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Attorneys for Plaintiff
SERENA CARNES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SERENA CARNES, as an “aggrieved
employee” and on behalf of “aggrieved
employees” under the California Labor Code
Private Attorneys General Act,

Plaintiff,

v.

THE SALVATION ARMY, THE
SALVATION ARMY ARC SAN DIEGO; and
DOES 1 through 10, inclusive,

Defendants.

Case No: 37-2021-00020557-CU-OE-CTL

REPRESENTATIVE ACTION

**DECLARATION OF ROBERT SPENCER
IN SUPPORT OF MOTIONS FOR AN
ORDER APPROVING SETTLEMENT OF
PAGA ACTION AND DISMISSING
ACTION WITH PREJUDICE AND FOR
AN ORDER AWARDING ATTORNEYS’
FEES AND COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION FEES**

[Assigned for all purposes to Judge Timothy
Taylor, Dept. C72]

Date: October 20, 2023
Time: 1:30 p.m.
Dept.: C72

Complaint filed: May 7, 2021
Trial date: February 16, 2024

1 I, ROBERT SPENCER, declare as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California and
3 before this Court. I am a senior associate in the law firm Keller Grover LLP, counsel for
4 Representative Plaintiff Serena Carnes (“Plaintiff”) in this action. I have personal knowledge of
5 the facts stated herein and, if called as a witness, I could and would testify competently to the
6 facts set forth below.

7 **Plaintiff’s Counsel’s Experience:**

8 2. Eric A. Grover, Esq.’s Experience: Between September 1988 and October 2005,
9 Eric A. Grover was first an associate and then a shareholder in the firm Littler Mendelson, P.C.
10 (“Littler”). Littler is the largest law firm in the United States specializing in labor and
11 employment law. During Mr. Grover’s 17 years at Littler, he practiced extensively in all areas
12 of labor and employment law, including wage and hour law and class action defense. He also
13 has extensive litigation experience, including numerous arbitrations and trying a number of cases
14 to verdict in state and federal courts.

15 3. In the time Mr. Grover worked at Littler, he worked on many class action matters.
16 The following is a list of various class action matters for which I was the lead or co-lead defense
17 attorney:

- 18 a. *DLSE v. UI Video* (Blockbuster) (Alameda County) (Failure to provide
uniforms.);
- 19 b. *Vickery, et al. v. Cinema Seven, Inc.* (San Francisco County) (Independent
20 contractor vs. employee status, overtime, minimum wage and expense
reimbursement claims.);
- 21 c. *ILWU, et al. v. DMS Messenger Services, et al.* (San Francisco County)
22 (Overtime, minimum wage, expense reimbursement and waiting time
penalties.);
- 23 d. *Shields, et al. v. Lyon’s Restaurants* (San Diego County) (Manager
24 misclassification.);
- 25 e. *O’Donnell, et al. v. Starving Students Movers* (Marin County) (Overtime,
minimum wage and waiting time penalties.);
- 26 f. *Cross, et al. v. Compass* (Sacramento County) (Overtime and waiting time
27 penalties.);
- 28 g. *Flowers, et al. v. Starving Students Movers* (San Joaquin County)
(Overtime, minimum wage and waiting time penalties.);

- h. *Chen v. DMX Music, Inc.* (San Francisco County) (Improper chargebacks on commission payments.);
- i. *Tiffany, et al. v. Hometown Buffet* (San Francisco County) (Manager misclassification.);
- j. *Leoni, et al. v. Jetsetter Express, Inc.* (San Joaquin County) (Manager misclassification.);
- k. *Solano v. Clark Pest Control* (Los Angeles County) (Technician/salesperson misclassification.);
- l. *Guglielmino, et al. v. McKee Foods Corp.* (USDC-ND) (Independent contractor vs. employee status.); and
- m. *Evets v. Guess?, Inc.* (San Francisco County) (Manager misclassification.).

4. Between October 15, 2005 and the present, Mr. Grover has been practicing law at Keller Grover LLP. At Keller Grover, approximately 95% of Mr. Grover's time is spent representing Plaintiffs in employment, consumer, privacy, and data breach class and representative action matters. Mr. Grover is currently lead counsel or co-lead counsel on more than 15 different class and/or representative actions. Mr. Grover has been named Class Counsel in numerous recent wage and hour, consumer, privacy, and data breach class action matters, including:

- a. *Watson v. Ann Taylor Stores Corp.*, Los Angeles County Superior Court Case No. BC342729
- b. *Novak v. Retail Brand Alliance, Inc., et al.*, Alameda County Superior Court Case No. RG 05-223254;
- c. *Jos. A. Banks Overtime Cases*, Solano County Superior Court Case No. JCCP NO. 4479;
- d. *Diaz v. Best Buy Stores, L.P.*, Alameda County Superior Court Case No. RG 06-264187;
- e. *Lozoya v. PA Acquisition Corp.*, et al, Alameda County Superior Court Case No. RG 06-258395;
- f. *Krispy Kreme Overtime Cases*, Alameda County Superior Court Case No. JCCP No. 4489;
- g. *Walgreens Overtime Cases*, Los Angeles County Superior Court Case No. JCCP 4387;

- h. *Gring v. Claire's Boutique's, Inc.*, Alameda County Superior Court Case No. RG 05-247759;
- i. *Greene v. Federated Retail Holdings, Inc.* San Francisco County Superior Court Case No. CGC 06-449456;
- j. *Stermer v. L'Occitane, Inc.*, San Francisco County Superior Court Case No. CGC 06-456056;
- k. *Wilde v. Catalina Restaurant Group, Inc. et al.*, Los Angeles County Superior Court Case No. BC347513;
- l. *Rogers v. Accentcare, Inc.*, Alameda County Superior Court County Superior Court Case No. RG 05-237683;
- m. *Fleming v. Dollar Tree Stores, Inc.*, United States District Court, Northern District of California, Case No. C 06-cv-03409 MJJ;
- n. *Corrado v. Valero Services, Inc.*, Alameda County Superior Court Case No. RG 07-322134;
- o. *Stenroos v. Core-Mark International, Inc.*, San Mateo County Superior Court Case No. CIV 451198;
- p. *Ford v. Pilot Travel Centers LLC*, United States District Court, Northern District of California, Case No. C-07-cv-02715 TEH;
- q. *Elsbury v. Pizza Hut of Southeast Kansas, Inc.*, United States District Court, Eastern District of California Case No. EDCV 07-00695 SGL (JCRx);
- r. *Brior v. AE Retail West LLC*, San Francisco County Superior Court Case No. CGC 06-455422;
- s. *Moore v. Genesco, Inc. et al.*, Alameda County Case No. RG 06-270570;
- t. *Stermer v. Ulta Salon, Cosmetics & Fragrance, Inc.*, San Francisco County Superior Court Case No. CGC 08-427014;
- u. *Lauzon v. Club Monaco U.S., LLC, Polo Retail, LLC, and Polo Ralph Lauren Corporation*, San Francisco County Superior Court Case No. CGC 06-449963;
- v. *Davenport v. Union Bank of California, N.A. and Unionbanc Investment Services LLC*, United States District Court, Central District of California, Case No. 2:07-cv-00001 FMC (VBKx);
- w. *Jacobs v. Les Schwab Tire Centers of California, Inc., et al.*, San Francisco County Superior Court Case No. CGC 08-478372;
- x. *Daniel Arias v. Praxair Distribution, Inc., et al.*, San Francisco County Case No. CGC 08-474506;
- y. *Flores, et al. v. Zale Delaware, Inc.*, United States District Court, Northern District of California, Case No. 07-cv-00539 TEH;

- 1 z. *Payan et al. v. MetroPCS, Inc.*, San Francisco County Superior Court Case No.
2 CGC 08-476703;
- 3 aa. *Njoku v. Ecko Direct, LLC*, San Francisco County Superior Court Case No. CGC
4 07-469480;
- 5 bb. *Wiggins v. Cingular Wireless Employee Services, LLC*, San Francisco County
6 Superior Court Case No. CGC 08-477763;
- 7 cc. *Lee v. Marshalls of CA LLC*, Alameda County Superior Court Case No. RG 07-
8 337021;
- 9 dd. *Flores v. Cintas Corporation No. 2, Inc.*, Los Angeles County Superior Court
10 Case No. BC400422;
- 11 ee. *Drew v. HCR Manor Care Medical Services of Florida, LLC, et al.*, San Francisco
12 County Superior Court Case No. CGC 09-490181;
- 13 ff. *Ireland, et al. v. National Distribution Centers, L.P., et al.*, San Francisco County
14 Superior Court Case No. CGC 09-493709;
- 15 gg. *Lim-Hui v. Carter's Retail, Inc.*, San Francisco County Superior Court Case No.
16 CGC 09-484456;
- 17 hh. *Sefton v. OshKosh B'Gosh, Inc.*, San Francisco County Superior Court Case No.
18 CGC 09-484496;
- 19 ii. *Murphy v. Check n' Go of California, Inc.*, San Francisco County Superior Court
20 Case No. CGC 06-449394;
- 21 jj. *Wireless Advocates Wage and Hour Cases*, Los Angeles County Superior Court
22 Case No. JCCP 4600;
- 23 kk. *Matrix Service Wage and Hour Cases*, Alameda County Superior Court Case
24 No. JCCP 4610;
- 25 ll. *Sullivan v. Kelly Services, Inc.*, United States District Court, Northern District of
26 California Case No. 08-cv-3893 CW;
- 27 mm. *Strickland, et al. v. Timec Company, Inc., et al.*, San Francisco County Superior
28 Court Case No. CGC 10-501832;
- nn. *Davis and Duke v. Plant Performance Services LLC, et al.*, Alameda County Case
No. RG 10-501301;
- oo. *Jordan v. Directory Distributing Associates, Inc.*, San Francisco County Superior
Court Case No. CGC 10-500633;
- pp. *Martin v. Total Safety U.S., Inc.*, Alameda County Case No. RG 10-533750;
- qq. *Placer Title Company Wage and Hour Cases*, Sacramento County Superior
Court Case No. JCCP 4567;
- rr. *Martin, et al. v. Starcon International, Inc.*, Contra Costa County Superior Court
Case No. MSC10-01071;

- 1 ss. *Meyer v. Irwin Industries, Inc.*, ADRS Case No. 11-3844-RAH;
- 2 tt. *Lazarin, et al. v. Total Western, Inc.*, JAMS Case No. 1100067385;
- 3 uu. *Potter v. Zale Delaware, Inc.*, Alameda County Superior Court Case No. RG 10-
4 548469;
- 5 vv. *Canales, et al. v. Electrical & Instrumentation Unlimited of California, Inc.*,
Kern County Superior Court Case No. S-1500-CV-271947 WDP;
- 6 ww. *Schechter and Porter v. ISYS Solutions, Inc.*, Alameda County Superior Court
7 Case No. RG 10-550517;
- 8 xx. *Gomez v. Pizza Hut of Southeast Kansas, Inc.*, San Bernardino County Superior
Court Case No. CIVVS900679;
- 9 yy. *Hernandez v. Bodell Construction Company*, Alameda County Superior Court
Case No. RG12-624600;
- 10 zz. *Gilliam v. Matrix Energy Services, Inc.*, Alameda County Superior Court Case
11 No. RG11-592345;
- 12 aaa. *Tate v. Wyatt Field Services Co.*, Alameda County Superior Court Case No. RG
10-522846;
- 13 bbb. *Becerra, et al. v. RadioShack Corporation*, United States District Court,
14 Northern District of California, Case No. C-11-cv-03586 YGR;
- 15 ccc. *Vasquez, et al. v. Turnaround Welding Services, Inc.*, Contra Costa County
Superior Court Case No. MSC12-00340;
- 16 ddd. *Betten and Lafa v. Diamond Wireless, LLC*, United States District Court, Central
17 District of California, Case No. 2:13-cv-02885 CBM;
- 18 eee. *Martin v. AltairStrickland LLC*, Alameda County Superior Court Case No.
19 RG11 575618;
- 20 fff. *Miller v. Southwest Airlines Co.*, United States District Court, Northern District
21 of California, Case No. C-12-cv-5978-CRB;
- 22 ggg. *Nguyen v. Equilon Enterprises LLC*, United States District Court, Northern
District of California, Case No. 4:12-cv-04650-YGR;
- 23 hhh. *Saunders v. StubHub Inc.*, San Francisco County Superior Court Case No. CGC-
24 12-517707;
- 25 iii. *Oregel v. PacPizza, LLC*, Contra Costa County Superior Court Case No.
MSC12-01454;
- 26 jjj. *Torres, et al. v. San Joaquin Community Hospital*, JAMS Case No. 1220043288;
- 27 kkk. *Hulsey v. San Joaquin Community Hospital*, JAMS Case No. 1210030884;
- 28

- 1 lll. *DeLeon, et al. v. NCR Corp.*, San Bernardino County Superior Court Case No.
2 CIVDS1403274;
- 3 mmm. *Springer, et al. v. Stanford Hospital and Clinics, et al.*, Los Angeles County
4 Superior Court Case No. BC470522;
- 5 nnn. *Ginn, et al. v. Certified Safety, Specialists LLC et al.*, Contra Costa County
6 Superior Court Case No. C11-0969;
- 7 ooo. *Clothier v. SPAR Marketing Services, Inc.*, Alameda County Superior Court
8 Case No. RG12-639317;
- 9 ppp. *St. Joseph Health System Medical Information Cases*, Orange County Superior
10 Court JCCP Case No. 4716;
- 11 qqq. *Everhart and Everhart v. Advantage Sales & Marketing, LLC*, Alameda County
12 Superior Court Case No. RG14-712100;
- 13 rrr. *Miller v. Hitachi America, Ltd.*, San Mateo County Superior Court Case No.
14 CIV 526430;
- 15 sss. *Johnson and Storey v. Mobility Plus Transportation LLC, et al.*, San Francisco
16 County Superior Court Case No. CGC-13-532872;
- 17 ttt. *Tripp and Solberg v. Crossmark, Inc., et al.*, United States District Court,
18 Northern District of California, Case No. 3:12-cv-04818-NC.
- 19 uuu. *McCabe, et al. v. Six Continents Hotels, Inc.*, United States District Court,
20 Northern District of California, Case No. 12-cv-04818-NC;
- 21 vvv. *Wheelock v. Hyundai*, Orange County Superior Court, Case No. 30-2011-
22 00522293-CU-BT-CJC;
- 23 www. *Roberts v. Wyndham Hotel and Resorts LLC, et al.*, United States District Court,
24 Northern District of California, Case No. 5:12-cv-05083-PSG;
- 25 xxx. *Castillo, et al. v. Seagate Technology LLC*, United States District Court,
26 Northern District of California Case No. 3:16-cv-01958-RS;
- 27 yyy. *Halkola v. Fisher, Sand & Gravel Co.*, Alameda County Superior Court, Case
28 No. RG17844100;
- zzz. *Ashlock, et al. v. Sunrun, Inc., et al.* San Francisco County Superior Court CGC-
 17-557027;
- aaaa. *Spitzer v. FRHI Hotels and Resorts (Canada) Inc.*, San Bernardino County
 Superior Court Case No. CIVDS1712220;
- bbbb. *Matthews v. eHealthinsurance Services, Inc.*, Santa Clara County Superior Court
 Case No. 17CV305656;

- cccc. *Crowley, et al. v. Central Transport LLC*, San Bernardino Case No. CIVDS1604546;
- dddd. *Alfinito v. Loop Transportation*, San Francisco County Superior Court Case No. CGC-17-556677;
- eeee. *Rabanal v. P.F. Chang's China Bistro, et al*, Alameda County Case No. RG17851208;
- ffff. *Kindt and Pappas v. Aerovias de Mexico, S.A. de C.V., et al*, San Bernardino County Case No. CIVDS1809416;
- gggg. *Duke v. Jacobs Engineering Group Inc., et al.*, San Bernardino Superior Court Case No. CIVDS1703459;
- hhhh. *O'Leary v. Youngevity International, Inc.*, San Diego County Superior Court Case No. 37-2017-00045550-CU-BT-CTL;
- iiii. *Kindt v. Concesionaria Vuela Compañía de Aviación S.A.P.I. de C.V., et al.*, Napa County Superior Court Case No. 19CV000373;
- jjjj. *Docter v. Accor Management US Inc.*, San Joaquin County Superior Court Case No. STK-CV-UBT-2019-0000147;
- kkkk. *Clothier v Spar Group, Inc.*, Alameda County Superior Court Case No. RG18926494;
- llll. *Pennywell-Foster v. IMKO Workforce Solutions, et al.*, Sacramento County Superior Court Case No. 34-2019-00252683;
- mmmm. *Stohs, et al. v. Samsonite Company Stores, LLC*, Alameda County Superior Court Case No. RG19001392;
- nnnn. *Casarez v. Chemtrade West US LLC*, Alameda County Superior Court Case No. RG19008007;
- oooo. *Butler v. Apple Inc.*, Santa Clara County Superior Court Case No. 1-14-cv-262989;
- pppp. *Gomez v. Pinnacle Workforce Logistics*, San Bernardino County Superior Court Case No. CIVDS1804163;
- qqqq. *Vilitchai, et al. v. Ametek Programmable Power, Inc.*, San Diego County Superior Court Case No. 37-2015-00025968-CU-OE-CTL;
- rrrr. *Madrid, et al. v. Golden Valley Health Centers*, Merced County Superior Court Case. No. 20Cv-01484;
- ssss. *Curtis v. Aegis Treatment Centers, LLC*, Shasta County Superior Court Case No. 193712;
- tttt. *Millay v. Napaidence OPCO, LLC*, Napa County Superior Court Case. No. 19CV001903;

- uuuu. *Gutierrez v. Brand Energy of California, Inc.*, Alameda County Superior Court Case No. RG17846239;
- vvvv. *Sica and Ellis v. Construction & Turnaround Services, L.L.C.*, United States District Court, Northern District of California Case No. 4:21-cv-0188-JSW;
- www. *Clark-Alonso v. Southwest Airlines Co.*, Merced County Superior Court Case No. 21 CV-02475
- xxxx. *Zuckerbraun v. Flour Maintenance Serv., Inc.*, Alameda County Superior Court Case No. RG20054385;
- yyyy. *Sica v Madison Industrial Serv. Team, Ltd Partnership*, United States District Court, Northern District of California Case No. 4:20-cv-08347-KAW;
- zzzz. *Harrington v. Forbes Security, Inc.*, San Francisco County Superior Court Case No. CGC-20-584155;
- aaaaa. *Hernandez v. Chino Commercial Bank*, San Bernardino County Superior Court Case No. CIVDS1922849;
- bbbbb. *Ellis v. Harder Mechanical Contractors, Inc.*, United States District Court, Northern District of California Case No. 21-cv-00844-JSW;
- ccccc. *Harrington v. Creative Security Company, Inc.*, Alameda County Superior Court Case No. RG21095377;
- ddddd. *Espinoza, et al. v. Dedicated Bldg. Serv. LLC*, Los Angeles County Superior Court Case No. 20STCV03569
- eeee. *Macomber v. Dermalogica, LLC*, San Diego County Superior Court Case No: 37-2020-00020451- CU-BT-CTL; and
- ffff. *Alvarez, et al. v. Autozone, Inc.*, San Bernardino Superior Court Case No. CIVDS1416344.

5. Robert Spencer, Esq.’s experience: I am a senior associate with Keller Grover LLP. I have spent my entire legal career, over 17 years, with Keller Grover LLP. Approximately 95% of my time is spent representing Plaintiffs in employment, consumer, privacy, and data breach class and representative action matters. I have been named Class Counsel in many of the cases referred to above alongside Eric A. Grover, Esq. I will not repeat them here for the sake of brevity.

Factual and Procedural Background:

6. A true and correct copy of the parties' Labor Code Private Attorneys General Act Settlement Agreement (the "Settlement Agreement")¹ entered into by Plaintiff and The Salvation Army ("Defendant"), is attached hereto as **Exhibit 1**. The Settlement Agreement is discussed below.

7. On March 2, 2021, pursuant to Labor Code § 2699.3's exhaustion requirements, Plaintiff gave written notice of her PAGA claims to the California Labor and Workforce Development Agency ("LWDA") and Defendant. A true and correct copy of the March 2, 2021 exhaustion letter is attached hereto as **Exhibit 2**.

8. After the LWDA declined to take action within the statutory time period, Plaintiff filed the Complaint on May 7, 2021 alleging PAGA claims on behalf of the LWDA, herself and all other aggrieved employees. The Complaint alleges that Defendant violated PAGA based on its failure to provide suitable seating for its employees who perform cashiering duties at its retail stores in violation of Labor Code §§ 1198 and 1199 and Wage Order 7 § 14. The Complaint seeks Labor Code § 2699(f) penalties. A true and correct copy of the Complaint is attached hereto as **Exhibit 3**.

9. Defendant has denied all of the allegations in their entirety. To date, no court has made a finding of any wrongdoing on the part of Defendant or that Defendant otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.

10. After Plaintiff filed her action, the California court of appeal decided *LaFace*, in which it held, as a matter of first impression, that no right to trial exists for PAGA actions.² The court further found that the employer was not obligated to provide seating for its cashiers

¹ Unless noted otherwise, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement.

² *LaFace v. Ralphs Grocery Co.* (2022) 75 Cal.App.5th 388, 406-09.

1 because the employer expected the cashiers to perform other duties around the store when no
2 customers were in line to pay and the seating would interfere with those duties.³

3 11. The parties engaged in formal discovery, exchanging written discovery responses
4 and relevant documents. The information obtained during discovery supported that the fact
5 pattern of this action was similar to that in *LaFace* in that Defendant expected Plaintiff and other
6 employees who worked as cashiers to perform other duties around the store when there was a lull
7 at the checkout line. The information indicated that Plaintiff's PAGA claims likely were
8 significantly weakened by *LaFace*.

9 12. In August 2022, Defendant filed a motion to compel the action into individual
10 arbitration, which Plaintiff opposed and the Court denied. After the Court's denial of the
11 arbitration motion, counsel for the parties discussed potential settlement and agreed to mediate.
12 In preparation, the Plaintiff obtained additional, relevant information from Defendant, including
13 that there are 3,072 individuals who meet the Settlement Agreement's definition of the PAGA
14 Group. Plaintiff's Counsel also received the number of pay periods at issue.

15 13. Armed with the information obtained from discovery and aware of the change in
16 the legal landscape after *LaFace*, the parties participated in a formal mediation session with
17 Brandon Coen, Esq. on April 27, 2023. By the end of the mediation, the parties were able to
18 reach a tentative settlement. Following the mediation and further refinement of the agreement
19 reached at the mediation, the parties agreed to settle the entire action, subject to approval by the
20 Court. The settlement is the result of arm's-length negotiations between the parties' counsel.
21 The detailed, formalized Settlement Agreement sets forth all terms of the parties' settlement.
22 **See Exhibit 1.**

23 **Plaintiff's Counsel's work litigating and settling this action:**

24 14. Prior to filing this action, Plaintiff's Counsel expended time and effort in
25 investigating and researching Plaintiff's potential Labor Code claims, and preparing this case for
26 litigation. On March 2, 2021, pursuant to Labor Code § 2699.3's exhaustion requirements,

27 _____
28 ³ *Id.* at 406-09.

1 Plaintiff's Counsel, on behalf of Plaintiff, gave written notice of her PAGA claims to the LWDA
2 and Defendant. **See Exhibit 2.** After the LWDA declined to take action within the statutory time
3 period, Plaintiff's Counsel drafted and then, on May 7, 2021, filed the operative Complaint. **See**
4 **Exhibit 3.**

5 15. At the beginning of this litigation, I engaged in direct settlement negotiations with
6 opposing counsel, which included a confidential exchange of information. While these
7 negotiations were not successful, they were helpful for the resolution of this action when it came
8 time to mediate this action.

9 16. I and other attorneys at Keller Grover LLP and counsel for Defendant conducted
10 formal discovery, including interrogatories and document requests. I and other attorneys at
11 Keller Grover LLP drafted written discovery requests on Plaintiff's behalf. We also assisted
12 Plaintiff in drafting her responses to Defendant's discovery requests and in producing responsive
13 documents.

14 17. We reviewed the discovery responses and documents that Defendant produced and
15 analyzed the information obtained in light of the changed legal landscape that occurred due to
16 *LaFace*. The information obtained during discovery supported that the fact pattern of this action
17 was similar to that in *LaFace* in that Defendant expected Plaintiff and other employees who
18 worked as cashiers to perform other duties around the store when there was a lull at the checkout
19 line.

20 18. As noted, Defendant moved to compel Plaintiff's PAGA claims to individual
21 arbitration. I and other attorneys at Keller Grover LLP drafted Plaintiff's opposition to the
22 motion.

23 19. After the Court denied the arbitration motion, I engaged in discussions with
24 Defense Counsel regarding potential settlement and agreed to mediate. In preparation, the
25 Parties agreed to exchange additional relevant information informally.

26 20. Armed with the information obtained from formal and informal discovery, the
27 parties participated in a formal mediation session with Brandon Coen, Esq. on April 27, 2023,
28 Keller Grover LLP, I attended the mediation during which we engaged in arm's length

1 negotiations with Defense Counsel. By the end of the mediation, the parties were able to reach a
2 tentative settlement. Plaintiff Counsel's experience in litigating similar representative PAGA
3 actions based on wage and hour claims, the degree of investigation that Plaintiff's Counsel
4 conducted, the amount of data obtained from Defendant and the analysis of the recent *LaFace*
5 decision made it possible for us to determine the potential value and evaluate the strength of the
6 PAGA claims when negotiating the settlement

7 21. Following April 27, 2023 mediation, working together, Defense Counsel and I
8 drafted a detailed Settlement Agreement. All terms of the Parties' settlement are set forth in the
9 Settlement Agreement, which is **Exhibit 1**.

10 22. Concurrently with the submission of the Settlement Agreement to the Court,
11 Plaintiff is submitting the settlement to the LWDA as required by Labor Code § 2699(l)(2). I
12 personally uploaded the following documents to the LWDA: 1) Notice of Motion for an Order
13 Awarding Attorneys' Fees, Costs, Enhancement Payment, and Settlement Administration Fees,
14 2) Memorandum of Points and Authorities in Support of Motion for an Order Awarding
15 Attorneys' Fees, Costs, Enhancement Payment, and Settlement Administration Fees, 3) Notice
16 of Motion and Motion for an Order Approving Settlement of PAGA action and Dismissing
17 Action with Prejudice, 4) Memorandum of Points and Authorities in Support of Motion for an
18 Order Approving Settlement of PAGA action and Dismissing Action with Prejudice, 5) the
19 proposed order, 6) this declaration, 7) the declaration of Plaintiff Carnes, and 8) the settlement
20 agreement.

21 23. Subsequent to the mediation, I and attorneys in Keller Grover LLP have spent time
22 negotiating and drafting Settlement Agreement, drafting the motion for approval of the PAGA
23 settlement, and drafting the motion seeking an award of attorneys' fees and costs, settlement
24 administration fees and Plaintiff's enhancement award. I have spent time communicating with
25 Defense Counsel and the parties' selected Settlement Administrator regarding settlement
26 administration issues. Further, I expect to spend additional time working with the Settlement
27 Administrator, speaking with PAGA Group members, finalizing and filing this motion, and
28 preparing for and attending the hearing.

Plaintiff's Counsel's Assessment of the Settlement's Fairness:

24. Based on my years of experience and my own independent investigation and evaluation, I am of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and it is in the best interests of the LWDA and the PAGA Group in light of all known facts and circumstances, controlling case law, and the expenses and risks inherent in litigation.

25. The Settlement Agreement defines the PAGA Group as "All persons within the State of California who are or were employed by Defendant in the State of California as an hourly, non-exempt employee at any time within the PAGA Release Period in any of the following job positions: 1) Sales Associate/Material Handler, 2) Clerk/Cashier, 3) Clerk/Sorter, 4) Sales Associate/Clerk, and 5) Store Attendant." The "PAGA Release Period" is from March 2, 2020 through April 27, 2023, inclusive. Defendant has identified approximately 3,072 PAGA Group members.

26. The Parties have selected Simpluris, Inc. to serve as Settlement Administrator and expect the settlement administration to cost \$12,000.

27. The Settlement Agreement achieves a substantial benefit for the LWDA and the PAGA Group members. The Settlement Agreement provides that, to settle this matter, Defendant will pay a total of \$150,000 (the "Settlement Amount"). The estimated total sum available for payment of PAGA penalties is calculated by deducting up to \$55,000 for the payment of Plaintiff's Counsel's fees and costs, a \$5,000 enhancement payment to Plaintiff, and administration costs of up to \$12,000 from the \$150,000 Settlement Amount, leaving \$78,000 (the "Net Settlement Amount") to be distributed to the LWDA and the PAGA Group members.⁴ As required by Labor Code § 2699(i), the Settlement Agreement provides that 75% of the Net Settlement Fund (\$58,500) will be paid to the LWDA and 25% (\$19,500) to the PAGA Group, who are the aggrieved employees.

28. Under the Settlement Agreement, the LWDA will receive approximately \$58,500,

⁴ The actual Net Settlement Fund will be higher as counsel's expenses do not exceed \$8,200.

1 which Labor Code § 2699(i) requires it to use for education and enforcement purposes.

2 29. PAGA Group members do not need to submit a claim to receive a settlement
3 payment. The PAGA Group members will divide their portion based on the formula set forth in
4 the Settlement Agreement, which, in summary, provides that each PAGA Group member shall
5 be credited with a single qualified Pay Period and shall be paid an equal amount of the \$19,500
6 allocated to the PAGA Group. Each PAGA Group member will receive \$6.35 ($\$19,500/3,072 =$
7 $\$6.35$).

8 30. The settlement provides that Simpluris will send notice of the settlement to the
9 PAGA Group (see Exhibit 1, Settlement Agreement exhibit A), even though notice is not
10 required in settlements of PAGA actions and aggrieved employees are not entitled to opt out of
11 the settlement.⁵ The settlement requires Defendant to provide Simpluris with a list of the PAGA
12 Group members' names, last known home addresses and social security numbers (the "PAGA
13 List") no later than 30 calendar days after the Court approves the settlement. After updating the
14 PAGA List, the Settlement Administrator will mail the Notice and the Individual Settlement
15 Payment check to each member of the PAGA Group no later than 60 calendar days after the
16 Court approves the settlement.

17 31. Under the settlement terms, for any Individual Settlement Payment check that is
18 returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the
19 PAGA Group member by performing an additional skip-trace and shall remail the Individual
20 Settlement Payment check no later than 10 calendar days following the receipt of the undelivered
21 Notice and check.

22 32. I am of the opinion that the Settlement and its distribution of approximately
23 \$58,500 to the LWDA and \$19,500 to the PAGA Group is fair, reasonable, and adequate, given
24 the inherent risk of continued litigation and the costs of pursuing such litigation.

25
26
27 ⁵ See e.g., *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 974 ("PAGA has no notice
28 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
action."); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 (same);

33. The fairness, reasonableness and adequacy of the settlement is demonstrated by the significant uncertainty and risks that Plaintiff will be unable to prevail on the merits. Defendant adamantly disputes that it had any obligation to provide seating for Plaintiff and the other PAGA Group members because they were expected to perform other duties around the store when there was a lull at the checkout line and seating would interfere with those duties. Bolstering Defendant's position is the fact that the court of appeal in *LaFace* found that the employer did not violate the Labor Code's seating requirements on a fact pattern that is very similar to the one here. That defense, if successful, would eliminate any recovery for the LWDA, Plaintiff and the PAGA Group.

34. Plaintiff's Counsel view the risk of a net-zero recovery in this case to be high because of *LaFace*, as such Plaintiff's Counsel agreed to settlement terms that cap the attorneys' fees and cost awards at amounts that represent a significant loss to our actual lodestar and out-of-pocket costs incurred during the two years that we have litigated this PAGA action. Plaintiff's Counsel's fees and costs are discussed in detail below.

35. Moreover, Defendant has argued that, even if Plaintiff succeeded on the merits, it will be able to convince the Court to reduce the amount of PAGA penalties awarded, which Plaintiff recognize is a substantial risk as courts have authority to set PAGA penalty amounts under Labor Code § 2699(e)(2). Labor Code § 2699(e)(2) provides that the court sets the amount of PAGA penalties after trial. In setting the penalties to be assessed, court have wide latitude.⁶ The following are examples of cases where courts awarded substantially reduced PAGA penalties:

- *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, at *8-9 (C.D. Cal. Aug. 12, 2011) (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000);
- *Elder v Schwan Food Co.*, No. B238876, 2013 Cal. App. Unpub. LEXIS 1472, at *7, 11, 19 (Feb. 27, 2013) (the court affirmed a reduced award of

⁶ See e.g., *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, 1100, 1104 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible).

\$2,500 individual PAGA civil penalty);

- *Aguirre v Genesis Logistics*, No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820, at *6-7 (C.D. Cal. Dec. 30, 2013) (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000);
- *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on basis that action was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, because corporate defendants corrected violations and were no longer in business, inequity would result from awarding penalties only to employees who opted out of class, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory);
- *Makabi v Gedalia*, No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at *6-7 (Mar. 2, 2016) (noting that the trial court found in favor of plaintiffs on Labor Code violation claims, but declined to award any PAGA penalties);
- *Arnold v San Diego Second Chance Program*, San Diego County Superior Court No. 37-2016-00018375 (Dec. 18, 2017) (no PAGA penalties awarded);
- *Felczer v Apple Inc.*, San Diego County Superior Court No. 37-2011-00102593 (Sept. 13, 2017) (no PAGA penalties awarded);
- *Morales v Peck Jeep Eagle, Inc.* (San Diego County Superior Court No. 37-2012-00103823, Oct. 24, 2016) (PAGA penalties of \$80,400.00 awarded);
- *Allen v American Multi-Cinema*, Alameda County Superior Court No. RG11585502 (July 24, 2016) (no PAGA penalties awarded);
- *Atempa v Pama*, San Diego County Superior Court (July 31, 2015) (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00);
- *Banford v American Gen. Life*, Santa Barbara County Superior Court No. CIV-DS1017566 (Feb. 24, 2015) (PAGA penalties of \$99,000.00 assessed);
- *Parr v GoldenState*, Alameda County Superior Court No. RG12-618103 (July 10, 2014) (PAGA penalties of \$325,835.00 assessed);
- *Driscoll v Granite Rock*, Santa Clara County Superior Court No. 1-08-cv-103426 (Sept. 20, 2011) (the court declined to award PAGA penalties);
- *In re Taco Bell Wage and Hour Actions*, (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *41 (the court declined to award PAGA penalties after trial);
- *Morales v Bridgestone Retail Operations LLC*, Orange County Superior Court No. 30-2017-00900244 (Aug. 2, 2018) (of \$7 million PAGA penalties requested, the court awarded \$425,000);
- *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty

rate to \$5 per violation); and

- *Magadia v Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, 1073, 1080, 1101, 1103-04, 1111 (the court awarded \$53,901,700 in total PAGA penalties, including \$48,046,000 of \$131,427,750 penalties sought for Labor Code § 226(a)(9) wage statement violations; \$5,785,700 of \$28,928,500 sought for Labor Code § 226(a)(6) final pay statement violations; and \$70,000 of requested \$821,400 for Labor Code § 226.7 missed meal period violations; also decertifying meal period regular rate claim class).

Plaintiff's Enhancement Award:

36. It is appropriate to recognize the contributions of the representative Plaintiff in prosecuting this litigation. I am of the opinion that it is fair and reasonable that Plaintiff Carnes receive a \$5,000 service award. Plaintiff Carnes was an essential element in the successful prosecution and ultimate settlement of this case and was always available to provide her input on the litigation, provide evidence and other information important to the prosecution.

37. The proposed enhancement award is fair given the amount of time and effort the representative Plaintiff spent assisting in the prosecution of this case and the personal hardship and pressure faced as a result of filing this lawsuit against her former employer. If the Court approves the settlement, Plaintiff's work bringing this representative PAGA action will result in substantial monetary benefits for the LWDA and the PAGA Group. The representative Plaintiff has provided a declaration outlining her efforts on behalf of the LWDA and the PAGA Group.

Plaintiff's Counsel's Fee and Costs Request:

38. Labor Code § 2699(g)(1) provides for reasonable attorneys' fees and costs in a PAGA action. Plaintiff's Counsel is seeking a total award of fees of \$50,000 and costs \$5,000 from the Settlement Amount that Defendant is required to pay to settle this action. The amount sought is reasonable because it is within the range for fee awards in similar wage and hour-related settlements and in light of the risks Plaintiff's Counsel undertook in accepting this case given its contingent nature, the quality of the representation we provided to the LWDA and PAGA Group, the results achieved, and the preclusion of other employment, as discussed below.

39. The fee request also is supported by a lodestar cross-check.

40. Through August 2, 2023, attorneys at Keller Grover LLP have spent over 238 hours litigating this case engaged in the litigation activities discussed above, along with other necessary tasks required to litigate this representative PAGA action based on the alleged Labor Code violations. Plaintiff's Counsel expects to spend at least another 10 hours finalizing this motion, attending the approval hearing, and dealing with settlement administration issues. A bullet-point summary of some of the necessary tasks engaged in by Keller Grover LLP is below:

- Researched potential claims and the appropriate defendant entities.
- Researched and drafted the LWDA exhaustion letter.
- Prepared and filed the Complaint.
- Engaged in direct settlement negotiations with Defendant.
- Propounded written discovery.
- Assisted Plaintiff in drafting her responses to Defendant's written discovery.
- Reviewed Defendant's discovery responses.
- Engaged in discovery meet and confer efforts.
- Drafted Plaintiff's opposition to Defendant's motion to compel individual arbitration.
- Prepared for and attended the hearing for the motion to compel arbitration.
- Worked with Defense Counsel to obtain data for the mediation.
- Prepared a mediation brief and related materials.
- Reviewed materials provided by Defendant in connection with the mediation.
- Engaged in substantial mediation preparation.
- Attended one mediation session.
- Drafted the Settlement Agreement and related exhibit.
- Engaged with Defense Counsel in detailed discussions regarding the terms of the Settlement Agreement and related exhibit.
- Drafted the motion for approval and motion for award of fees and costs.

41. The following chart summarizes the hours expended by Plaintiff's Counsel at Keller Grover LLP in connection with this litigation through August 2, 2023:

NAME	POSITION	BAR	RATE	HOURS ⁷	BILLING
		ADMISSION			
Eric A. Grover	Partner	1988	\$950	18.75	\$17,812.50
Elizabeth Acevedo	Sr. Associate	2003	\$675	67	\$45,225.00
Robert Spencer	Sr. Associate	2005	\$675	152.50	\$102,937.50
Total Lodestar:					\$165,975.00

42. The rates used to calculate our attorneys' fees in this case are our current 2023 rates. Keller Grover LLP's partners periodically establish hourly rates for all billable personnel in the firm. Keller Grover LLP's partners set the rates based on their regular and on-going monitoring of prevailing market rates in the San Francisco Bay Area for attorneys of comparable skill, experience, and qualifications. In doing so, they obtain information concerning market rates from other attorneys in the area who perform comparable litigation, including the prosecution or defense of complex and/or class action litigation, from conversations with attorneys who are involved in fee litigation, from reviewing fee applications that are submitted in other cases (which report the billing rates of attorneys practicing in other firms), and the orders approving or disapproving them. Keller Grover LLP's partners set the billing rates for our firm to be consistent with prevailing market rates in the private sector in the Bay Area for attorneys of comparable skill, qualifications and experience, but not at the higher or most aggressive end of the spectrum despite our belief that our work product and efficiency and general quality of representation is at the upper end of that continuum.

43. Eric A. Grover's reasonable hourly rate for this matter is \$950 per hour. This rate is based on his 34 years of experience and substantial involvement in class actions, including serving as lead or co-lead counsel in scores of employment, consumer, data breach, and privacy class and representative actions.

⁷ In an exercise of billing judgment, time entries have been rounded down and other time entries eliminated.

1 44. Elizabeth A. Acevedo, Esq. is a 2003 graduate of the University of Southern
2 California Gould School of Law and, throughout her career, has represented plaintiffs in
3 employment, consumer, privacy and securities class actions. Ms. Acevedo worked at Keller
4 Grover for approximately 12 years through 2019 and continued to work for the firm in an Of
5 Counsel capacity until she recently returned to the firm. Ms. Acevedo's current reasonable
6 hourly rate is \$675.

7 45. I am a 2005 graduate of the Loyola Law School of Los Angeles. I have spent my
8 entire career at Keller Grover LLP and specialize in representing plaintiffs in consumer, privacy,
9 and employment class and representative actions. My current reasonable hourly rate is \$675.

10 46. Courts have approved Keller Grover LLP's hourly rates in orders approving class
11 action and PAGA action settlements in other cases. *See e.g., Parker v. Cherne Contr. Corp.*,
12 2021 U.S. Dist. LEXIS 236229, *20-21 (N.D. Cal. Dec. 9, 2021), finding Keller Grover LLP's
13 rates to be in line with hourly rates by comparable attorneys in the Northern District, citing
14 *Hefler v. Wells Fargo & Co.* (N.D. Cal. Dec. 18, 2018) No. 16-CV-05479, 2018 U.S. Dist.
15 LEXIS 213045, 2018 WL 6619983, at *14 (rates from \$650 to \$1,250 for partners or senior
16 counsel, \$400 to \$650 for associates) and *In re Volkswagen "Clean Diesel" Mktg., Sales*
17 *Practices, & Prods. Liab. Litig.* (N.D. Cal. Mar. 17, 2017) No. 2672 CRB (JSC), 2017 U.S. Dist.
18 LEXIS 39115, 2017 WL 1047834, at *5 (billing rates ranging from \$275 to \$1600 for partners,
19 \$150 to \$790 for associates, and \$80 to \$490 for paralegals reasonable "given the complexities
20 of this case and the extraordinary result achieved for the Class.")

21 47. Plaintiff's Counsel's rates are in line with Bay Area attorney rates. In addition to
22 the cases just noted, recent Northern District case law describing hourly rates by comparable
23 attorneys in similar complex class actions supports that Plaintiff's Counsel's fee request is within
24 the range of the Bay Area market. *See e.g., Acosta v. Frito-Lay, Inc.* (N.D. Cal. May 14, 2018)
25 No. 15-cv-02128-JSC, 2018 U.S. Dist. LEXIS 75998, at *37-39 (finding rates in wage and hour
26 class action between \$330 and \$890 to be reasonable); *Nitsch v. DreamWorks Animation SKG*
27 *Inc.* (N.D. Cal. June 5, 2017) No. 14-cv-04062-LHK, 2017 U.S. Dist. Lexis 86124, at *32-33
28 (finding rates of lead counsel between \$870 and \$1,200 per hour reasonable and rates between

\$275 and \$750 for other counsel to be reasonable); *O'Bannon v. NCAA* (N.D. Cal. July 13, 2015) No. 09-cv-03329-CW (NC), 2015 U.S. Dist. LEXIS 91514, at * 14 (finding similar range of hourly rates in 2015 from \$985 to \$250 for class counsel experienced in complex class actions to be reasonable); *Williams v. SuperShuttle Int'l, Inc.* (N.D. Cal. Feb. 12, 2015) No. 12-CV-06493-WHO, 2015 U.S. Dist. LEXIS 19341, at *5 (finding similar range of hourly rates in 2015 from \$750 to \$325) for class counsel experienced in complex employment class actions to be reasonable).

48. The following cases looking at rates between six and nine years ago also supported Plaintiff's Counsel's rates: *Steinfeld v. Discover Fin. Servs.* (N.D. Cal. Mar. 31, 2014) No. C 12-01118 JSW, 2014 U.S. Dist. LEXIS 48540, at **4-5 (finding similar range of hourly rates (from \$725 to \$415) for class counsel experienced in complex consumer class actions to be reasonable and comparable to rates of attorneys doing similar work in the Bay Area community); *Vedachalam v. Tata Consulting Serv. Ltd.* (N.D. Cal. July 18, 2013) No. C 06-0963 CW, 2013 U.S. Dist. LEXIS 100796, at *8 (finding similar range of hourly rates (from \$725 to \$425) of class counsel experienced in complex employment and consumer class actions to be reasonable and comparable to rates charged by other attorneys in the field); *Bolton v. U.S. Nursing Corp.* (N.D. Cal. Oct. 18, 2013) No. C 12-4466 LB, 2013 U.S. Dist. LEXIS 150299, at *14-15 (approving similar range of hourly rates (from \$725 to \$395) in complex class action); *Greko v. Diesel U.S.A., Inc.* (N.D. Cal. Apr. 26, 2013) No. 10-CV-02576 NC, 2013 U.S. Dist. LEXIS 60114, at *35 (approving similar range of hourly rates (from \$700 to \$300) for attorneys experienced in employment class action field); *Wren v. RGIS Inventory Specialists* (N.D. Cal. April 01, 2011) 2011 U.S. Dist. LEXIS 38667, at **52-62 (approving similar range of hourly rates (from \$725 to \$250) in complex employment class action, citing the multiple declarations by counsel and other Bay Area plaintiffs' attorneys who affirmed the rates were at market).

49. Keller Grover's lodestar through August 2, 2023 is \$165,975.00.

50. The requested attorneys' fees of \$50,000 represents an amount that will be substantially less than the actual total lodestar of \$165,975. Further, Plaintiff's Counsel expects

1 to spend at least 10 additional hours working on this action that will incur approximately \$6,750
2 in additional lodestar.

3 51. Contingent Nature of Case and Risk to Counsel: This case was taken on a
4 contingency basis and is not a case undertaken lightly. The risk of advancing costs in this type
5 of litigation can be quite a burden.

6 52. Even with Plaintiff's Counsel's extensive experience litigating wage and hour
7 cases, prosecuting these cases still carries a considerable amount of risk. This case involved
8 significant uncertainty and risk in not prevailing on the merits, especially in light of *LaFace*, the
9 recent court of appeal decision that found that the employer was not obligated to provide seating
10 to employee under facts very similar to those in this case. Defendant disputes Plaintiff's ability
11 to prove that it violated the Labor Code provisions underlying her PAGA claims. Defendant has
12 raised what it considers to be substantial defenses to Plaintiff's claims, including its assertion
13 that Plaintiff's claims cannot survive after *LaFace*. Also, even if Plaintiff prevailed on the
14 merits, Labor Code § 2699(e)(2) allows the court to award a lesser amount of penalties than the
15 maximum set forth in the statute. Continued litigation of this action presents significant risks
16 that this action would result in a lower recovery or no recovery at all.

17 53. Quality of Representation and Results Achieved: The nature of class and
18 representative action work and the expertise of the attorneys in Keller Grover LLP also justify
19 our hourly rates as well. I and the attorneys who worked on this case have expertise in
20 representing employees in similar representative and class actions based on wage and hour
21 violations and have provided the LWDA and PAGA Group with an exceptional quality of
22 representation.

23 54. Because of that experience, we were able to resolve the action efficiently and
24 fairly and obtain significant monetary benefits to the LWDA and reasonable monetary benefits
25 to the PAGA Group members. The Settlement Agreement benefits the State by providing that
26 approximately \$58,500 will be paid to California's LWDA. PAGA Group members also each
27 will receive an Individual Settlement Payment of \$6.35. The success achieved by the settlement
28 supports Plaintiff's Counsel's fee request.

Plaintiff's Counsel's Costs:

58. Plaintiff's Counsel is seeking the Court's approval of \$5,000 in costs.

59. Thus, Plaintiff's Counsel is seeking \$50,000 in attorneys' fees and \$5,000 in costs, a total of \$55,000, as set forth in the Settlement Agreement.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that this Declaration was executed on this 14th day of August, 2023 at San Francisco, California.


ROBERT SPENCER

EXHIBIT 1

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Attorneys for Defendant
THE SALVATION ARMY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SERENA CARNES, as an "aggrieved
employee" and on behalf of "aggrieved
employees" under the California Labor Code
Private Attorneys General Act,

Plaintiff,

v.

THE SALVATION ARMY, THE
SALVATION ARMY ARC SAN DIEGO;
and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 37-2021-00020557-CU-OE-CTL

*Assigned for all purposes to the
Hon. Timothy Taylor, Dept. C-72*

**LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT
AGREEMENT**

Complaint Filed: May 7, 2021
Trial Date: February 16, 2024

1 This Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*)
2 Settlement Agreement (“Settlement Agreement”) is made by and between SERENA CARNES
3 (“Plaintiff”), on her own behalf and as an authorized representative of the PAGA Group (as
4 defined below) and the State of California, on the one hand, and THE SALVATION ARMY
5 (“Defendant”) on the other hand (collectively the “Parties”), in connection with the lawsuit
6 entitled *Carnes v. The Salvation Army, et al.*, San Diego County Superior Court, Case No. 37-
7 2021-00020557-CU-OE-CTL. This Settlement Agreement resolves all claims under the
8 California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698,
9 *et seq.*, based on or arising out of alleged violations of the Labor Code including all claims that
10 could have been alleged based on the factual allegations and identified Labor Code sections in
11 the operative pleading for the Litigation.

12 **I. DEFINITIONS**

13 **A. Administrative Costs.** The term “Administrative Costs” as used herein means
14 all administrative costs of settlement, including cost of notice to the PAGA Group,
15 administration, and any fees and costs incurred or charged by the Settlement Administrator in
16 connection with the execution of its duties under this Settlement Agreement.

17 **B. Agreement or Settlement Agreement.** The terms “Agreement” or “Settlement
18 Agreement” are used synonymously herein to mean this Labor Code Private Attorneys General
19 Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement.

20 **C. Court.** The term “Court” as used herein means the Superior Court of the State
21 of California for the County of San Diego.

22 **D. Defendant.** The term “Defendant” as used herein means The Salvation Army.

23 **E. Defendant’s Counsel.** The term “Defendant’s Counsel” as used herein means
24 Littler Mendelson, P.C.

25 **F. Individual Settlement Payment.** The term “Individual Settlement Payment” as
26 used herein means the payment that each member of the PAGA Group will receive as his or her
27 share of the Net Settlement Amount. Each member of the PAGA Group shall be credited with
28

1 a single Pay Period and shall be paid an equal amount of the twenty-five percent (25%) of the
2 Net Settlement Amount allocated to the PAGA Group as part of this settlement.

3 **G. Litigation.** The term “Litigation” as used herein means the action entitled
4 *Carnes v. The Salvation Army, et al.*, San Diego County Superior Court, Case No. 37-2021-
5 00020557-CU-OE-CTL.

6 **H. LWDA Payment.** The term “LWDA Payment” as used herein means the
7 seventy-five percent (75%) of the Net Settlement Amount payable to the LWDA.

8 **I. Net Settlement Amount.** The term “Net Settlement Amount” as used herein
9 means the Settlement Amount minus any award of attorneys’ fees and litigation costs to
10 Plaintiff’s Counsel, Administrative Costs, and Plaintiff’s enhancement award. Based on the
11 statutory requirement that seventy-five percent (75%) of PAGA civil penalties be paid to the
12 California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent
13 (25%) of PAGA civil penalties be distributed to the aggrieved employees, seventy-five percent
14 (75%) of the Net Settlement Amount will be paid to the LWDA and twenty-five percent (25%)
15 of the Net Settlement Amount will be paid to the PAGA Group based on the distribution formula
16 set forth above.

17 **J. PAGA Group.** The PAGA Group is defined as: All persons within the State of
18 California who are or were employed by Defendant in the State of California as an hourly, non-
19 exempt employee at any time within the PAGA Release Period in any of the following job
20 positions: 1) Sales Associate/Material Handler, 2) Clerk/Cashier, 3) Clerk/Sorter, 4) Sales
21 Associate/Clerk, and 5) Store Attendant. Defendant represents that, based on a reasonable
22 investigation of its records, the total number of individuals in the PAGA Group, including
23 Plaintiff, does not exceed 3,072.

24 **K. PAGA Release Period.** The term “PAGA Release Period” as used herein shall
25 refer to the time period from and including March 2, 2020 through April 27, 2023.

26 **L. Plaintiff.** The term “Plaintiff” as used herein means Serena Carnes.

27 **M. Plaintiff’s Counsel.** The term “Plaintiff’s Counsel” as used herein means Keller
28 Grover LLP.

1 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein
2 means Simpluris, Inc., which will be responsible for the administration of the settlement
3 embodied in this Agreement and all related matters.

4 **O. Settlement Amount.** The term “Settlement Amount” as used herein means a
5 fund in the sum of One hundred and fifty-thousand dollars (\$150,000) which shall be paid by
6 Defendant. The Settlement Amount shall cover, resolve, and fully satisfy the Administrative
7 Costs and any and all amounts owed to Plaintiff, the PAGA Group, the LWDA, and Plaintiff’s
8 Counsel, including all amounts allocated to attorneys’ fees and litigation costs.

9 **II. BACKGROUND**

10 **A.** On May 7, 2021, Plaintiff filed a complaint against Defendant for penalties
11 pursuant to Labor Code § 2699(f) for alleged violations and penalties under Labor Code §§ 1198
12 and 1199 and Wage Order No. 7-2001, § 14 related to the alleged failure to provide suitable
13 seating. Following the filing of the action, and after some formal discovery and motion practice,
14 counsel for the Parties met and conferred with respect to the potential settlement of the
15 Litigation. Pursuant to these discussions, the Parties exchanged additional informal discovery
16 sufficient to engage in settlement discussions and engaged in private mediation.

17 **B.** Plaintiff and Defendant and their respective counsel have engaged in good faith,
18 arms-length negotiations. On April 27, 2023, the Parties participated in a mediation with
19 Brandon Coen, Esq. which resulted in reaching a resolution of this matter. The Parties have
20 now entered into a more detailed, formalized Settlement Agreement for submission to the Court
21 for approval.

22 **C.** Plaintiff’s counsel has conducted an investigation of the law and facts relating to
23 the claims asserted in the Litigation and has concluded, taking into account the sharply contested
24 issues involved, the expense and time necessary to pursue the Litigation through trial and any
25 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
26 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
27 the Plaintiff, the State of California, and the members of the PAGA Group pursuant to this
28 Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair,

1 reasonable, adequate, and in the best interests of the State of California and the PAGA Group.
2 Plaintiff, on their own behalf and as a representative pursuant to PAGA, has agreed to settle the
3 Litigation with Defendant on the terms set forth herein.

4 D. Defendant has concluded that, because of the substantial expense of defending
5 against the Litigation, the length of time necessary to resolve the issues presented herein, the
6 inconvenience involved, and the concomitant disruption to its business operations, it is in its
7 best interests to accept the terms of this Agreement. Defendant denies each of the allegations
8 and claims asserted against it in the Litigation. However, Defendant nevertheless desires to
9 settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of
10 continuing litigation and for the purpose of putting to rest the controversies engendered by the
11 Litigation.

12 E. This Agreement is intended to and does effectuate the full, final and complete
13 resolution of all allegations and claims under the California Labor Code Private Attorneys
14 General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq., based on or arising out of alleged
15 violations of the Labor Code including all claims that could have been alleged based on the
16 factual allegations and identified Labor Code sections in the operative pleading for the
17 Litigation.

18 **III. JURISDICTION**

19 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
20 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
21 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
22 approval of this Agreement, pursuant to California Code of Civil Procedure § 664.6 the Court
23 shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and
24 enforcing this Agreement consistent with the terms set forth herein, and the Parties and their
25 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and
26 enforcing this Agreement and all orders and judgments entered in connection therewith.

27 //

28 //

1 **IV. STATEMENT OF NO ADMISSION**

2 **A.** Defendant denies liability to Plaintiff and to the PAGA Group upon any claim or
3 cause of action. This Agreement does not constitute, and is not intended to constitute, an
4 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
5 made against it in the Litigation.

6 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
7 any statements, discussions or communications, nor any materials prepared, exchanged, issued
8 or used during the course of the negotiations leading to this Agreement is intended by the Parties
9 to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
10 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum
11 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
12 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
13 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
14 case or any other judicial, arbitral, administrative, investigative or other forum or proceeding,
15 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
16 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
17 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
18 the Court that has as its purpose the interpretation, implementation, or enforcement of this
19 Agreement or any orders or judgments of the Court entered in connection with the settlement.

20 **C.** None of the documents produced or created by Plaintiff or her counsel in
21 connection with the approval of this settlement or administration of this settlement constitute,
22 and they are not intended to constitute, an admission by Defendant of any violation of any
23 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
24 obligation or duty at law or in equity.

25 **D.** Nothing in this Agreement will be construed as an admission or
26 acknowledgement of any kind that any group should or would be given collective treatment in
27 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
28 Court's actions with regard to this Agreement will be admissible in any court or other tribunal

1 regarding the propriety of collective treatment. In the event that this Agreement is not approved
2 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff
3 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
4 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
5 way any of their objections or defenses in the Litigation.

6 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

7 **A. Scope of Release.**

8 Upon approval of this settlement by the Court, Plaintiff, individually and as a
9 representative acting as a proxy or agent of the LWDA, a State of California Executive Branch
10 Agency, in this Litigation, agrees to release each named Defendant and each named Defendant's
11 partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the
12 "Released Parties"), of and from any and all claims under the California Labor Code Private
13 Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, that were or could have
14 been alleged based on the factual allegations and identified Labor Code sections in the operative
15 pleading for the Litigation, including, but not limited to, California Labor Code sections §§ 1198
16 and 1199 and IWC Wage Order No. 7-2001, § 14, during the time period from and including
17 March 2, 2020 through April 27, 2023, inclusive (the "Released Claims"). Plaintiff further
18 agrees to release any and all claims for costs, fees, and interest related to the Released Claims.
19 The Parties further agree that this Agreement and judgment to be entered by the Court following
20 approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other
21 proxy or agent, from any future prosecution of any of the Released Claims against any of the
22 Released Parties.

23 **VI. SETTLEMENT ADMINISTRATOR**

24 Plaintiff and Defendant, through their respective counsel, have selected Simpluris, Inc.
25 as the Settlement Administrator to administer the settlement, which includes but is not limited
26 to distributing and responding to inquiries about the Notice of Settlement and calculating all
27 amounts to be paid from the Settlement Amount, including the Individual Settlement Payments.
28 The Administrative Costs are estimated to be no more than twelve-thousand dollars (\$12,000),

1 will be paid from the Settlement Amount. Any charges and expenses of the Settlement
2 Administrator greater than the allocated twelve-thousand dollars (\$12,000) will come from the
3 Settlement Amount. If the actual Administrative Costs are less than the Parties' estimation, the
4 difference between the actual and estimated Administrative Costs will be included in the Net
5 Settlement Amount.

6 **VII. NOTICE**

7 Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice
8 of Settlement (the "Notice"), in the form attached hereto as **Exhibit "A"** which in substance will
9 be provided to the members of the PAGA Group as follows:

10 As soon as practicable following approval of the settlement, but no later than 30 calendar
11 days after the Court's approves the settlement, Defendant will provide to the Settlement
12 Administrator the following information about each PAGA Group member: (1) name; (2) last
13 known home address; and (3) social security number (collectively referred to as the "PAGA
14 List").

15 The Settlement Administrator shall run all the addresses provided through the United
16 States Postal Service NCOA database (which provides updated addresses for any individual who
17 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
18 address) to obtain current address information. Within 30 calendar days after the Settlement
19 Administrator's receipt of the PAGA List, the Settlement Administrator will mail the Notice
20 together with the Individual Settlement Payments to all PAGA Group members by first-class
21 United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and
22 return all undeliverable Notices to the Settlement Administrator. For each Notice and Individual
23 Settlement Payment that is returned as undeliverable, the Settlement Administrator shall
24 promptly attempt to locate the PAGA Group member by performing an additional skip trace and
25 shall re-mail the Notice and Individual Settlement Payment no later than 10 calendar days
26 following receipt of the undeliverable Notice. The Notice will be provided in English.

27 //

28 //

1 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

2 **A. Distribution Formula.**

3 Each member of the PAGA Group shall be credited with a single qualified Pay Period
4 and shall be paid an equal amount of the twenty-five percent (25%) of the Net Settlement
5 Amount allocated to the PAGA Group as part of this settlement.

6 If a PAGA Group member is deceased at the time of distribution, the Settlement
7 Administrator shall distribute the deceased PAGA Group member's Individual Settlement
8 Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the
9 legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA Group
10 member's estate and attempt to place the deceased PAGA Group member's payment in escrow
11 or similar disposition such that any competing heirs may take whatever action they wish to
12 resolve ultimate disposition of such money and the Settlement Administrator and the Parties
13 hereto may disclaim any further interest in or obligation in relation to such money.

14 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
15 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
16 trace search and, if another address is identified, shall mail the check to the newly identified
17 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
18 process, after the check void date, the monies represented by the check shall be turned over
19 according to the LWDA.

20 Any settlement checks that remain uncashed 180 or more calendar days after issuance
21 by the Settlement Administrator shall be voided and the Settlement Administrator will remit the
22 entire amount of each PAGA Group member's uncashed Individual Settlement Payment to the
23 LWDA.

24 **B. Funding of the Settlement Amount.**

25 The funding of the entire Settlement Amount by Defendant will be completed at one
26 time with funds provided to and escrowed by the Settlement Administrator. The Settlement
27 Amount shall be paid to the Settlement Administrator by Defendant within 30 calendar days of
28 its receipt of a notice of entry of the Court's approval order.

1 **C. Time for Distribution of the Enhancements to Plaintiff, Attorneys' Fees and**
2 **Litigation Costs to Plaintiff's Counsel, the LWDA Payment and**
3 **Administrative Costs.**

4 The Settlement Administrator shall cause the Court approved enhancement to Plaintiff,
5 attorneys' fees and litigation costs awarded to Plaintiff's Counsel, and the LWDA Payment to
6 be paid within 30 days of the funding of the Settlement Amount. The Settlement Administrator
7 may pay itself the Court-approved administrative costs once the Individual Settlement Payments
8 have been mailed out.

9 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

10 The amounts paid under this Agreement do not represent a modification of any
11 previously credited hours of service under any employee benefit plan, policy or bonus program
12 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
13 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
14 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of
15 this Agreement shall not be applied retroactively, currently or on a going forward basis as salary,
16 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit
17 plan, policy or bonus program. Defendant retains the right to modify the language of its benefit
18 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid
19 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any
20 similar measuring term as defined by applicable plans, policies and bonus programs for purpose
21 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
22 benefits are not required by this Agreement.

23 **X. PLAINTIFF'S COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

24 Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's
25 Counsel shall not seek or receive an amount in excess of fifty-thousand dollars (\$50,000), which
26 represents 33 1/3% of the Settlement Amount, for all past and future attorneys' fees necessary
27 to prosecute, settle and administer the Litigation and this Agreement. Additionally, Defendant
28 shall not oppose an application by Plaintiff's Counsel for reimbursement of all past and future

1 litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this
2 Agreement, which Plaintiff's Counsel estimates shall not exceed five-thousand dollars (\$5,000).
3 Any attorneys' fees or litigation costs awarded to Plaintiff's Counsel by the Court shall be
4 deducted from the Settlement Amount for the purpose of determining the Net Settlement
5 Amount. This amount shall include all attorneys' fees, litigation costs and expenses for which
6 Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever. Should the
7 Court approve a lesser percentage or amount of fees and/or litigation costs than the amount that
8 Plaintiff's Counsel ultimately seeks, then the unapproved portion or portions shall revert to the
9 Net Settlement Amount.

10 **XI. ENHANCEMENT TO PLAINTIFF**

11 Defendant shall not oppose an application by Plaintiff, and Plaintiff shall not seek or
12 receive an amount in excess of five-thousand dollars (\$5,000) for her participation in and
13 assistance with the Litigation. Any enhancement awarded to Plaintiff by the Court shall be
14 deducted from the Settlement Amount for the purpose of determining the Net Settlement
15 Amount, and shall be reported on IRS Form 1099-misc. If the Court approves an enhancement
16 of less than five-thousand dollars (\$5,000) to Plaintiff, then the unapproved portion shall revert
17 into the Net Settlement Amount.

18 **XII. TAXATION AND ALLOCATION**

19 For withholding tax characterization purposes and payment of taxes, the Net Settlement
20 Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement
21 Allocation"): 100% as penalties.

22 **XIII. COURT APPROVAL**

23 This Agreement is contingent upon approval by the Court. Plaintiff and Defendant agree
24 to take all steps as may be reasonably necessary to secure approval of this Agreement, to the
25 extent not inconsistent with the terms of this Agreement, and will not take any action adverse to
26 each other in obtaining Court approval of this Agreement in all respects.

27 //

28 //

1 **XIV. APPRAISAL AND CERTIFICATION BY THE SETTLEMENT**
2 **ADMINISTRATOR.**

3 The Settlement Administrator shall keep Plaintiff's Counsel and Defendant's Counsel
4 apprised of all distributions from the Settlement Amount. Upon completion of administration
5 of the Settlement, the Settlement Administrator shall provide written certification of such
6 completion to Plaintiff's Counsel and Defendant's Counsel. The Settlement Administrator shall
7 also provide a final accounting, including the names of payees and the amounts of the Individual
8 Settlement Payments.

9 **XV. MISCELLANEOUS PROVISIONS**

10 **A. Stay of Litigation.**

11 Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
12 approval of this Agreement by the Court.

13 **B. Interpretation of the Agreement.**

14 This Agreement constitutes the entire agreement between Plaintiff and Defendant.
15 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
16 other written or oral representations or terms, and no such extrinsic oral or written
17 representations or terms shall modify, vary or contradict its terms. In entering into this
18 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
19 may not be varied or contradicted by extrinsic evidence. This Agreement will be interpreted
20 and enforced under the laws of the State of California, both in its procedural and substantive
21 aspects, without regard to its conflict of law's provisions. Any claim arising out of or relating
22 to this Agreement, or the subject matter hereof, will be resolved solely and exclusively in the
23 Superior Court of the State of California for the County of San Diego, and Plaintiff and
24 Defendant hereby consent to the personal jurisdiction of the Court over them solely in
25 connection therewith. Plaintiff, on her own behalf and on behalf of the PAGA Group and the
26 State of California, and Defendant participated in the negotiation and drafting of this Agreement
27 and had available to them the advice and assistance of independent counsel. As such, neither
28 Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed

1 against the other.

2 The terms and conditions of this Agreement constitute the exclusive and final
3 understanding and expression of all agreements between Plaintiff and Defendant with respect to
4 the resolution of the Litigation. This Agreement may be modified only by a writing signed by
5 counsel for all Parties or their successors-in-interest.

6 **C. Further Cooperation.**

7 Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare
8 and execute all documents, to seek approval of this Agreement from the Court, and to do all
9 things reasonably necessary or convenient to consummate this Agreement as expeditiously as
10 possible.

11 **D. Counterparts.**

12 This Agreement may be executed in one or more actual or non-original counterparts, all
13 of which will be considered one and the same instrument and all of which will be considered
14 duplicate originals.

15 **E. Authority.**

16 Each individual signing below warrants that he or she has the authority to execute this
17 Agreement on behalf of the party for whom or which that individual signs.

18 **F. No Third-Party Beneficiaries.**

19 Plaintiff, members of the PAGA Group, the State of California, Defendant and Released
20 Parties are direct beneficiaries of this Agreement. The Parties are not aware of any third-party
21 beneficiaries.

22 **G. Deadlines Falling on Weekends or Holidays.**

23 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
24 or legal holiday, that deadline shall be continued until the following business day.

25 **H. Severability.**

26 In the event that any one or more of the provisions contained in this Agreement shall for
27 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
28 unenforceability shall in no way effect any other provision if Defense Counsel and Plaintiff's

Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

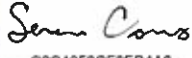
I. Defendant's Fees and Costs

All of Defendant's own legal fees, costs and expenses incurred in this Litigation shall be borne by Defendant.

APPROVED AS TO CONTENT:

6/21/2023

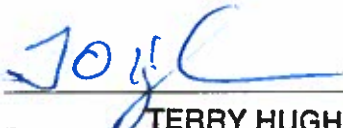
DATED: June __, 2023

DocuSigned by:

C0C4058CF8EB4A8

Serena Carnes

DATED: June 22, 2023

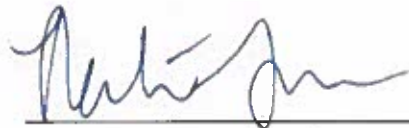
THE SALVATION ARMY


By: **TERRY HUGHES**
SECRETARY

APPROVED AS TO FORM:

DATED: June 21, 2023

KELLER GROVER LLP

By: 
Eric A. Grover
Robert W. Spencer
Attorney for Plaintiff

DATE: June 22, 2023

LITTLER MENDELSON, P.C.

By: 
Joshua Z. Feldman
Attorneys for Defendants

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SERENA CARNES, as an “aggrieved employee” and on behalf of “aggrieved employees” under the California Labor Code Private Attorneys General Act,

Plaintiff,

v.

THE SALVATION ARMY, THE
SALVATION ARMY ARC SAN DIEGO;
and DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2021-00020557-CU-OE-CTL

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS
(CAL. LABOR CODE §§ 2698, *ET SEQ.*)**

You have been identified as an hourly, non-exempt employee who worked for a The Salvation Army (“Salvation Army” or “Defendant”) Thrift Store in California between March 2, 2020 and April 27, 2023, inclusive (“PAGA Group”).

On May 7, 2021, Serena Carnes (“Plaintiff”) filed a complaint in San Diego County Superior Court (the “Court”) to recover civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* (“PAGA”). The lawsuit alleges that Covered Employees were not provided suitable seating

Salvation Army denies all of Plaintiff’s allegations and disputes all of Plaintiff’s claims.

Plaintiff and Defendant reached a settlement of the claims for PAGA civil penalties alleged in the lawsuit. By law, 75% of the civil penalties are paid to the State of California and the remaining 25% are paid to the PAGA Group. Pursuant to the settlement agreement, each member of the PAGA Group shall be paid an equal amount of the twenty-five percent (25%) of the Net Settlement Amount allocated to the PAGA Group as part of this settlement. Your Individual Settlement Payment is provided with this notice.

The Court-approved settlement contains the following release of claims, which is meant to bar any future litigation by Plaintiffs and the California Labor & Workforce Development Agency (“LWDA”), either directly or through any other proxy or agent:

Upon approval of this settlement by the Court, Plaintiff, individually and as a representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Litigation, agrees to release each named Defendant and each named Defendant’s partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the “Released Parties”), of and from

any and all claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, that were or could have been alleged based on the factual allegations and identified Labor Code sections in the operative pleading for the Litigation, including, but not limited to, California Labor Code sections §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14, during the time period from and including March 2, 2020 through April 27, 2023, inclusive (the "Released Claims"). Plaintiff further agree to release any and all claims for costs, fees, and interest related to the Released Claims. The Parties further agree that this Agreement and judgment to be entered by the Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.

This release of claims does not cover any other claims you may have against Defendant.

If you have any questions or would like a copy of the settlement agreement approved by the Court, please contact the Settlement Administrator at _____.

EXHIBIT 2

KELLER GROVER LLP

1965 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103
TELEPHONE: (415) 543-1305
FAX: (415) 543-7861

Robert Spencer, Esq.
rspencer@kellergrover.com

March 2, 2021

Via Online Submission Only

California Labor & Workforce
Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: The Salvation Army

Dear Sir or Madam:

The undersigned represents Ms. Serena Carnes, a former employee of The Salvation Army and The Salvation Army ARC San Diego (collectively "Salvation Army"), on behalf aggrieved employees currently and formerly employed in the State of California by Salvation Army. The purpose of this letter is to comply with the statutory exhaustion requirements of Labor Code § 2699.3 before commencing an action under Labor Code §§ 2699, *et seq.* alleging violations of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14(A).

Our client is a former hourly Training Associate employed by Salvation Army. She worked for Salvation Army from approximately January 2019 through December 1, 2020 as an hourly sales associate/cashier in San Diego, California.

Salvation Army operates multiple thrift shop locations throughout California.

Salvation Army violated Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14(A) by failing to provide Ms. Carnes and other aggrieved employees with any seating – suitable or otherwise – within the vicinity of the cashier stations. The nature of the job duties of a cashier reasonably permit the use of seats as cashiers could ring up customers from a seated position and/or sit between customers. Yet, Salvation Army did not provide such seats to Ms. Carnes or other aggrieved employees. Ms. Carnes and her coworkers had to stand for numerous hours a shift. Ms. Carnes would have used a seat if it was provided. She also asked her supervisor to provide seats; however none were provided.

Notice to Salvation Army of Attempt to Settle this Dispute:

This notice shall represent Ms. Carnes' reasonable attempt to settle this dispute with Salvation Army prior to litigation. Under *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, this

notice serves to apprise Salvation Army of Ms. Carnes' mentioned grievances and the proposed remedies as detailed below, while affording Salvation Army a reasonable opportunity to meet Ms. Carnes' demands.

Demand is hereby made that Salvation Army shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Salvation Army shall comply with IWC Wage Order 7-2001, § 14 and provide employees with suitable seating.
2. Salvation Army shall pay the aggrieved employees all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and under PAGA, Labor Code §§ 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14(A).

Conclusion:

If you have any questions, please feel free to telephone me at (415) 543-1305. In addition, should Salvation Army wish to discuss resolution of the issues raised in this letter, they should direct counsel to contact me at the same telephone number.

Thank you for your attention to this matter.

Sincerely,



ROBERT SPENCER

cc: Attn: Legal Department
The Salvation Army ARC San Diego
1335 Broadway
San Diego, California 92101-5705
Return receipt No: 7018 3090 0000 4429 2746

cc: The Salvation Army
c/o Cogency Global
Connie Mix
Registered Agent for Service of Process
1325 J Street, Suite 1550
Sacramento, California 95814
Return receipt No: 7018 3090 0000 4429 2753

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Attn: Legal Department
The Salvation Army ARC San Diego
1335 Broadway
San Diego, California 92101-5705

2. A

7018 3090 0000 4429 2746

(over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Lloyd Ewers

C. Date of Delivery

3/5

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery

any Restricted Delivery

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

The Salvation Army
c/o Cogency Global
Connie Mix
Registered Agent for Service of Process
1325 J Street, Suite 1550
Sacramento, California 95814

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

COGENCY GLOBAL INC.

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/5/21

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

7018 3090 0000 4429 2753

Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

7018 3090 0000 4429 2753

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$ 3.60
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy)	\$ 2.85
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$.51
Total Postage and Fees	\$ 6.96
Sent To Salvation Army - Cogency Global Street and Apt. No., or PO Box No. 1325 J Street suite - 1550 City, State, ZIP+4®	

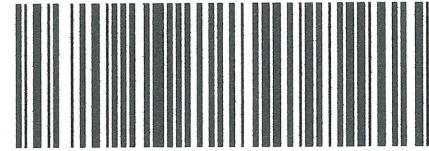
Postmark
Here

74

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

KELLER GROVER LLP
 1965 MARKET STREET
 SAN FRANCISCO, CA 94103

CERTIFIED MAIL®



7018 3090 0000 4429 2753

FIRST-CLASS



PTNEY BOWES
US POSTAGE
 02 7H
 0001255800 MAR 02 2021
 \$ 006.96⁰
 MAILED FROM ZIP CODE 94103

The Salvation Army
 c/o Cogency Global
 Connie Mix
 Registered Agent for Service of Process
 1325 J Street, Suite 1550
 Sacramento, California 95814

7018 3090 0000 4429 2746

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$ 3.60
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy)	\$ 2.85
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$.51
Total Postage and Fees	\$ 6.96
Sent To Legal Dept. Salvation Army Street and Apt. No., or PO Box No. 1355 Broadway City, State, ZIP+4® San Diego, CA 92101	

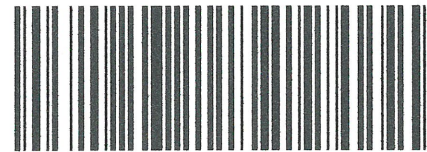
Postmark
Here

74

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Robert Spencer, Esq.
 Keller Grover LLP
 1965 Market Street
 San Francisco, CA 94103

CERTIFIED MAIL®



7018 3090 0000 4429 2746

FIRST-CLASS



PTNEY BOWES
US POSTAGE
 02 7H
 0001255800 MAR 02 2021
 \$ 006.96⁰
 MAILED FROM ZIP CODE 94103

Attn: Legal Department
 The Salvation Army ARC San Diego
 1335 Broadway
 San Diego, California 92101-5705

7018 3090 0000 4429 2753

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 2.85☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

\$.51

Total Postage and Fees

\$ 6.96

Sent To

The Salvation Army - Cogency Global

Street and Apt. No., or PO Box No.

1325 J Street Suite 1550

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

J4

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 2.85☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

\$.51

Total Postage and Fees

\$ 6.96

Sent To

Legal Dept. Salvation Army

Street and Apt. No., or PO Box No.

1355 Broadway

City, State, ZIP+4®

San Diego, CA 92101

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

J4

7018 3090 0000 4429 2746

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

The Salvation Army
c/o Cogency Global
Connie Mix
Registered Agent for Service of Process
1325 J Street, Suite 1550
Sacramento, California 95814

7018 3090 0000 4429 2753

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Attn: Legal Department
The Salvation Army ARC San Diego
1335 Broadway
San Diego, California 92101-5705

2. A

7018 3090 0000 4429 2746

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

EXHIBIT 3

Eric A. Grover, Esq. (SBN 136080)
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Robert W. Spencer, Esq. (SBN 238491)
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1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

Attorneys for Plaintiff
SERENA CARNES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SERENA CARNES, as an “aggrieved
employee” and on behalf of “aggrieved
employees” under the California Labor Code
Private Attorneys General Act,

Plaintiff,

v.

THE SALVATION ARMY, THE
SALVATION ARMY ARC SAN DIEGO; and
DOES 1 through 10, inclusive,
Defendants.

Case No: 37-2021-00020557-CU-OE-CTL

REPRESENTATIVE ACTION

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. PENALTIES, and**
- 2. ATTORNEYS’ FEES**

1 Plaintiff SERENA CARNES (“Plaintiff”), on behalf of herself and all other aggrieved
2 employees, complains against Defendants THE SALVATION ARMY, THE SALVATION
3 ARMY ARC SAN DIEGO, and Does 1 through 10 (all referred to collectively as “SALVATION
4 ARMY” or “Defendants”) as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
7 other statutes, Labor Code §§ 1198 and 1199. Plaintiff has complied with all requirements set
8 forth in Labor Code § 2699.3 necessary to commence a civil action seeking Labor Code § 2699
9 penalties.

10 2. This Court has personal jurisdiction over the parties because Plaintiff is a
11 California resident who worked in California for Defendants and Defendants have systematically
12 and continuously conducted business in the State of California., including in this County.

13 3. Venue is proper in this Court because California Code of Civil Procedure § 395.5
14 because: (a) Plaintiff performed part of her duties in San Diego County, (b) part of the of the
15 obligations of the parties arises in San Diego County, (c) part of Defendants’ liability arises in
16 San Diego County, and (d) breaches by Defendants occurred in connection with work performed
17 partly in San Diego County.

18 **II. PARTIES AND BACKGROUND**

19 4. Plaintiff SERENE CARNES is a California resident. Plaintiff CARNES worked
20 for SALVATION ARMY as a non-exempt, hourly sales associate/cashier from approximately
21 January 2019 through December 1, 2020 at Defendants’ retail store located at 6875 El Cajon
22 Boulevard, San Diego, California 92115.

23 5. Defendant THE SALVATION ARMY is a California corporation doing business
24 throughout California, and is a “person” as defined by Labor Code § 18 and California Business
25 and Professions Code § 17201. In addition, it is an “employer” as that term is used in the Labor
26 Code and in the Industrial Welfare Commission’s (hereinafter referred to as “IWC”) Wage Orders
27 regulating wages, hours, and working conditions.
28

6. Defendant THE SALVATION ARMY ARC SAN DIEGO is an unknown entity doing business throughout California. In addition, it is an “employer” as that term is used in the Labor Code and in the Industrial Welfare Commission’s (hereinafter referred to as “IWC”) Wage Orders regulating wages, hours, and working conditions.

7. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1 through 10, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that ground alleges that each of the fictitiously named Defendants are responsible in some manner for the occurrences alleged and that Plaintiff’s damages and other losses as alleged are proximately caused by those occurrences.

8. Plaintiff bring this action on behalf of all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.* who worked as hourly employees in California. Plaintiff seeks all penalties within the applicable limitations period for each violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14 (failure to provide suitable seating).

III. FACTUAL ALLEGATIONS

9. SALVATION ARMY operates numerous retail stores throughout California.

10. At all relevant times, Plaintiff was employed by SALVATION ARMY as an hourly, non-exempt employee in the “Mercantile Industry” as defined by IWC Wage Order 5-2001, § 2(H).

11. SALVATION ARMY employed a policy and practice of failing to provide Plaintiff and other aggrieved employees suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14. SALVATION ARMY employs cashiers at its retail stores throughout California. The nature of the job duties of a cashier reasonably permits the use of seats as cashiers could ring up customers from a seated position and/or sit between assisting customers. Yet, SALVATION ARMY did not provide seats to Plaintiff and other aggrieved employees. Plaintiff and other aggrieved employees had to stand for numerous hours at a time due to the lack of suitable seating.

IV. REPRESENTATIVE ACTION

12. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.* who are or were employed in the State of California by Defendants as hourly retail store employees and were provided suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

13. There is a well-defined community of interest in the quests of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest, including, but not limited to, whether SALVATION ARMY failed to provide suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

14. Plaintiff's claims are typical of the claims of the members of the aggrieved employees whom Plaintiff seeks to represent and her interests are consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately represent the interests of the aggrieved employees because Plaintiff is also an aggrieved employee and her claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who are experienced in the prosecution of class and representative actions, and Plaintiff intends to prosecute this action vigorously.

15. Common questions of law and fact exist as to all aggrieved employees that predominate over any other questions affecting only individual aggrieved employees.

16. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved employees.

V. FIRST CAUSE OF ACTION

(FAILURE TO PROVIDE SUITABLE SEATING - PAGA)

17. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

18. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

19. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violator and against whom one or more of the alleged violations were committed.

20. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

21. By the actions alleged herein, Defendant failed to provide Plaintiff and other aggrieved employees suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

22. Therefore, Plaintiff, for herself and all current and former aggrieved employees and on behalf of the State of California, demand the penalties provided by Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

23. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

24. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14(failure to provide suitable seating) during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;

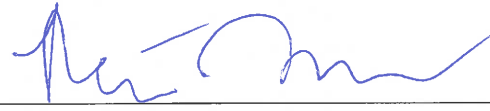
1. For reasonable attorneys’ fees and costs as allowed by Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5;

2. For all interest as required by Labor Code § 218.6 and other applicable law; and

3. For such other and further relief as the Court may deem proper.

Dated: May 7, 2021

KELLER GROVER LLP

By: 
ERIC A. GROVER
ROBERT SPENCER

Counsel for Plaintiff
SERENA CARNES

EXHIBIT 4

Keller Grover
Salvation Army Transaction Detail by Account
All Dates

Date	Name	Class	Memo/Description	Split	Amount
Case Expenses Receivable					
\$Filing & Court Fees					
03/04/2021	LWDA	Salvation Army		United Mileage Plus 1151	75.00
05/11/2021	One Legal, Inc.	Salvation Army	16279877	United Mileage Plus 1151	460.19
05/23/2021	One Legal, Inc.	Salvation Army	16302335	United Mileage Plus 1151	109.90
05/23/2021	One Legal, Inc.	Salvation Army	16302336	United Mileage Plus 1151	68.72
05/25/2021	One Legal, Inc.	Salvation Army	16358154	United Mileage Plus 1151	12.35
05/26/2021	One Legal, Inc.	Salvation Army	16363070	United Mileage Plus 1151	12.35
09/22/2021	One Legal, Inc.	Salvation Army	16948457	United Mileage Plus 1151	12.35
09/26/2021	One Legal, Inc.	Salvation Army	16948458	United Mileage Plus 1151	40.15
01/03/2022	One Legal, Inc.	Salvation Army	17441130	United Mileage Plus 1151	12.35
01/05/2022	One Legal, Inc.	Salvation Army	17441131	United Mileage Plus 1151	39.89
09/14/2022	Superior Court	Salvation Army		United Mileage Plus 1151	5.00
09/14/2022	L A SUPERIOR COURT	Salvation Army		United Mileage Plus 1151	7.80
09/20/2022	One Legal, Inc.	Salvation Army	18939875	United Mileage Plus 1151	12.87
09/22/2022	One Legal, Inc.	Salvation Army	18939879	United Mileage Plus 1151	68.72
10/02/2022	One Legal, Inc.	Salvation Army	19003565	United Mileage Plus 1151	12.87
03/10/2023	One Legal, Inc.	Salvation Army		United Mileage Plus 1151	48.90
03/23/2023	One Legal, Inc.	Salvation Army		United Mileage Plus 1151	33.92
03/24/2023	One Legal, Inc.	Salvation Army		United Mileage Plus 1151	13.33
Total for \$Filing & Court Fees					\$ 1,046.66
\$Mediation Fee					
04/12/2023	Coen Mediation Services	Salvation Army	Inv. 10508, full day mediation	Accounts Payable	3,000.00
Total for \$Mediation Fee					\$ 3,000.00
\$Photocopies					
8/3/2023	Keller Grover	Salvation Army	Photocopies 1440 x .20		\$ 288.00
Total for Photocopies					\$ 288.00
\$Postage					
05/31/2021		Salvation Army	Postage 3/01/2021-05/31/2021	-Split-	13.92
Total for \$Postage					\$ 13.92
\$Research					
03/31/2021	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	0.94
01/31/2022	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	21.82
02/28/2022	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	22.54
08/31/2022	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	201.69
09/30/2022	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	66.85
11/06/2022	Pacer Service Center	Salvation Army		United Mileage Plus	3.50
03/24/2023	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	31.44
05/08/2023	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	2.83
8/3/2023	LexisNexis, RELX Inc.	Salvation Army		Accounts Payable	101.17
Total for \$Research					\$ 452.78
Total for Case Expenses Receivable					\$ 4,801.36

Thursday, Aug 03, 2023 09:13:17 AM GMT-7

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On August 14, 2023, in the case of *Carnes v. The Salvation Army, et al.*, San Diego Superior Court Case Number 37-2021-00020557-CU-OE-CTL, I served the foregoing document(s):

DECLARATION OF ROBERT SPENCER IN SUPPORT OF MOTIONS FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION AND DISMISSING ACTION WITH PREJUDICE AND FOR AN ORDER AWARDING ATTORNEYS' FEES AND COSTS, SERVICE PAYMENT, AND SETTLEMENT ADMINISTRATION FEES

on the interested party(ies) below, using the following means:

Joshua Feldman, Esq.

jfeldman@littler.com

Barbara Nikitas

bnikitas@littler.com

LITTLER MENDELSON P.C

2049 Century Park East, 5th Floor

Los Angeles, California 90067-3107

Telephone: (310) 553-0308

Facsimile: (310) 553-5583

Attorneys for Defendant

THE SALVATION ARMY

☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


JOEY GONZALEZ