 out at the beginning of their shift and at the end of their shift. Timecards were filled out by the Crew
9 Chief or supervisor without input from Plaintiff and similarly situated employees. Defendants and the
10 Crew Chief did not show the time entries to Plaintiff and similarly situated employees for verification.
11 Plaintiff and similarly situated employees had to travel to sites and start working right away upon
12 arrival. As a result, Plaintiff and similarly situated employees worked off-the-clock since Defendants
13 did not keep track of their start and stop times.

14 21. Plaintiff was sick while at work on March 24, 2023. Plaintiff informed Defendants that he
15 had purchased a flight ticket to fly back home to see a medical provider because he was sick and was
16 vomiting a lot. Defendants' supervisor, Mike Denning told Plaintiff to "consider this his last day."
17 Defendants sent Plaintiff his last paycheck approximately two weeks after his last day of work. Plaintiff
18 is informed and believes that Defendants maintain a policy of paying final wages only at regularly
19 scheduled payroll cycles rather than upon termination or within seventy-two hours of separation as
20 required by the California Labor Code.

21 22. As a result of Defendants' policies and practices, Plaintiff and similarly situated
22 employees were not paid for all wages due, including minimum wages, overtime wages, and sick leave
23 wages. These amounts were not paid to similarly situated employees at the time of their separation and
24 remain unpaid to date. Additionally, the unlawful practices identified above resulted in Defendants
25 issuing inaccurate paystubs to Plaintiff and similarly situated employees. The paystubs did not
26 accurately itemize the gross wages earned, total hours worked, correct applicable rates of pay, and the
27 net wages earned.

23. Plaintiff is informed and believes that DONALD POLLARD and RAY KEENER were the Managing Members or Members of the Limited Liability Company from at least 2022 to present. Mr. Pollard and Mr. Keener were responsible for creating, implementing, and overseeing the wage and hour policies and practices outlined herein that resulted in the violation of the California Labor Code.

24. Defendant GFP ENTERPRISES, LLC identified Defendant DONALD POLLARD in its filings with the California Secretary of State from at least January 10, 2022, to the present as its Managing Member or Member. Plaintiff is informed and believes that DONALD POLLARD was responsible for creating and electing to implement GFP ENTERPRISES, LLC's payroll and compensation policies and practices or that DONALD POLLARD was aware of such policies and practices and ratified them.

25. Defendant GFP ENTERPRISES, LLC identified Defendant RAY KEENER in its filings with the California Secretary of State from at least January 10, 2022, to the present as its Managing Member or Member. Plaintiff is informed and believes that RAY KEENER was responsible for creating and electing to implement GFP ENTERPRISES, LLC's payroll and compensation policies and practices or that RAY KEENER was aware of such policies and practices and ratified them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully set forth herein.

27. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 16, section (3)(A); Cal. Lab. Code §§ 510, 1194.

28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However,

1 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
2 worked at their regular rate of pay.

3 29. Plaintiff and similarly situated employees were not exempt from overtime protections
4 employees under the California Wage Orders and Labor Code.

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

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
(As to all Defendants)

10 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
11 set forth herein.

12 32. For the period preceding the filing of this Complaint, Defendants were required to
13 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
14 every hour worked. See MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code §
15 1194.

16 33. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of
17 their obligation to pay the minimum wage for each hour worked but failed to do so. Defendants
18 rounding Plaintiff's and similarly situated employees hours worked, failing to pay all wages due.

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

22 **THIRD CAUSE OF ACTION**
23 **WAGE STATEMENT VIOLATIONS**
(As to all Defendants)

24 35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully
25 set forth herein.

26 36. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
27 statement to an employee, semimonthly or at the time of each payment of wages, showing:
28

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

23 37. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
24 itemized statement or failed to provide an accurate and complete itemized statement showing the
25 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
26 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
27 and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
28 paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours
29 worked due to Defendants' failure to keep proper track of time and rounding policy that resulted in
30 off-the-clock work. Plaintiff and similarly situated employees were not able to promptly and easily
31 determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly
32 situated employees suffered confusion over whether they received all wages owed and were
33 prevented from effectively challenging information on their wage statements.

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

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

39. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 38 as though fully set forth herein.

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

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

42. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, or all sick leave pay owed at their termination or within the required time after their separation from employment.

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

44. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid for all their hours worked because of Defendants' failure to track Plaintiff's and similarly situated employees' hours and Defendants' rounding policy. Defendants' time keeping practice were unreliable because the Crew Chief would enter the time for Plaintiff and similarly situated employees without input from Plaintiff and similarly situated employees. Additionally, Defendants knew that Plaintiff and similarly situated employees received fringe pay but they felt to incorporate such pay into the calculation for the regular rate of pay for premium pay such as overtime wages and sick pay wages. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

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

//

FIFTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to GFP ENTERPRISES, LLC and DOES 1 to 100)

46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully set forth herein.

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

48. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and paid sick leave, during their employment or any time thereafter.

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

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

SIXTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

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

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

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

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

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

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

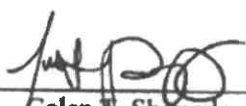
- 1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;
3 d. Liquidated damages pursuant to California Labor Code section 1194.2;
4 4. As to the Third Cause of Action:
5 a. Penalties as provided for in Labor Code section 226, including the greater of all
6 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
7 violation occurred and one hundred dollars (\$100.00) per employee for each
8 violation in the subsequent pay periods, but not to exceed four thousand dollars
9 (\$4,000.00);
10 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
11 226(e);
12 5. As to the Sixth Cause of Action:
13 a. For civil penalties as provided in the Labor Code for each enumerated
14 violation;
15 b. For those Labor Code sections where there is no civil penalty provided for their
16 violation, the default penalty provided in Labor Code section 2699(f): for any
17 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
18 period; For any subsequent violation, two hundred dollars (\$200) for each
19 aggrieved employee per pay period;
20 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
21 d. For any other remedies as allowed by law and/or deemed appropriate by the
22 Court;
23 //
24 //
25 //
26 //
27 //
28 //

- 1 6. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

7
8 Dated: November 16, 2023

Shimoda & Rodriguez Law, PC

9
10 By: _____


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

1 *Willis v. GFP Enterprises LLC, et al.*
2 *Sacramento County Superior Court of California 23CV006533*

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

5 I, Elias Tapia, declare that:

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

8 On December 12, 2023, I served the following documents on the party below:

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

10 Cody Stroman 11 Fox Rothschild, LLP 12 345 California Street, Ste 2200 13 San Francisco, California 94104 14 Phone: 415-248-1522 Facsimile: 415-391-4436 Email: CodyStroman@foxrothschild.com swmoore@foxrothschild.com	
---	--

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

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

21 [] [By Electronic Mail] I e-mailed the document(s) to the person(s) shown above. No
22 error was reported by the e-mail service that I used.

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

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on December 12, 2023, at Elk Grove,
26 California.

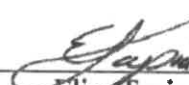
27 
Elias Tapia

Exhibit C



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

August 9, 2023

For Online Filing:

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

Re: *Willis v. GFP Enterprises, LLC*

Dear Labor Commissioner,

As counsel for John Willis ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

GFP Enterprises, LLC
P.O. Box 639
Sisters, OR 97759

GFP Enterprises, LLC
307 W Sisters Park Dr
Sisters, OR 97759

Donald Pollard
69820 Goodrich Rd
Sisters, OR 97759

Ray Keener
12651 N. New Reflection Dr.
Marana, AZ 85658

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against GFP Enterprises, LLC, Donald Pollard, and Ray Keener ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to, the following: all non-exempt employees who worked for Defendants in California at any time between one year prior to the filing of this notice to the present date. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018)



(finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from August 7, 2022, to about September 3, 2022, and from March 20, 2023, to March 24, 2023, as a non-exempt employee. Defendants operate a disaster response company that responds to fires, floods, hurricanes, and other disasters or emergencies. They provide disaster response such as moving debris from disaster areas, providing trailers and catering in disaster areas, and providing fire protection such as moving wood and debris to certain areas to break fires and help in extinguishing fires. In the fall of 2022, Plaintiff worked in Eureka, California for approximately two weeks. In March of 2023, Plaintiff worked in Coachella, California for Defendants. Over the course of employment Plaintiff and Aggrieved Employees held positions as firefighters and wild land firefighters. Some of their duties included cutting trees down to avoid fires, mop up hot spots on the ground, cool hot spots on the ground, drive and/or assist heavy equipment to clear out debris from natural disasters or to construct barricades to break fires, set up catering trailers at disaster zones or sites, and assist in disaster emergency response.

In addition to their base hourly rate, Plaintiff and Aggrieved Employees were paid additional sums per hour, e.g., \$4.60 per hour, depending on where they worked, including in California. Plaintiff and Aggrieved Employees were also paid flat daily rates, e.g., \$325 per day, depending on where they worked, including in California. Defendants also paid various types of bonuses to employees depending on whether they obtained different types of work-related certifications, ranging from \$100 to \$150 per bonus. Plaintiff and Aggrieved Employees usually worked over eight hours per day and over forty (40) hours per week. Most of the time, Plaintiff and Aggrieved Employees worked between twelve (12) and sixteen (16) hours per day. Defendants failed to incorporate the value of the additional hourly rates into the base rate when calculating the regular rate of pay for overtime and sick leave wage premiums. Defendants also failed to correctly calculate the regular rate of pay for overtime and sick leave when Plaintiff earned daily rates and/or provided lodging in addition to their base hourly and/or daily rates of pay.

Furthermore, Defendants did not keep accurate time records and utilized rounding when calculating Plaintiff's and Aggrieved Employees' hours worked. Plaintiff and Aggrieved Employees did not record their own hours worked. Instead, Crew Chiefs recorded times for all employees on sites. The crew consisted of ten (10) to twenty (20) employees. Defendant maintained policies and procedures that prevented Plaintiff and Aggrieved Employees from clocking in and out at the beginning of their shift and at the end of their shift. Timecards were filled out by the Crew Chief or supervisor without input from Plaintiff and Aggrieved Employees. Defendants and the Crew Chief did not show the time entries to Plaintiff and Aggrieved Employees for verification. Plaintiff and Aggrieved Employees had to travel to sites



and start working right away upon arrival. As a result, Plaintiff and Aggrieved Employees worked off-the-clock since Defendants did not keep track of their start and stop times.

Plaintiff was sick while at work on March 24, 2023. Plaintiff informed Defendants that he had purchased a flight ticket to fly back home to see a medical provider because he was sick and was vomiting a lot. Defendants' supervisor, Mike Denning told Plaintiff to "consider this his last day." Defendants sent Plaintiff his last paycheck approximately two weeks after his last day of work. Plaintiff is informed and believes that Defendants maintain a policy of paying final wages only at regularly scheduled payroll cycles rather than upon termination or within seventy-two hours of separation as required by the California Labor Code.

As a result of Defendants' policies and practices, Plaintiff and Aggrieved Employees were not paid for all wages due, including minimum wages, overtime wages, and sick leave wages. These amounts were not paid to Aggrieved Employees at the time of their separation and remain unpaid to date. Additionally, the unlawful practices identified above resulted in Defendants issuing inaccurate paystubs to Plaintiff and Aggrieved Employees. The paystubs did not accurately itemize the gross wages earned, total hours worked, correct applicable rates of pay, and the net wages earned.

Plaintiff is informed and believes that Donald Pollard and Ray Keener were the Managing Members or Members of the Limited Liability Company from at least 2022 to present. Mr. Pollard and Mr. Keener were responsible for creating, implementing, and overseeing the wage and hour policies and practices outlined herein that resulted in the violation of the California Labor Code.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

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



Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendant they were entitled to be paid at least the State’s minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

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

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

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

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

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

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of



work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Mr. Pollard and Mr. Keener were officers, directors, shareholders, and/or managing agents of Defendant responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

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

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

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

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendant failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the



requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count Eight – Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

Labor Code section 204(a) provides that “all wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 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. As stated above, Defendant failed to comply with this provision by paying Plaintiff and Aggrieved Employees for wages earned between the 1st and 15th and between the 16th and last day of the month beyond the maximum time allowed under the statute. This was in violation of the law.

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

Very truly yours,

Shimoda & Rodriguez Law, PC

By: _____

Justin P. Rodriguez

JPR:rk

cc: Client via e-mail

Willis v. GFP Enterprises, LLC, et al.

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

I, Elias Tapia, declare that:

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

On August 9, 2023, I served the following documents on the party below:

- PRIVATE ATTORNEYS GENERAL ACT LETTER

GFP Enterprises, LLC P.O. Box 639 Sisters, OR 97759	GFP Enterprises, LLC 307 W Sisters Park Dr Sisters, OR 97759
Donald Pollard 69820 Goodrich Rd Sisters, OR 97759	Ray Keener 12651 N. New Reflection Dr. Marana, AZ 85658

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 9, 2023, at Elk Grove, California.


Elias Tapia

Exhibit D

Date	Description	Total Amount
7/6/2023	Administration Fee - Phone, Fax, Scan, copying, Westlaw Legal Research Fee	\$500.00
8/9/2023	Certified Mail - PAGA Letters	\$23.76
8/9/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
8/16/2023	Affordable Legal Service Fee - GFP enterprises inv 194688-01	\$75.00
8/17/2023	One Legal Service Fee - \$1435 complex and complaint fee, \$144.25 filing fee order 20972309	\$1,579.25
8/31/2023	One Legal Service Fee - Proof of service order 21072186	\$83.39
11/22/2023	One Legal Service Fee - Stipulation order 21664270	\$122.51
12/19/2023	Mediation - Mediator Fee	\$9,784.05
12/22/2023	One Legal Service Fee - First Amended Complaint Order 21817122	\$101.92
3/7/2023	One Legal Service Fee - Joint Case Management statement 22392660	\$16.88
5/17/2024	One Legal Service Fee & Court Filing Fee - PAM Motion	\$78.65
Anticipated	One Legal Service Fee & Court Filing Fee - FAM Motion	\$125.00
Anticipated	One Legal Service Fee - Notice of Entry of Order	\$25.00
Anticipated	One Legal Service Fee - Compliance Declaration	\$20.00

Total: \$12,610.41

Exhibit E

Exhibit F

<u>TASK CATEGORY</u>				<u>GTS</u>	<u>JPR</u>	<u>RK</u>
<u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law & Motion.</u> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendants; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings and court filings; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.				2.9	7.5	13.6
<u>Case Review, Management, Strategy Meetings, Dispositive Motions.</u> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from the Court regarding case management and assignments; Research regarding certification; Research regarding trial plan; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.				4.5	6.9	3.5
<u>Discovery (Pre-Mediation/Non-Mediation Related), Related Law & Motion, and Hearings.</u> Includes time spent preparing discovery requests; Research regarding discovery issues and anticipated objections; Document review and analysis; Seek out witnesses for interviews and obtaining declarations; Review public records requests regarding prior labor commissioner filings and prior wage and hour lawsuits; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.				1.5	2.1	2.7
<u>Discovery / Investigation for Mediation.</u> Includes time spent preparing informal discovery specifically geared towards mediation; reviewing informal mediation productions, including data, analyses, documents, and public records; Analyzing sample; Perform damages analysis and calculations; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.				1.2	8.4	1
<u>Mediation / Settlement Conference / Direct Negotiations.</u> Includes time spent drafting/revising mediation brief and accompanying exhibits; Drafting pocket brief; Review documents productions for potential exhibits; Preparing for and attending mediation; Pre-mediation call with mediator; Legal research relating to issues on day of mediation; Direct negotiations with opposing counsel both before and after mediations; Preparing working draft of MOU; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.				1	18.2	15.3
<u>Drafting Settlement Agreements.</u> Includes time spent preparing long form agreement and exhibits, revisions relating thereto; Research regarding any approval procedures or issues regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.				.9	2.6	3.9
<u>Settlement Approval and Administration.</u> Includes time spent drafting motion for preliminary approval and supporting declarations and order; Class data and settlement calculation review; Speaking with Settlement Administrator regarding calculations, distributions, and final approval logistics; Review reports from Settlement Administrator; Respond to Class Member calls and inquiries regarding the settlement and research relating thereto; Draft Motion for Final Approval and supporting declarations, review and finalize exhibits relating thereto; Legal research regarding approval issues. Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same. Includes estimated 10 hours for J. Rodriguez supervising final distributions and compliance with Count final approval order and attending compliance hearings.				3.8	23.5	13.8
TOTAL:				15.8	69.2	53.8

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

Attorneys for Plaintiff JOHN WILLIS
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JOHN WILLIS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

GFP ENTERPRISES, LLC, an Oregon
Limited Liability Company; DONALD
POLLARD, an individual; RAY KEENER, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 23CV006533

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

CLASS ACTION

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

Date: October 25, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: August 10, 2023

FAC Filed: December 13, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on October 25, 2024, at 9:00 a.m., in Department 23 before
4 the Honorable Jill H. Talley, presiding. Plaintiff John Willis (“Plaintiff”) filed this putative class
5 action on August 10, 2023. The operative Complaint alleges that Defendants GFP Enterprises, LLC,
6 Donald Pollard, and Ray Keener (“Defendants”) violated California law by 1) failing to pay overtime
7 wages, 2) failing to pay minimum wages, 3) failing to provide accurate wage statements, 4) failing to
8 timely pay all final wages, and 5) engaging in unfair competition. Plaintiff has also alleged
9 Defendants are liable for civil penalties under the Private Attorney’s General Act (“PAGA”) based on
10 these violations. Plaintiff sought attorneys’ fees and costs as part of this Action. Defendants denied
11 all of Plaintiff’s claims and denied that this case was appropriate for class treatment. No class has
12 been certified. The class settlement was preliminarily approved by this Court on June 20, 2024.

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

21 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

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

25 All non-exempt employees who worked for Defendants in California at
26 any time between August 10, 2019, up to April 23, 2024.

27 The Court recognizes that the foregoing definition is for Class Member identification purposes
28 only and is not intended to capture the claims at issue or limit or alter the released claims under the

1 Agreement. The settlement class shall not include the one individual who timely opted out of the class
2 settlement, Michael Fleek. This individual shall not be bound by the Agreement or any of the releases
3 or obligations therein except for the releases and covenants regarding to the PAGA claims as set forth in
4 section 1.31 and 6.2 as they are still an Aggrieved Employee under the Agreement and there is no ability
5 to opt out of a PAGA settlement.

6 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
7 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
8 records, individuals who fall within the definition and the number of Class Members would make
9 joinder impractical. The commonality and predominance requirements are met for settlement purposes
10 since there are questions of law and fact common to Class Members. The common questions of law or
11 fact in this case all stem from Plaintiff's contentions that Defendants caused the violations outlined
12 above by 1) failing to incorporate the value of non-discretionary remuneration (*e.g.* bonuses, additional
13 hourly rates/differentials) in addition to the basic hourly rate when calculating the regular rate of pay for
14 overtime and sick leave wage premiums, 2) failing to pay any overtime and/or correctly calculate the
15 regular rate of pay for overtime and sick leave when Plaintiff earned daily rates and/or provided lodging
16 in addition to their base hourly and/or daily rates of pay, 3) failing to keep accurate time records and
17 utilizing rounding when calculating Plaintiff's and similarly situated employees' hours worked because
18 a crew chief, instead of employees, recorded times for all employees without input and verification from
19 employees, 4) maintaining policies and procedures that prevented Plaintiff and similarly situated
20 employees from clocking in and out leading to Plaintiff and similarly situated employees worked off-
21 the-clock since Defendants did not keep track of their start and stop times, 5) failing to timely pay
22 Plaintiff and similarly situated employees' wages, including final wages. The PAGA, waiting time
23 penalty, wage statement violation, and unfair competition claims also derive from these violations.
24 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
25 settlement purposes is also satisfied since the claims of the Class Representative is based on the same
26 facts and legal theories as those applicable to the class members.

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

4 The Court finds that Plaintiff John Willis and Plaintiff's counsel, Galen T. Shimoda,
5 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate
6 representatives of the settlement class. The Court appoints them as Class Representative and Class
7 Counsel, respectively.

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

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

17 No objections were made by Class Members and only one Class Member opted out of the
18 settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an
19 extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs,
20 the Court gives final approval to the Agreement and all terms therein as if stated here in full, including
21 the \$135,000 Gross Settlement Amount.

22 The Court approves of the Ten Thousand Dollars (\$10,000) PAGA Payment, which shall be paid
23 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
24 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
25 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
26 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
27 provides a recovery that creates an effective, substantial deterrent to any potential future non-
28 compliance, furthering the purpose of the Labor Code and LWDA.

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

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

9 Class Counsel sought an award of attorney's fees of \$47,250, attorney's costs of \$12,610.41, an
10 Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement
11 Administrator Costs in the amount of \$7,650. Defendant does not oppose these requests. The Notice of
12 Settlement sent to Class Members included information regarding these amounts and that they would be
13 requested in connection with final approval of the Agreement. Class Members have been given the
14 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.
15 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates, including
16 prior fee awards in Sacramento County Superior Court at the requested rates, and the amount of time
17 expended in litigation for the benefit of Class Members. The Court finds that the rates requested and
18 hours expended are reasonable. The Court has also reviewed the updated itemized costs submitted by
19 Class Counsel, the information provided by the Class Representative regarding the efforts and burdens
20 undertaken for the benefit of the class, and the cost information provided by the Settlement
21 Administrator. The Court finds that these amounts are fair, reasonable, and supported by the evidence
22 submitted by Class Counsel. The requested amounts are approved and awarded as requested, which will
23 be deducted from the Gross Settlement Amount. This finding is further supported by the lack of
24 objections by Class Members to these amounts. The difference between the actual attorneys' costs and
25 originally allocated costs of \$14,000, as well as the difference between the Settlement Administrator
26 Costs awarded and the originally allocated of \$10,000, will be added to the Net Settlement Amount
27 pursuant to the terms of the Agreement.
28

1 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
2 **INCLUDING THE NOTICE OF SETTLEMENT**

3 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
4 Exhibit A to the Declaration of Nathalie Hernandez, fairly and adequately advised Class Members of the
5 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
6 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how
7 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and
8 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and
9 distribution of such notice by first class mail to each identified Class Member at his or her most recent
10 address based on a National Change of Address database search from the Class Members' last known
11 address and a skip trace on any Class Members who have the Notice of Settlement returned as
12 "undeliverable" or "not at this address" comported with all constitutional requirements, including those
13 of due process.

14 **IV. IMPLEMENTATION SCHEDULE**

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

17 Last day for Settlement Administrator to calculate 18 the final Net Settlement Amount, the final 19 Individual Settlement Amounts to Participating 20 Class Members and/or Aggrieved Employees, any 21 applicable taxes thereon, and report the results of 22 these calculations to Class Counsel and 23 Defendants' Counsel	Within 7 calendar days after the Effective Date
24 Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
25 Last day for Settlement Administrator to deliver 26 payment of Class Counsel's attorney's fees and 27 costs, Enhancement Payments, PAGA Payment, 28 Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement

Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement. The Court sets a further Compliance Hearing for June 27, 2025, at 10:30 a.m. At least 15 calendar days prior to the hearing, Class Counsel shall file a declaration from the Settlement Administrator regarding the status of the distribution of the settlement funds. If the Court is satisfied that the settlement funds have been fully distributed, no appearance will be required.

IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court