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Attorneys for SAVANNAH L. BURNETT, as an aggrieved employee,  
and on behalf of all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF MARIN**

LUTHER RODDY and SAVANNAH L.  
BURNETT, individuals, on behalf of the state  
of California, as a private attorneys general,

Plaintiff,

v.

O'NEILL BEVERAGES CO. LLC, a  
Delaware Limited Liability Company; and  
DOES 1-50, Inclusive,

Defendants.

Case No.: CIV2200067

[Assigned for all purposes to the Hon. Stephen  
Freccero in Dept. A]

**DECLARATION OF DAVID D. BIBIYAN  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR APPROVAL OF  
REPRESENTATIVE ACTION  
SETTLEMENT**

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2. I submit this declaration in support of Plaintiff's Motion for Approval of Representative Action Settlement. I believe that the Settlement is fair, reasonable and adequate in light of the probable outcome of further litigation relating to liability and damage issues.

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1        8.        I am an active member of the California Employment Lawyers' Association  
2 ("CELA"), one of only a few members of its Reverse Auctions Subcommittee and serve as a  
3 mediator between other plaintiffs' counsel who bring overlapping class actions. I have also  
4 attended various Continuing Legal Education courses pertaining to advocacy on behalf of  
5 employees.

6        9.        In fact, I recently created the content for, helped organize, and served as the  
7 Moderator for the 2023 California Complex Symposium Wage and Hour/PAGA Section, a  
8 Continuing Legal Education seminar and forum featuring four respected Judges serving in the  
9 Complex Divisions of their respective county Superior Courts. In addition, my firm served as a  
10 sponsor of that event.

11       10.       Not only have I practiced almost exclusively in this field for years and have  
12 contributed to the legal education curriculum for attorneys practicing within it, I am also a  
13 published author in the Daily Journal as a contributor in the Wage and Hour and PAGA context,  
14 including, in December 15, an article entitled: "PAGA: What's Gone, What's Left and What's  
15 Next." I have also been a quoted source in multiple other publications, including in article  
16 published by Bloomberg Law dated November 1, 2023 entitled: "Adidas, Home Depot Sued in  
17 Test Cases on Job Ad Pay Transparency."

18       11.       My firm has the experience, resources and means necessary to allow us to provide  
19 adequate representation as Class Counsel to all class members in this litigation.

20       12.       I have filed contested motions for class certification in the past and have been  
21 appointed Class Counsel by the Superior Court of California in the past for purposes of certifying  
22 a class. Some examples of Actions in which I was appointed Class Counsel include:

23       • *Santoyo v. Consolidated Foundries, Inc.*, Case No. BC612298, California Superior  
24 Court, County of Los Angeles, Honorable Judge Ann I. Jones, presiding;

25       • *Arendorff v. Stanley Steamer International, Inc.*, Case No. BC681368, California  
26 Superior Court, County of Los Angeles, Honorable Yvette M. Palazuelos, presiding;

27       • *Barreto v. Don Roberto Jewelers, Inc.*, Case No. BC495451, California Superior Court,  
28 County of Los Angeles, Honorable Ann I. Jones, presiding;

1           • *Junior Amilcar Laguna Gonzalez v. Takaaki Koyama*, Case No. BC641998, Los Angeles  
2 Superior Court, Honorable Elihu M. Berle, presiding;  
3           • *Rios v. Nongshim America, Inc.*, Case No. CIVDS1807390, California Superior Court,  
4 County of San Bernardino, Honorable David S. Cohn, presiding;  
5           • *Stoddard v. Molded Fiber Glass – West*, Case No. 1517758, California Superior Court,  
6 County of San Bernardino, Honorable David S. Cohn, presiding;  
7           • *Mata v. Sahara Scaffold, Inc.*, Case No. CIVDS1810785, California Superior Court,  
8 County of San Bernardino, Honorable David S. Cohn, presiding;  
9           • *Carrasco v. Pure Dental Solutions*, Case No. BC645995, Los Angeles Superior Court,  
10 Honorable Kenneth R. Freeman, presiding;  
11           • *Gonzalez v. Gochez, et al.*, Case No. BC648729, Los Angeles Superior Court, Honorable  
12 Maren Nelson, presiding;  
13           • *Montoya v. Superior Paving Co.*, Case No. CIVDS1833422, County of San Bernardino,  
14 Honorable David S. Cohn, presiding;  
15           • *Lopez v. Norred & Associates, Inc.*, Case No. CIVDS1824109, California Superior  
16 Court, County of San Bernardino, David S. Cohn, presiding;  
17           • *Noyola v. Lacren, LLC*, Case No. BC717024, California Superior Court, County of Los  
18 Angeles, Hon. Anthony Mohr, presiding;  
19           • *Luciano, et al. v. O'Tasty Foods, Inc., et al.*, Case No. BC711988, California Superior  
20 Court, County of Los Angeles, Honorable Maren Nelson, presiding;  
21           • *Gordon v. Hospice Source, LLC*, Case No. 34-2018-00250022-CU-OE-GDS, California  
22 Superior Court, County of Sacramento, Honorable Christopher E. Krueger, presiding;  
23           • *Barragan v. Refrigeration Supplies Distributor*, Case No. 19STCV09312, California  
24 Superior Court, County of Los Angeles, Honorable Carolyn B. Kuhl, presiding;  
25           • *Ramirez v. Acre Gourmet, Inc.*, Case No. CGC-19-575117, California Superior Court,  
26 County of San Francisco, Honorable Andrew Y.S. Cheng, presiding;  
27           • *Villafuerte v. Bay Alarm Company*, Case No. BC689110, California Superior Court,  
28 County of Los Angeles, Honorable Amy D. Hogue, presiding;

1           • *Cazares v. Areas USA LAX, LLC*, Case No. 19STCV08209, California Superior Court,  
2 County of Los Angeles, Honorable Carolyn B. Kuhl, presiding;  
3           • *Magana v. Castlerock Environmental, Inc., et al.*, Case No. 19STCV38353, California  
4 Superior Court, County of Los Angeles, Honorable Ann I. Jones, presiding;  
5           • *Chilel v. Sushi California, Inc.*, Case No. 19STCV08209, California Superior Court,  
6 County of Los Angeles, Honorable Ann I. Jones, presiding;  
7           • *Malone v. Orange Courier, Inc., et al.*, Case No. 30-2016-00763474, California Superior  
8 Court, County of Orange, Honorable Glenda Sanders, presiding;  
9           • *Rivera v. Talamo Food Services, Inc.*, Case No. 19CV355856, California Superior Court,  
10 County of Santa Clara, Honorable Patricia M. Lucas, presiding;  
11           • *Olguin v. Cal Central Harvesting, Inc.*, Case No. 18CV03860, California Superior Court,  
12 County of Santa Barbara, Honorable James F. Rigali, presiding;  
13           • *Pence v. Sober Living by the Sea, Inc.*, Case No. 2018-00988742, California Superior  
14 Court, County of Orange, Honorable Randall J. Sherman, presiding;  
15           • *Franco v. Vincent Rags, Inc.*, Case No. 20STCV07768, California Superior Court,  
16 County of Los Angeles, Honorable Ann I. Jones, presiding;  
17           • *Cabral v. Miller Castings, Inc.*, Case No. 19STCV39556, California Superior Court,  
18 County of Los Angeles, Honorable Carolyn B. Kuhl, presiding.  
19           • *Bolanos v. Texas Roadhouse, Inc.*, Case No. 19STCV39556, California Superior Court,  
20 County of Los Angeles, Honorable Sunshine Sykes, presiding;  
21           • *Rodriguez v. Scott A. Humphreys, Inc.*, Case No. 30-2021-01184556-CU-OE-CXC,  
22 California Superior Court, County of Ventura, Honorable Matthew P. Guasco, presiding; and  
23           • *Torres v. Primal Pet Foods, Inc.* Case No. FCS054783, California Superior Court,  
24 County of Solano, Honorable Wendy G. Getty, presiding.  
25           • *Hanson v. Zapata Nuccio, Inc.*, Case No. 20STCV28951, California Superior Court,  
26 County of Los Angeles, Honorable Elihu M. Berle, presiding;  
27           • *Molina v. Avibank Mfg, Inc.*, Case No. 20STCV03910, California Superior Court,  
28 County of Los Angeles, Honorable John P. Doyle, presiding;

1           • *Cetina v. Lawry's Restaurants, Inc.*, Case No. 19STCV05201, California Superior Court,  
2 County of Los Angeles, Honorable Amy D. Hogue, presiding;  
3           • *Luna v. Pronto California General Agency, LLC*, Case No. 19STCV39951, California  
4 Superior Court, County of Los Angeles, Honorable Elihu M. Berle, presiding;  
5           • *Alvarez v. Kazak-Mars, Inc.*, Case No. 20STCV42587, California Superior Court,  
6 County of Los Angeles, Honorable Elihu M. Berle, presiding;  
7           • *Noe v. My Pillow, Inc.* Case No. CIVDS 2011360, California Superior Court, County of  
8 San Bernardino, Honorable David Cohn, presiding;  
9           • *Nunez v. 2751 West Coast Acquisition Company*, Case No. 30-2020-01145215-CU-  
10 OE-CXC, California Superior Court, County, County of Orange, Honorable Randall J. Sherman,  
11 Presiding;  
12           • *Smith v. McMillen Enterprises, Inc.*, Case No. CV-20-002938, California Superior Court,  
13 County of Stanislaus, Honorable John R. Mayne, presiding;  
14           • *Turner v. Plant Prefab Inc., et al.*, Case No. CIVDS2017517, California Superior Court,  
15 County of San Bernardino, Honorable David Cohn, presiding;  
16           • *Duran v. Fresh Select, LLC*, Case No. VCU284892, California Superior Court, County  
17 of Tulare, Honorable Bret Hillman, presiding;  
18           • *Reynoso, et al. v. Cream of the Crop AG Service, Inc.*, Case No. VCU278847, California  
19 Superior Court, County of Tulare, Honorable Bret Hillman, presiding;  
20           • *Michel v. Universal Waste Systems, Inc.*, Case No. 19STCV46181, California Superior  
21 Court, County of Los Angeles, Honorable David S. Cunningham presiding;  
22           • *Jungers v. U.S. Borax Inc., et al.*, Case No. BCV-21-10003, California Superior Court,  
23 County of Kern, Honorable Bernard C. Barmann Jr. presiding.  
24           • *Fortune v. Amoroso Limited Partnership, et al.*, Case No. 20STCV25874, California  
25 Superior Court, County of Los Angeles, Honorable Carolyn Kuhl presiding;  
26           • *Rincon, et al. v. New-Indy Tripaq LLC, et al.*, Case No. 20STCV17118, California  
27 Superior Court, County of Los Angeles, Honorable Maren Nelson presiding; and  
28           • *Montoya, et al. v. Remo, Inc.* Case No. 20STCV34614, California Superior Court,

1 County of Los Angeles, Honorable Maren Nelson presiding;

2 • *Rincon, et al. v. New-Indy Tripaq, LLC, et al.* Case No. 20STCV17118, California

3 Superior Court, County of Los Angeles, Honorable Maren Nelson presiding;

4 • *De Leon v. Wismettac Asian Foods, Inc.* Case No. 19STCV18172, California Superior

5 Court, County of Los Angeles, Honorable Elihu M. Berle presiding;

6 • *Tapia v. Mercer Foods, Inc.* Case No. CV-21-000020, California Superior Court, County

7 of Stanislaus, Honorable Sonny S. Sandhu presiding;

8 • *Molina v. Reser's Fine Foods, Inc.* Case No. 37-2021-00013052-CU-OECTL, California

9 Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding;

10 • *Reyes v. Imperial Sprinkler Supply, Inc.* Case No. 30-2020-01167748-CU-OE-CXC,

11 California Superior Court, County of Los Angeles, Honorable Peter Wilson presiding;

12 • *Zavala, et al. v. PLS Check Cashers, Inc.* Case No. 20STCV42586, California Superior

13 Court, County of Los Angeles, Honorable Elihu M. Berle presiding; and

14 • *Paz v. Hill Brothers Chemical Company.* Case No. 20STCV48279, California Superior

15 Court, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;

16 • *Garcia v. Inwesco Incorporated.* Case No. 20STCV46833, California Superior Court,

17 County of Los Angeles, Honorable Carolyn B. Kuhl presiding;

18 • *Guevara v. J&K Culver, LLC, et al.* Case No. 19STCV39951, California Superior

19 Court, County of Los Angeles, Honorable Elihu M. Berle presiding;

20 • *Hamilton v. Michael Kors Stores, Inc. et al.*, Case No. 19STCV37061, California

21 Superior Court, County of Los Angeles, Honorable Yvette M. Palazuelos presiding;

22 • *Arzooian v. A&M Administration, LLC, et al.* Case No. 21STCV05576, California

23 Superior Court, County of Los Angeles, Honorable Yvette M. Palazuelos presiding;

24 • *Santos, et al. v. Maruzen of America, Inc.*, Case No. 19STCV37662, California Superior

25 Court, County of Los Angeles, Honorable Kenneth R. Freeman presiding;

26 • *Schaffino v. M.O. Dion & Sons., Inc., et al.*, Case No. 20STCV38023, California Superior

27 Court, County of Los Angeles, Honorable Gail Killefer presiding;

28 • *Moreno v. Santa Paula Post Acute, LLC, et al.* Case No. 21STCV12533, California

1 Superior Court, County of Los Angeles, Honorable Carolyn Kuhl presiding;  
2       • *Singer v. Desert Area Resources and Training*, Case No. BCV-21-101093, California  
3 Superior Court, County of Kern, Honorable Thomas S. Clark presiding;  
4       • *Clarizio v. Guard-Systems, Inc.*, Case No. 21STCV28667, California Superior Court,  
5 County of Los Angeles, Honorable Armen Tamzarian presiding;  
6       • *Guzman v. Freschco Painters, Inc.*, Case No. 21STCV04683, California Superior Court,  
7 County of Los Angeles, Honorable Lawrence P. Riff presiding;  
8       • *Koutny v. PAE Aviation and Technical Services, LLC*, Case No. 21C-0106, California  
9 Superior Court, County of Kings, Honorable Melissa R. D’Morias presiding;  
10       • *Rodriguez v. Pacifica Trucks, LLC*, Case No. 20STCV37576, California Superior Court,  
11 County of Los Angeles, Honorable Stuart Rice presiding;  
12       • *Ramos v. AEGIS Treatment Centers, LLC*, Case No. 20STCV41429, California Superior  
13 Court, County of Los Angeles, Honorable Carolyn B. Kuhl presiding;  
14       • *Valdez v. Integrated Building Services, Inc.* Case No. 20STCV37793, California Superior  
15 Court, County of Los Angeles, Honorable Elihu M. Berle presiding;  
16       • *Harris v. America One Security, Inc.* Case No. 21STCV01399, California Superior Court,  
17 County of Los Angeles, Honorable Lawrence P. Riff presiding;  
18       • *Moreno v. M&J Seafood Company, Inc.* Case No. 22STCV03341, California Superior  
19 Court, County of Los Angeles, Honorable William F. Highberger presiding;  
20       • *Corrales v. Q&B Foods, Inc.* Case No. 20STCV40885, California Superior Court,  
21 County of Los Angeles, Honorable Elihu Berle presiding;  
22       • *Arteaga v. Demolition Specialist, Inc.* Case No. RIC2001133, California Superior Court,  
23 County of Riverside, Honorable Harold Hopp presiding;  
24       • *Vigil, et al. v. Capstone Turbine Corporation*, Case No. 20STCV32123, California  
25 Superior Court, County of Los Angeles, Honorable Lawrence P. Riff presiding;  
26       • *Ramirez v. Sea-Win, Inc.* Case No. 21STCV22026, California Superior Court, County of  
27 Los Angeles, Honorable Lawrence P. Riff presiding;  
28       • *Ortega Chavez v. Winpak Lane, Inc.* Case No. CIVSB2207313, California Superior

1 Court, County of San Bernardino, Honorable Jessica Morgan presiding;

2 • *Garcia v. American Licorice Company*. Case No. RG21107049, California Superior  
3 Court, County of Alameda, Honorable Brad Seligman presiding;

4 • *Madrono v. Vitale Nursing, Inc, et al.*, Case No. 21STCV09845, California Superior  
5 Court, County of Los Angeles, Honorable Lawrence P. Riff presiding; and

6 • *Orellana v. Advanced Building Maintenance*. Case No. 34-2020-00286791-CU-OE-  
7 GDS, California Superior Court, County of Sacramento, Honorable Jill Talley presiding.

8 13. I have also settled matters on a “PAGA Only” basis for aggrieved employees in the  
9 past, including in:

10 • *Flores v. Delta Apparel, Inc.*, Case No. BC641499, California Superior Court, County  
11 of Los Angeles, Honorable Daniel J. Buckley, presiding;

12 • *Segura v. CJ Foods Service Holdings USA, LLC*, Case No. 19STCV24918, California  
13 Superior Court, County of Los Angeles, Honorable Maureen Duffy-Lewis, presiding;

14 • *Sierra v. Nexem-Allied, LLC*, Case No. 20STCV11281, California Superior Court,  
15 County of Los Angeles, Honorable Randolph M. Hammock, presiding;

16 • *Nodal v. Sodexo, Inc.*, Case No. 20STCV40601, California Superior Court, County of  
17 Los Angeles, Honorable Lawrence Riff, presiding;

18 • *Cooper v. Lucas Health Partners, LLC*, Case No. 20STCV20050, California Superior  
19 Court, County of Los Angeles, Honorable Maren Nelson, presiding;

20 • *Herrera v. Greystar Management, LP, et al.*, Case No. 37-2020-00009672-CU-OE-CTL,  
21 California Superior Court, County of San Diego, Honorable Carolyn Caietti, presiding; and

22 • *Slater v. Jo-Ann Stores, LLC.*, Case No. 21STCV18454, California Superior Court,  
23 County of Los Angeles, Honorable Maurice A. Leiter, presiding.

24 • *Bolanos v. Canoga Park Heating & Air Conditioning, Co., Inc.*, Case No.  
25 21STCV12674, California Superior Court, County of Los Angeles, Honorable Yolanda Orozco,  
26 presiding;

27 • *Granados v. Cosmetic Ideas, Inc.* Case No. 21STCV10797, California Superior Court,  
28 County of Los Angeles, Honorable Richard L. Fruin, presiding;

1       • *Ruano v. DPC Woodwork, Inc.* Case No. 21STCV00408, California Superior Court,  
2 County of Los Angeles, Honorable Jon R. Takasugi presiding;  
3       • *Tarin v. TPS Solutions, Inc.*, Case No. 21STCV07844, California Superior Court,  
4 County of Los Angeles, Honorable Maren E. Nelson presiding;  
5       • *Echegoyen v. The ADT Security Corporation.*, Case No. 21STCV07206, California  
6 Superior Court, County of Los Angeles, Honorable Carolyn Kuhl presiding; and  
7       • *Iraheta v. Legacy Farmers, Inc.*, Case No. MSC21-00762, California Superior Court,  
8 County of Contra Costa, Honorable Edward G. Weil presiding.

9       14.       Currently, my firm is acting as counsel in tens of wage and hour class actions and  
10 representative PAGA actions.

11       15.       After a thorough investigation and settlement discussions, I arrived at terms that I  
12 viewed was in the best interest of both Plaintiff and Aggrieved Employees.

13                   **PAGA Counsel’s Requested Fees and Costs are Reasonable**

14       16.       I believe Plaintiff’s Counsel are entitled to recover attorneys’ fees and costs.  
15 Plaintiff’s Counsel request a fee of one third (1/3) of the Gross Settlement Amount, which, unless  
16 and until escalated pursuant to the Parties’ Settlement Agreement, amounts to \$208,333.33, is  
17 reasonable, is well within the range of fees generally sought and approved in other class and  
18 representative cases, and is also reasonable based on PAGA Counsel’s lodestar.

19       17.       The Bibiyan Law Group, P.C., invested time and resources into litigating this  
20 Action, with \$2,409.24 of costs to date and counting deferred to the end of the case and entirely  
21 contingent on the outcome, which, as set forth above, the recovery of which was far from certain  
22 with much of the litigation still potentially pending.

23       18.       During the period that this Action has been pending, the Bibiyan Law Group, P.C.,  
24 has advanced some of the expenses, and has not received any compensation for prosecuting the  
25 Action on behalf of the State and other Aggrieved Employees.

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**An Award of Fees Based on a Percentage of the Common Fund  
is Appropriate and Reasonable**

19. I believe the percentage of attorneys' fees set forth in the Settlement (*i.e.*, 1/3 of the GSA) is reasonable. I am informed and believe that, historically, courts have awarded percentage fees in the range of 20% to 50% in collective actions, depending on the circumstances of the case.

20. Here, I believe the requested fee is consistent with the fees awarded in other PAGA settlements approved by California courts.

21. The Bibiyan Law Group, P.C., invested time and resources into litigating this Action, with \$2,409.24 of costs to date and counting deferred to the end of the case and entirely contingent on the outcome which, as set forth above, the recovery of which was far from certain with much of the litigation still potentially pending. It has been a long-recognized principle that an attorney merits a significantly larger fee when the compensation is contingent, rather than being fixed on a time or contractual basis. During the period that this Action has been pending, the Bibiyan Law Group has advanced some of the expenses, and has not received any compensation for prosecuting the Action on behalf of the State and other Aggrieved Employees.

22. I believe the significant outlay of monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a substantial settlement or the imposition of civil penalties at trial. I believe PAGA Counsel should not be penalized with a lower fee for settling the case prior to trial, because the percentage of the fund method "encourages early settlement, which avoids protracted litigation." Thus, the requested award of attorneys' fees is reasonable under the percentage of the fund method.

**The Requested Fees are also Reasonable under a Lodestar Crosscheck**

23. I understand from my position as principal of Bibiyan Law Group, P.C., my involvement with the case, and information provided by my staff, that Bibiyan Law Group, P.C., will have collectively billed 138.4.8 hours. David D. Bibiyan billed 18.1 hours at his hourly rate of \$1000 per hour. Jeffrey D. Klein billed 9.5 hours at his hourly rate of \$900. Vedang J. Patel billed 17.8 hours at his hourly rate of \$600 per hour. Brandon M. Chang billed 5.5 hours at his hourly rate of \$500 per hour. Matthew Carraher billed 71.7 hours at his hourly rate of \$425 per hour. Adam

1 Lonner billed 6.3 hours at his hourly rate of \$425 per hour. Paralegals billed 3.5 hours at \$175 per  
2 hour. Finally, legal assistants billed 6.0 hours at \$75 per hour. Cumulatively, this amounts to a total  
3 lodestar of \$73,293.00. Plaintiff requests attorneys' fees of only \$208,333.33.

4 **Class Counsel's Hours Spent on the Case**

5 24. After diligent inquiry of the members of my firm, I can attest that Bibiyan Law  
6 Group, P.C., has spent over 138 hours litigating this Action to bring it to resolution, not including  
7 time which will be expended monitoring the administration of the settlement and distribution of  
8 funds to Aggrieved Employees.

9 25. The efforts expended by Bibiyan Law Group, P.C. to achieve this result include,  
10 but are not limited to, the following:

- 11 • The investigation of the matter, including meeting with Plaintiff, reviewing  
12 policies provided by Plaintiff, review of documents in Plaintiff's possession,  
13 review and analysis Plaintiff's personnel file, and exploring Defendants'  
14 corporate structure to determine whether any other individuals or entities  
15 should be named in the litigation;
- 16 • Compliance with prerequisites in connection with PAGA;
- 17 • Filing and serving pleadings in the Superior Court of California for the County  
18 of Fresno, Case Nos. 22CECG02947 (the "Burnett Class Action") and  
19 22CECG03720 (the "Burnett PAGA Action"), including drafting, meeting and  
20 conferring with Counsel for Defendants, and filing Joint Stipulation to file the  
21 First Amended Complaint in this Action;
- 22 • Reviewing and analyzing Defendants' Answers to Plaintiff's Complaints;
- 23 • Meeting and conferring with Defendant on the enforceability of a purported  
24 arbitration agreement;
- 25 • Researching the dockets for other cases filed against Defendants, and  
26 understanding their impact on this litigation;
- 27 • Meeting and conferring with opposing counsel as required by the Court prior  
28 to the Initial Case Management Conference;

- Review and analysis of the Court's Minute Orders, attention to scheduling and delegation of actions in light thereof, drafting and filing Case Management Statements and preparation for appearance at the Case Management Conferences;
- Meeting and conferring with Defendant regarding mediation, performance of informal discovery beforehand, and negotiating with opposing counsel regarding the parameters thereof;
- Communicating extensively with co-counsel about the parameters of joint representation, and then working cooperatively with co-counsel and opposing counsel for the receipt of a representative sampling and analyzing the same with the aid of Plaintiff to perform analyses of liability and exposure prior to attendance of the mediation in this matter;
- Review of a mediation brief and damages model for use at mediation;
- Attendance at the mediation session by various attorneys;
- Communicating with Plaintiff who requested updates or other information regarding this matter;
- Negotiating, finalizing and fully executing the Settlement Agreement;
- Filing and serving California Rules of Court Rule 3.770 compliant requests for dismissals without prejudice of the Burnett Class Action and Burnet PAGA Action; and
- Preparing the instant Motion for Settlement Approval.

26. PAGA Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. Thus, the Court should find that PAGA Counsel's hours were necessary and reasonable to achieve the excellent result. PAGA Counsel's hourly rates are in line with, and, in fact, modest, compared with the hourly rates of other Counsel in similar actions.

27. And, the over 138 hours expended by the lawyers and staff members of Bibiyan Law Group, P.C., in connection with this Action is only a calculation of efforts made thus far; it does not include the time that will be spent preparing for and attending the approval hearing,

1 reviewing the Settlement Administrator's final calculations, and subsequent coordination with the  
2 Settlement Administrator to ensure payments to Aggrieved Employees are timely distributed.  
3 Thus, PAGA Counsel request that the Court find that these hours are reasonable in this litigation.

4 28. The courts are quite liberal in the evidence required to prove an attorney's hours.  
5 Detailed time records are not required. An attorney's testimony alone may suffice.

6 29. Reasonable hours include, in addition to time spent during litigation, the time spent  
7 before the action is filed, including time spent interviewing the clients, investigation of the facts  
8 and the law, and preparing the initial pleadings.

9 30. Here, I have established by declaration testimony the over 138 hours spent by the  
10 Bibiyan Law Group, P.C., in this case, which suffices for evidentiary purposes.

11 31. PAGA Counsel have been representing Plaintiff for more than two years, while  
12 never receiving any compensation, and expending significant time and resources which could have  
13 been directed towards other cases. In agreeing to litigate this case on a contingent fee basis, PAGA  
14 Counsel assumed considerable risk given the uncertain outcome of PAGA actions, which was  
15 amplified in light of *Wesson*.

16 32. Here, no multiplier is necessary as PAGA Counsel have incurred far more in  
17 attorneys' fees than PAGA Counsel request in fees from the Gross Settlement Amount. However,  
18 should a multiplier have been requested, it would have been warranted.

19 **Plaintiff is Entitled to a Multiplier Based on a Percentage of the Fund**  
20 **to Ensure that the Fee Awarded is Within the Range of Fees Freely Negotiated**  
21 **in the Legal Marketplace in Comparable Litigation**

22 33. Had it been necessary, a multiplier to reach the fees requested by PAGA Counsel  
23 would have been more than justified to compensate PAGA Counsel at a rate reflecting the risk of  
24 nonpayment in this matter, as PAGA Counsel's representation of Plaintiff was purely on a  
25 contingent basis. This is because litigating a wage-and-hour representative action through trial  
26 takes years and requires the investment of tens (if not hundreds) of thousands of dollars and  
27 thousands of hours of time. Attorneys willing to undertake this risk deserve a high rate of recovery.

28 ///

1       34.       Moreover, wage-and-hour laws are still developing, and change in the law always  
2 threaten to wipe out the plaintiff's attorney. In fact, numerous appellate decisions and decisions  
3 of both the California and United States Supreme Courts have attacked the validity of PAGA  
4 actions directly relevant to this case, including *Wesson*, which, as set forth herein, could have  
5 significantly affected its value. It is this contingent nature of these cases that justify an award  
6 when and if PAGA Counsel is able to obtain a settlement or verdict, because oftentimes no money  
7 is recovered in a case, including plaintiff's counsel's costs, let alone their time.

8                   **The Quality of Representation, the Novelty and Complexity of the Issues,**  
9                   **and the Results Obtained**

10       35.       PAGA Counsel used a high level of skill in addressing the difficult questions  
11 presented in this case, which involved the contested issues regarding: the compliance of various  
12 of Defendant's policies with the Labor Code, including whether all time worked was paid for;;  
13 whether meal and/or rest breaks were given in compliance with the Labor Code; issues regarding  
14 the timeliness of pay, including whether all pay was received by termination or resignation; the  
15 sufficiency and accuracy of wage statements (including whether issues therewith, if any, were  
16 intentional or injurious); and various other issues. Proof of PAGA Counsel's skill in this area of  
17 law lies in the size of this Settlement and the recoveries of the State and Aggrieved Employees  
18 despite Defendant's contentions that Plaintiff's unpaid wages claims are speculative; Defendant's  
19 contention that their meal and rest period policies were compliant; and other hurdles encountered  
20 by PAGA Counsel that were traversed in reaching this Settlement pertaining to evolving case law  
21 regarding PAGA actions.

22                   **This Litigation Precluded Other Employment by PAGA Counsel**

23       36.       A practitioner can only properly litigate so many cases at one time. The  
24 requirements of this case were significant, requiring over 138 hours to be expended to date by the  
25 Bibiyan Law Group, P.C., and another twenty-five (25) to fifty (50) hours conservatively expected  
26 to be expended in the future in connection with approval, settlement administration, answering  
27 questions of Aggrieved Employees, and updates to this Court regarding uncashed checks. PAGA  
28 Counsel were also most definitely precluded from other employment. This factor must also be

1 considered.

2 **Costs Incurred by Bibiyan Law Group, P.C.**

3 37. The Settlement provides for reimbursement of Plaintiff's Counsel's reasonable  
4 litigation costs in an amount up to \$25,000.00. The Bibiyan Law Group, P.C., has incurred costs  
5 in the amount of \$2,409.24. Because these costs are reasonable, PAGA Counsel requests that the  
6 Court approve those costs.

7 38. The itemized costs incurred by Bibiyan Law Group, P.C., in the above-referenced  
8 matter total \$2,409.24:

|    |                                |            |
|----|--------------------------------|------------|
| 9  | (1) Filing/Messenger Costs     | \$1,985.80 |
| 10 | (2) LWDA Filing Fee            | \$75.00    |
| 11 | (3) Service of Process         | \$246.20   |
| 12 | (4) Postage/FedEx              | \$55.64    |
| 13 | (5) Photocopies (233 x \$0.20) | \$46.60    |

14

15 I declare under penalty of perjury under the laws of the state of California that the foregoing  
16 is true and correct this 1st day of May 2024, at Los Angeles, California.

17

18 David D. Bibiyan  
19 David D. Bibiyan

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