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Attorneys for Plaintiff Sindy Aviles

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SINDY AVILES, and BRYAN KELLY,
individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

FREEWAY INSURANCE SERVICES
AMERICA, LLC, a Delaware limited liability
company; and DOES 1 through 25, inclusive,

Defendants.

Case No. 21STCV34864

Honorable Kristin S. Escalante
Department 24

**DECLARATION OF MIRIAM L.
SCHIMMEL IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR APPROVAL
OF PAGA SETTLEMENT, AWARD OF
ATTORNEYS' FEES AND COSTS, AND
SETTLEMENT ADMINISTRATION COSTS**

Date: June 2, 2023

Time: 8:30 a.m.

Dept.: 24

Complaint Filed: September 22, 2021
Trial Date: None set

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I, Miriam L. Schimmel, declare and state as follows:

1. I am Senior Counsel with Blackstone Law, APC, attorneys of record for Plaintiff Sindy Aviles (“Plaintiff”). I am an attorney admitted to practice in all Courts of the State of California. I submit this declaration in further support of Plaintiffs’ Motion for Approval of PAGA Settlement, Award of Attorneys’ Fees and Costs and Settlement Administration Costs (the “Motion”). I have personal knowledge of the facts contained herein, and, if called to testify I could and would competently do so.

2. On May 10, 2023, the Court issued a tentative ruling and held a hearing Plaintiffs Sindy Aviles and Bryan Kelly's Motion, during which the Court requested Plaintiffs provide certain additional information concerning the settlement. This declaration and the documents submitted herewith provide that requested information as follows.

3. **Notice to the LWDA:** The Court requested that Plaintiffs submit the email received from the Labor Workforce Development Agency (“LWDA”) in response to Plaintiffs’ submission of the proposed settlement to the LWDA on April 18, 2023. Attached hereto as **Exhibit A** is a true and correct copy of the email that I received after I submitted the proposed settlement, along with the motion seeking approval of the settlement and all supporting documentation, to the LWDA on April 18, 2023.

4. **Notice to Aggrieved Employees.** The Court requested a copy of the notice that will be sent to the Aggrieved Employees with the payment of their share of the settlement. The notice was originally submitted to the Court as Exhibit 1 to the Proposed Order. A copy of the same notice is attached hereto as **Exhibit B**.

5. **Confirmation of Updated Addresses of Aggrieved Employees.** In response to the Court's request for an explanation of whether or how the Settlement Administrator will confirm the addresses for the Aggrieved Employees are up to date, we obtained and submitted concurrently herewith, the Declaration of Julie Green on behalf of CPT Group, Inc., the Settlement Administrator for this matter. Ms. Green's declaration provides the requested information.

6. **Modification of Released Claims by Aggrieved Employees.** The Court also pointed out that some of the Labor Code sections listed in the Aggrieved Employees' release (the "Release") were not included in the PAGA Notice provided to the Court. I reviewed the documentation filed with the Court and realized that only Plaintiff Aviles' letter giving notice to the LWDA was included. Plaintiff Kelly's notice was not. Attached hereto as **Exhibits C and D**, respectively, are the LWDA letters for Plaintiffs Aviles and Kelly. Upon examination of both letters, the Parties discovered there only Labor Code § 221 was included in the Release but was not referenced in either letter. As such, the Parties executed an Amendment to the Stipulation and Agreement for PAGA Representative Action Settlement that amended the "Released Claims" language so that it does not include Labor Code § 221. A true and correct copy of the executed Amendment to the Settlement Agreement is attached hereto as **Exhibit E**.

7. In accordance with Labor Code sections 2699 et. seq., a copy of the Amendment to the Settlement Agreement, as well as information regarding the approval hearing in this matter, were submitted to the LWDA via online submission concurrently with the filing of this motion. A true and correct copy of the confirmation email received from the LWDA is attached hereto as **Exhibit F**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 26, 2023, at Beverly Hills, California.

Miriam L. Schimmel

EXHIBIT A

From: [DIR PAGA Unit](#)
To: [Miriam Schimmel](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, April 18, 2023 12:53:30 PM

[External Email].

04/18/2023 12:52:47 PM

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

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT B

[Date], 2023

[Claims Administrator Contact Information]

[Employee Name]

[Employee Street Address]

[City, State Zip]

Re: PAGA Settlement Payment

Dear Current or Former Freeway Insurance Services America, LLC Employee:

You have received this notice because Freeway Insurance Services America, LLC's ("FISA") records indicate that you have worked for FISA as an hourly, non-exempt employee in California at some time between December 16, 2020 through September 30, 2022. This notice relates to the settlement of the following lawsuit: *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles Superior Court, Case No. 21STCV34864 (the "Action").

In the Action, plaintiffs Sindy Aviles and Bryan Kelly ("Plaintiffs") seek civil penalties against FISA pursuant to the California Private Attorneys General Act ("PAGA"), a law which allows Plaintiffs to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiffs claim were "aggrieved" by alleged wage and hour violations on the part of FISA, including its alleged failure to: provide meal periods and rest breaks; properly pay and calculate wages for all hours worked, overtime, minimum wages and paid sick time; reimburse for all necessary business-related expenses; furnish accurate itemized wage statements and maintain accurate payroll records; and timely pay all wages due during employment and upon separation.

FISA strongly disputes Plaintiffs' allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Action. Nonetheless, to avoid the cost and distraction of litigation, FISA has made a business decision to settle the Action, which settlement has been approved by the Court.

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be distributed to the State Controller's Unclaimed Property Fund in the name of the employee who did not cash the check.

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Action.

If you have any questions about this notice, please contact the Settlement Administrator, CPT Group at () - .

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE ACTION. PLEASE DO NOT CONTACT THE COURT REGARDING THE CASE.

EXHIBIT C



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Jean-Claude Lapuyade, Esq.
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Eduardo Garcia, Esq.
egarcia@jcl-lawfirm.com

March 9, 2022

Via Online Filing to LWDA and Certified Mail to Defendants
Labor and Workforce Development Agency
Online Filing

**FREEWAY INSURANCE SERVICES
AMERICA, LLC**

c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

***Sent via Certified Mail and Return Receipt
No. 7021 2720 0000 9972 6051***

**CONFIE SEGUROS CALIFORNIA,
LLC**

c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

***Sent via Certified Mail and Return Receipt
No. 7021 2720 0000 9972 6075***

**FREEWAY INSURANCE SERVICES,
INC.**

c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

***Sent via Certified Mail and Return Receipt
No. 7021 2720 0000 9972 6068***

CONFIE HOLDING II CO.

c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

***Sent via Certified Mail and Return Receipt
No. 7021 2720 0000 9972 6082***

CONFIE SEGUROS, INC.

c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

***Sent via Certified Mail and Return Receipt
No. 7021 1970 0001 4068 3193***

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff BRYAN KELLY (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants FREEWAY INSURANCE SERVICES AMERICA, LLC, (“Defendant Freeway Insurance Services America”), FREEWAY INSURANCE SERVICES, INC. (“Defendant Freeway Insurance Services”), CONFIE SEGUROS CALIFORNIA, LLC (“Defendant Confie Seguros California”), CONFIE HOLDING II CO., (Defendant Confie Holding”), and CONFIE SEGUROS, INC. (Defendant Confie

Seguros”) (collectively, “Defendants”). Plaintiff was employed by Defendants in California from January of 2019 to July of 2021 as a non-exempt employee, paid in part on a commission basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. When Plaintiff worked at times for Defendants as a commission-based employee, Plaintiff was entitled to be separately compensated for his non-productive time, including rest periods. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, piece-rate based and/or commission-based employees who worked for Defendant Freeway Insurance Services America and/or Defendant Freeway Insurance Services and/or Defendant Confie Seguros California and/or Defendant Confie Holding and/or Defendant Confie Seguros in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

EXHIBIT D

September 22, 2021

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

RE: *Sindy Aviles v. Freeway Insurance Services America, LLC*

Dear PAGA Administrator:

This office represents Sindy Aviles (“Claimant”), who is employed by Freeway Insurance Services America, LLC (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as “Employer”) as a Sales Agent in the County of Los Angeles in the State of California. Claimant’s employment with Employer commenced in or around January 2020.

This letter shall serve as Claimant’s notice pursuant to the Private Attorneys General Act of 2004 (“PAGA”) (California Labor Code § 2699.3), of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code, which are recoverable under PAGA, and all other remedies available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558. Claimant seeks these remedies on behalf of the State of California and all aggrieved employees. The aggrieved employees on whose behalf Claimant will file a PAGA cause of action includes all current and former hourly paid and/or non-exempt employees who worked for Employer in the State of California during the relevant statutory period.

As set forth below, Employer has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders including *inter alia*, Wage Order 4-2001.

Failure to Pay Minimum Wages and Failure to Pay Overtime Wages

Employer violated California Labor Code sections 1194, 1197, and 1197.1 by failing to pay

Claimant and other aggrieved employees at least minimum wages for all hours worked. Claimant and other aggrieved employees were required to perform work duties off-the-clock prior to clocking-in and after clocking-out. Such off-the-clock work included, but was not limited to, responding to e-mails, phone calls, and text messages, and completing sales. By failing to pay Claimant and other aggrieved employees any wages for off-the-clock work, Employer violated Labor Code sections 1194, 1197, and 1197.1, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code sections 510 and 1198 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Claimant and other aggrieved employees worked in excess of 8 hours in a day and/or 40 hours in a week without overtime compensation because Employer failed to pay them for off-the-clock work as described above. On occasions when Claimant and other aggrieved employees had already worked eight hours in one day on-the-clock and also performed work off-the-clock, Employer failed to pay them overtime compensation for this off-the-clock work. In addition, Employer failed to correctly calculate the overtime rate of pay by failing to include non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay in the regular rate of pay for purposes of overtime compensation.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). Further, an uninterrupted rest period of no less than ten (10) minutes must be provided for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employer failed to provide Claimant and the other aggrieved employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length. Employer created incentives for Claimant and the other aggrieved employees to forgo legally protected meal and rest periods. Employer failed to compensate Claimant and the other aggrieved employees properly for non-compliant meal and rest periods including, *inter alia*, missed, short, late, and/or interrupted meal and rest periods. Employer failed to issue meal period and rest period premiums on each occasion that a meal period or rest period was not provided. On those occasions when Employer

did pay meal and/or rest period premiums, it failed to do so at the correct rate. On occasions when meal period and/or rest period premiums were paid, Employer paid them at the base hourly rate of pay rather than at the regular rate of compensation. Employer failed to include all non-discretionary payments for work performed by Claimant and the other aggrieved employees in the regular rate of compensation when issuing meal and/or rest period premiums, including but not limited to, non-discretionary commissions, non-discretionary bonuses, and/or non-discretionary performance pay.

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employer failed to pay Claimant and other aggrieved employees all wages due to them, including minimum wages, overtime wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, when the aggrieved employees' employment ended, including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned, Employer failed to pay them all wages due to them upon termination of their employment, including minimum wages, overtime wages, meal period premiums, and rest period premiums.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant

time period, Employer failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid, to Claimant and other aggrieved employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Employer failed to provide wage statements to Claimant and other aggrieved employees stating, *inter alia*, the total hours worked (including time spent working off-the-clock), the correct amount of meal period premium wages earned, and the correct amount of rest period premium wages earned.

Failure to Reimburse Necessary Business Expenses

Labor Code section 2802 requires employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Claimant and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employer. These costs include, but are not limited to, the use of personal cell phones for work duties.

Employer is in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2699, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employer for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Labor Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Labor Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699.

Labor Code § 2699.3(a)(2)(A). It is the intention of this law firm to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office not address these matters within this time. Should you require anything further or have questions, please do not hesitate to contact me.

BLACKSTONE LAW

A handwritten signature in black ink, appearing to read "Jill J. Parker".

Jill J. Parker, Esq.

Cc: By U.S. Certified Mail, Return Receipt Requested

Freeway Insurance Services America, LLC
7711 Center Avenue, 2nd Floor
Huntington Beach, California 92647

CSC – Lawyers Incorporating Service
Agent for Service of Process for Freeway Insurance Services America, LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

EXHIBIT E

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Adrianna A. Rubino (State Bar No. 300951)
3 arubino@rutan.com
18575 Jamboree Road, 9th Floor
4 Irvine, CA 92612
Telephone: 714-641-5100
5 Facsimile: 714-546-9035

6 Attorneys for Defendant
FREEWAY INSURANCE SERVICES AMERICA, LLC

7
BLACKSTONE LAW, APC
8 Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
9 Miriam L. Schimmel (State Bar No. 185809)
mschimmel@blackstonepc.com
10 8383 Wilshire Boulevard, Suite 745
Beverly Hills, CA 90211
11 Telephone: 310-622-4278
Facsimile: 855-786-6356

12 Attorneys for Plaintiff
13 SINDY AVILES

14 [PLAINTIFFS' COUNSEL CONTINUED ON NEXT PAGE]

15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES, DISTRICT
18

19 SINDY AVILES, individually, and on behalf of
other members of the general public similarly
20 situated and on behalf of Aggrieved Employees
pursuant to the California Private Attorneys
21 General Act,

22 Plaintiff,

23 v.

24 FREEWAY INSURANCE SERVICES
AMERICA, LLC, an Illinois limited liability
25 company, and DOES 1 through 25 inclusive;

26 Defendant.
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Case No. 21STCV34864

Judge: Hon. Kristin S. Escalante, Dept. 24

**AMENDMENT TO STIPULATION AND
AGREEMENT FOR PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Date Action Filed: September 22, 2021
Trial Date: TBD

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Jean-Claude Lapuyade (State Bar #248676)
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SINDY AVILES
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15 Attorneys for Plaintiff
BRYAN KELLY
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1 **RECITALS**

2 A. Plaintiffs and Defendant entered into a Stipulation and Agreement for PAGA
3 Representative Action Settlement, which was filed with the Court on April 14, 2023 as Exhibit B to
4 the Declaration of Jonathan M. Genish in Support of Plaintiffs' Motion for Approval of PAGA
5 Settlement (the "**Settlement Agreement**"), and is attached hereto as **Exhibit 1**.

6 B. This Amendment to the Settlement Agreement (the "**Amendment**") modifies the
7 Settlement Agreement in accordance with the Court's instructions set forth in its Minute Order dated
8 May 10, 2023 regarding the definition of "Released Claims" in the Settlement Agreement.

9 **AMENDMENT TO AGREEMENT AND STIPULATION**

10 I. **Scope of Amendment.** This Amendment modifies the Settlement Agreement as set
11 forth below. The Settlement Agreement and the Amendment together constitute a binding
12 agreement among the Parties. The Settlement Agreement shall control except to the extent it is
13 modified by the terms of this Amendment. In the event of a conflict or inconsistency between the
14 terms of the Settlement Agreement, on the one hand, and the terms of this Amendment, on the other
15 hand, the terms of this Amendment shall control and the Settlement Agreement shall be interpreted
16 in a way to ensure consistency between the Settlement Agreement and the Amendment. The
17 Settlement Agreement and Amendment constitute the entire integrated agreement between the
18 parties regarding the settlement of this matter.

19 II. **Amended Provisions.**

20 A. **Definition of Released Claims.** The Parties agree that Paragraph 16 of the
21 Settlement Agreement which defines "Released Claims" is amended to delete reference to Labor
22 Code section 221, with no other changes, such that the definition of Released Claims, as amended,
23 reads as follows:

24 **"Released Claims"** means all PAGA claims that were or reasonably could have been
25 alleged against Defendant in the Action on behalf of the Aggrieved Employees based
26 on the facts or claims alleged in the Action and/or in the Plaintiffs' LWDA Notices.
27 Without limiting the foregoing, and in addition to the foregoing, the release includes
28 all claims and civil penalties under California Labor Code Sections 2699 *et seq.*,
attorneys' fees and costs, and interest arising out of the claims at issue, for
Defendant's alleged failure to: provide meal periods; provide rest breaks; pay
minimum wages; pay and properly calculate overtime wages; properly calculate the
regular rate of pay including with respect to meal period and rest break premiums
and sick time; furnish accurate itemized wage statements; properly calculate and pay

wages for all hours worked; pay all wages due at separation of employment; separately compensate for rest breaks at the correct rate of pay; properly compensate employees for all non-productive time including rest breaks; timely pay all wages due during employment and upon separation; maintain accurate payroll records; and reimburse for all necessary business-related expenses, pursuant to the corresponding alleged violations of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194 *et seq.*, 1197 *et seq.*, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 2698-2699, 2699.3, 2699.5, and the applicable IWC Wage Order provisions.

III. **Exhibit**. The Parties agree to make the corresponding change to Exhibit 1 of the Settlement Agreement (the Proposed Order and Judgment Granting Plaintiffs' Motion for Approval of PAGA Settlement) to reflect the change in this Amendment. A true and correct version of the Amended Proposed Order is attached hereto as **Exhibit 2**.

IT IS SO AGREED.

Dated: 05/26/2023, 2023

By:



SINDY AVILES
Plaintiff/Class Representative

Dated: _____, 2023

FREEWAY INSURANCE SERVICES AMERICA, LLC

By: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

Dated: _____

RUTAN & TUCKER, LLP
MARIA Z. STEARNS

By: _____

Maria Z. Stearns
Attorneys for Defendant
FREEWAY INSURANCE SERVICES
AMERICA, LLC

Dated: May 26, 2023

BLACKSTONE LAW, APC

By: _____

Miriam L. Schimmel
Miriam L. Schimmel
Attorneys for Plaintiff
SINDY AVILES

[SIGNATURES CONTINUE ON NEXT PAGE]

wages for all hours worked; pay all wages due at separation of employment; separately compensate for rest breaks at the correct rate of pay; properly compensate employees for all non-productive time including rest breaks; timely pay all wages due during employment and upon separation; maintain accurate payroll records; and reimburse for all necessary business-related expenses, pursuant to the corresponding alleged violations of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194 *et seq.*, 1197 *et seq.*, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 2698-2699, 2699.3, 2699.5, and the applicable IWC Wage Order provisions.

III. **Exhibit**. The Parties agree to make the corresponding change to Exhibit 1 of the Settlement Agreement (the Proposed Order and Judgment Granting Plaintiffs' Motion for Approval of PAGA Settlement) to reflect the change in this Amendment. A true and correct version of the Amended Proposed Order is attached hereto as **Exhibit 2**.

IT IS SO AGREED.

Dated: _____, 2023

By: _____
SINDY AVILES
Plaintiff/Class Representative

Dated: May 25, 2023

FREEWAY INSURANCE SERVICES AMERICA,
LLC
By: Tim Clark
Title: CHRO

APPROVED AS TO FORM AND CONTENT:

Dated: May 25, 2023

RUTAN & TUCKER, LLP
MARIA Z. STEARNS
By: Maria Z. Stearns
Maria Z. Stearns
Attorneys for Defendant
FREEWAY INSURANCE SERVICES
AMERICA, LLC

Dated: _____

BLACKSTONE LAW, APC
By: _____
Miriam L. Schimmel
Attorneys for Plaintiff
SINDY AVILES

[SIGNATURES CONTINUE ON NEXT PAGE]

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Dated: May 26, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorneys for Plaintiff
SINDY AVILES

Dated: May 26, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorneys for Plaintiff
BRYAN KELLY

EXHIBIT 1

1 RUTAN & TUCKER, LLP
Maria Z. Stearns (State Bar No. 230649)
2 mstearns@rutan.com
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18575 Jamboree Road, 9th Floor
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Telephone: 714-641-5100
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6 Attorneys for Defendant
FREEWAY INSURANCE SERVICES AMERICA, LLC
7
BLACKSTONE LAW, APC
8 Jonathan M. Genish (State Bar No. 259031)
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9 8383 Wilshire Boulevard, Suite 745
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10 Telephone: 310-622-4278
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11
Attorneys for Plaintiff
12 SINDY AVILES
13 [PLAINTIFFS' COUNSEL CONTINUED ON NEXT PAGE]

14
15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

18 SINDY AVILES, individually, and on behalf of
19 other members of the general public similarly
20 situated and on behalf of Aggrieved Employees
pursuant to the California Private Attorneys
General Act,;

21 Plaintiff,

22 v.

23 FREEWAY INSURANCE SERVICES
24 AMERICA, LLC, an Illinois limited liability
company, and DOES 1 through 25 inclusive,;

25 Defendant.
26

Case No. 21STCV34864

Judge: Hon. Kristin S. Escalante
Dept: 24

**STIPULATION AND AGREEMENT FOR
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date Action Filed: September 22, 2021
Trial Date: TBD

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Jean-Claude Lapuyade (State Bar No. 248676)
2 Eduardo Garcia (State Bar No. 290572)
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3 San Diego, CA 92121
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5 egarcia@jcl-lawfirm.com

6 ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar No. 277924)
7 Jackland K. Hom (State Bar No. 327243)
Julieann Alvarado (State Bar No. 334727)
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10 shani@zakaylaw.com
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11 julieann@zakaylaw.com

12 Attorneys for Plaintiff
BRYAN KELLY
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1 This Stipulation and Agreement for PAGA Representative Action Settlement is made and
2 entered into by and between plaintiffs Sindy Aviles and Bryan Kelly (collectively, “**Plaintiffs**”) on
3 the one hand, and defendant Freeway Insurance Services America, LLC (“**Defendant**”), on the other
4 hand (collectively, the “**Parties**”) and is made in compromise of disputed claims.

5 **DEFINITIONS**

6 1. “**Action**” means and refers to *Aviles v. Freeway Insurance Services America, LLC*,
7 Case No. 21STCV34864.

8 2. “**Aggrieved Employees**” means all employees who were employed by defendant
9 Freeway Insurance Services America, LLC as a non-exempt employee in California during the
10 PAGA Period.

11 3. The terms “**Agreement**,” “**Settlement**,” and “**Settlement Agreement**” mean this
12 Stipulation and Agreement for PAGA Representative Action Settlement, which the Parties
13 acknowledge sets forth all material terms and conditions of the Settlement between them, and which
14 is subject to Court approval pursuant to Section 2699(1)(2) of the California Labor Code Private
15 Attorneys General Act of 2004, Labor Code section 2698, *et seq.*

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

17 5. “**Defendant**” means and refers to Freeway Insurance Services America, LLC.

18 6. “**Effective Date**” of this Agreement shall be the later of (i) the 61st day after service
19 of notice of entry of the Final Order and Judgment, if no appeal, review, or writ has been filed; or
20 (ii) if an appeal, review, or writ is sought from the Final Order and Judgment, the day after the Final
21 Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
22 Order and Judgment are no longer subject to further judicial review. The Effective Date is
23 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,
24 PAGA Counsel, and Defendant’s counsel; and (b) the Court has entered the Final Order and
25 Judgment.

26 7. “**Final Order and Judgment**” means the proposed order granting approval of the
27 Settlement and entering Judgment, in the form substantially similar to that attached to this
28 Agreement as Exhibit 1.

1 8. **“Gross Settlement Amount”** means a maximum total of \$320,000, which includes
2 all payments owing as a result of this Agreement and includes: the PAGA Payment Fund; Settlement
3 Administration Costs; and PAGA Counsel Attorneys’ Fees and Costs as awarded by the Court.

4 9. **“LWDA Payment”** means a payment to the California Labor Workforce and
5 Development Agency in an amount equal to 75% of the PAGA Payment Fund.

6 10. **“PAGA Payment Fund”** is the Gross Settlement Amount less all of the following:
7 PAGA Counsel’s Attorneys’ Fees and Costs and Settlement Administration Costs. The PAGA
8 Payment Fund is paid from the Gross Settlement Amount and is comprised of the LWDA Payment
9 and the PAGA Aggrieved Employee Payment.

10 11. **“PAGA Aggrieved Employee Payment”** means an amount equal to 25% of the
11 PAGA Payment Fund, to be distributed to the Aggrieved Employees.

12 12. **“PAGA Claim”** means the claim for civil penalties under the California Labor Code
13 Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”) alleged in
14 the Action.

15 13. **“PAGA Counsel”** means BLACKSTONE LAW, APC; JCL LAW FIRM, APC; and
16 ZAKAY LAW GROUP, APLC.

17 14. **“PAGA Period”** means December 16, 2020 through September 30, 2022.

18 15. **“Plaintiffs”** means Plaintiff Sindy Aviles (“**Aviles**”) and Plaintiff Bryan Kelly
19 (“**Kelly**”).

20 16. **“Released Claims”** means all PAGA claims that were or reasonably could have been
21 alleged against Defendant in the Action on behalf of the Aggrieved Employees based on the facts
22 or claims alleged in the Action and/or in the Plaintiffs’ LWDA Notices. Without limiting the
23 foregoing, and in addition to the foregoing, the release includes all claims and civil penalties under
24 California Labor Code Sections 2699 *et seq.*, attorneys’ fees and costs, and interest arising out of
25 the claims at issue, for Defendant’s alleged failure to: provide meal periods; provide rest breaks;
26 pay minimum wages; pay and properly calculate overtime wages; properly calculate the regular rate
27 of pay including with respect to meal period and rest break premiums and sick time; furnish accurate
28 itemized wage statements; properly calculate and pay wages for all hours worked; pay all wages due

1 at separation of employment; separately compensate for rest breaks at the correct rate of pay;
2 properly compensate employees for all non-productive time including rest breaks; timely pay all
3 wages due during employment and upon separation; maintain accurate payroll records; and
4 reimburse for all necessary business-related expenses, pursuant to the corresponding alleged
5 violations of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
6 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194 *et seq.*, 1197 *et seq.*, 1197.1, 1198, 1198.5,
7 1199, 2800, 2802, 2804, 2698-2699, 2699.3, 2699.5, and the applicable IWC Wage Order
8 provisions.

9 17. “**Released Parties**” means Defendant and its respective current and former parents,
10 predecessors or successors, holding companies, affiliated companies or entities (including, but not
11 limited to: Freeway Insurance Services, Inc.; Confie Seguros California, LLC; Confie Holding II
12 Co.; and Confie Seguros, Inc.), owners, investors, shareholders, members, partners, officers,
13 directors, managers, employees, agents, attorneys, insurers, assigns, and any individual or entity
14 which could be jointly liable with Defendant.

15 18. “**Settlement Administrator**” means CPT Group or any other neutral third-party
16 administrator chosen by the Parties, subject to approval by the Court.

17 RECITALS

18 19. On September 22, 2021, Aviles filed a Complaint against Defendant in this Action
19 asserting claims under the California Private Attorneys General Act in this Action.

20 20. On November 2, 2021, Aviles filed a First Amended Complaint, adding wage and
21 hour class action allegations to the Action.

22 21. On [REDACTED], Aviles filed a Second Amended Complaint in the Action seeking to
23 dismiss the class allegations, without prejudice, and to add Kelly as a Named Plaintiff in the Action.

24 22. During the course of informal discovery in the Action, PAGA Counsel conducted an
25 investigation into the facts of the Action. This included exchanging data and information relating
26 to the underlying alleged violations.

27 23. After exchanging data and information, the Parties entered into direct settlement
28 negotiations. The negotiations were rigorous and at arm’s length. As a result of the negotiations,

1 the Settlement was reached. The Parties believe the Settlement is fair, reasonable, and adequate.
2 The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a
3 compromise of the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of
4 the Parties to effect a final and complete resolution of the Released Claims.

5 24. The Parties enter into this Settlement Agreement on a conditional basis. In the event
6 the Court does not enter a Final Order and Judgment, substantially in the form attached as **Exhibit 1**
7 to this Settlement Agreement, this Settlement Agreement will be deemed null and void *ab initio* and
8 will be of no force or effect whatsoever and will not be referred to or utilized for any purpose
9 whatsoever.

10 25. Defendant denies all of the claims in the Action, and does not waive, but rather
11 expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural,
12 and factual grounds should this Settlement Agreement not become final. This Settlement
13 Agreement reflects a compromise reached to end litigation in the Action.

14 26. The Parties stipulate and agree to the following terms of this Settlement Agreement
15 with the intent that this Settlement Agreement finally disposes of the Action, with prejudice.

16 **TERMS AND CONDITIONS**

17 27. **Settlement Payments and Calculation of Claims.** The following table summarizes
18 the allocation of the Gross Settlement Amount:

<u>Gross Settlement Amount of \$320,000.00 Broken Down As Follows:</u>	
•	PAGA Counsel Attorneys' Fees not to exceed \$106,666.66
•	PAGA Counsel Attorneys' Costs not to exceed \$3,828.90
•	Settlement Administration Costs, not to exceed \$9,750.00
•	\$199,754.44 for the PAGA Payment Fund
○	\$149,815.83 for the LWDA Payment
○	\$49,938.61 for the PAGA Aggrieved Employee Payment

23
24 28. Subject to final Court approval and the conditions specified in this Agreement, and
25 in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees
26 to pay the Gross Settlement Amount of \$320,000.00. The Gross Settlement Amount includes
27 payments to be made for PAGA Counsel's Attorneys' Fees and Costs, the PAGA Payment Fund,
28 and Settlement Administration Costs. The Parties agree, subject to Court approval, that the Gross

1 Settlement Amount shall be apportioned as follows:

2 a. Settlement Administration Fees And Costs: The fees and costs associated
3 with settlement administration (*e.g.*, preparing and mailing payments to the Aggrieved Employees,
4 tax documentation, etc.) (the “**Settlement Administration Costs**”) will be paid from the Gross
5 Settlement Amount and will not exceed \$9,750.00.

6 b. PAGA Counsel’s Attorneys’ Fees and Costs: The Parties agree that, subject
7 to the Court’s review and approval, PAGA Counsel will be paid from the Gross Settlement Amount
8 an amount that is up to (1/3) of the Gross Settlement Amount for attorneys’ fees (\$106,666.66), plus
9 actual litigation costs not to exceed \$3,828.90.

10 c. PAGA Payment Fund: After deducting PAGA Counsel’s Attorneys’ Fees
11 and Costs and Settlement Administration Costs from the Gross Settlement Amount, the remaining
12 amount will comprise the PAGA Payment Fund. The PAGA Payment Fund is comprised of the
13 LWDA Payment and the PAGA Aggrieved Employee Payment. The PAGA Payment Fund of
14 approximately \$199,754.44 shall be allocated 75% to the LWDA Payment, which is estimated to
15 total \$149,815.83 (\$199,754.44 x 75%). The remaining 25% of the PAGA Payment Fund, estimated
16 to total \$49,938.61 (\$199,754.44 x 25%), shall be allocated to the PAGA Aggrieved Employee
17 Payment to be paid to the Aggrieved Employees on a *pro rata* basis based on pay periods worked
18 during the PAGA Period, as set forth below, which shall be referred to as the Aggrieved Employee’s
19 “**Individual PAGA Payment.**”

20 Example:

21 Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods.
22 All Aggrieved Employees were actively employed a combined total of 3,000 pay periods during the
23 PAGA Period. Aggrieved Employee A’s Individual PAGA Payment would be calculated as
24 follows:

- 25 ➤ 25 pay periods for Aggrieved Employee A ÷ 3,000 total pay periods for all Aggrieved
26 Employees = 0.83%.
27 ➤ Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that
28

is 0.83% of the PAGA Aggrieved Employee Payment.¹

d. Taxes and Reporting: The Individual PAGA Payments will be treated as non-wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS Form 1099.

29. **Release by Aggrieved Employees and State of California.**

a. Terms of Release. In exchange for the consideration recited in this Settlement Agreement, upon approval of the settlement by the Court as set forth herein and funding in full of the Gross Settlement Amount by Defendant, Plaintiffs, as representatives for the State of California and all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will forever completely release and discharge the Released Parties of any and all Released Claims. The Aggrieved Employees and the State of California are deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against any of the Released Parties for any Released Claims.

b. No Claims Based On Stipulation and Agreement. No Aggrieved Employee will have any claim against any of the Released Parties, Defendant's counsel, Plaintiffs, or PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing requirements of the Settlement Administrator under this Agreement.

30. **Request For Final Order and Judgment**. Upon execution of this Agreement, PAGA Counsel shall promptly file an unopposed motion with the Court requesting approval of this Settlement and shall submit concurrently therewith a proposed Final Order and Judgment, in a form substantially similar to Exhibit 1. Plaintiffs shall not file the motion or application requesting approval or final judgment with the Court until Defendant has been given the opportunity to review and approve it, which approval will not be unreasonably withheld. Plaintiffs agree to comply with all requirements to give notice of the Settlement to the LWDA, as set forth in California Labor Code §2699(l).

¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded down.

1 31. **Settlement Funding.**

2 a. Upon the Court entering the Final Order and Judgment, and within 7 days
3 after the Effective Date, the Settlement Administrator shall send Defendant's counsel electronic
4 wiring instructions to fund the Gross Settlement Amount.

5 b. Within 21 days after the Effective Date, Defendant shall wire to the
6 Settlement Administrator the Gross Settlement Amount (the "**Funding Date**").

7 c. Within 45 days after the Effective Date, the Settlement Administrator shall
8 issue all payments required by this Agreement (the "**Payment Date**").

9 32. **PAGA List.** Within 10 days after the Effective Date, Defendant will provide a
10 PAGA List to the Settlement Administrator which will identify all Aggrieved Employees by name,
11 social security number, and last known home address ("**PAGA List**"). The PAGA List will also
12 contain the number of pay periods credited to each Aggrieved Employee during the PAGA Period.

13 33. **List Of Individual Settlement Amounts.** Within 10 days after the Settlement
14 Administrator receives the PAGA List, the Settlement Administrator will provide to PAGA Counsel
15 and Defendant's counsel a Proceeds List reflecting the Individual PAGA Payment for each
16 Aggrieved Employee ("**Proceeds List**"). The Proceeds List provided to PAGA Counsel will not
17 include the Aggrieved Employees' names, social security numbers or contact information but will
18 include pay period information.

19 34. **PAGA Payments to Aggrieved Employees.**

20 a. On the Payment Date, the Settlement Administrator will mail to each
21 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
22 Notice attached as Exhibit 2 to this Agreement and (b) their Individual PAGA Payment (collectively,
23 the "**PAGA Packet**").

24 b. Prior to mailing the PAGA Packet, the Settlement Administrator will update
25 all addresses using the National Change of Address System (NCOA). In the event that a PAGA
26 Packet is returned to the Settlement Administrator with a forwarding address, the Settlement
27 Administrator will re-send the PAGA Packet to the forwarding address identified. If no forwarding
28 address is provided, then the Settlement Administrator will promptly conduct a "standard search,"

1 sometimes called, “Skip Trace” or “Credit Header” searches, to locate a better address. If a better
2 address is found, the Settlement Administrator will promptly re-send the PAGA Packet. If a better
3 address is not found or the PAGA Packet is ultimately returned without a forwarding address, neither
4 the Settlement Administrator, Defendant, Defendant’s counsel, or PAGA Counsel shall be required
5 to take further action.

6 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
7 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee’s
8 check is not cashed within that period, the settlement payment check will be voided and a stop-
9 payment will be issued. Neither Defendant, Defendant’s counsel, Plaintiffs, nor PAGA Counsel
10 will have any liability for lost or stolen settlement payment checks, forged signatures on settlement
11 payment checks, unauthorized negotiation of settlement payment checks, or failure to timely cash a
12 settlement payment check within the 180 day period.

13 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
14 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
15 distributed to the State Controller’s Unclaimed Property Fund in the name(s) of the employee(s)
16 who did not claim the funds.

17 35. **Payments Of Attorneys’ Fees And Costs, and the LWDA Payment.**

18 a. No later than the Payment Date, the Settlement Administrator will pay from
19 the Gross Settlement Amount to PAGA Counsel their Court-approved Attorneys’ Fees and Costs.
20 Such payment is conditional upon PAGA Counsel providing the Settlement Administrator with
21 completed Form W-9s.

22 b. No later than the Payment Date, the Settlement Administrator will pay the
23 LWDA Payment from the PAGA Payment Fund by issuing a check in the approximate amount of
24 \$149,815.83 (75% of the PAGA Payment Fund) payable to “California Labor Workforce and
25 Development Agency.”

26 36. **Adjustment of Settlement Amount.** If the total aggregate number of Pay Periods
27 during the PAGA Period is more than 10% higher than 16,000, i.e., there are more than 17,600 Pay
28 Periods for the PAGA Period (“**Pay Periods Threshold**”), the Gross Settlement Amount will

1 increase on a pro rata basis to the extent the Pay Periods Threshold is exceeded. For example, if the
2 Pay Periods for the PAGA Period exceed the Pay Periods Threshold by 1%, then the Gross
3 Settlement Amount will be increased by 1%.

4 37. **Deadlines.** If any deadline specified in this Agreement falls on a Saturday, Sunday,
5 or Court holiday, the deadline will be automatically extended to the next regular business day.
6 Unless specified otherwise, all references to “days” shall mean calendar days.

7 38. **Enforcement and Continuing Jurisdiction of the Court.** Pursuant to the Parties’
8 agreement, this Settlement Agreement will be approved by the Court and will be enforceable by the
9 Court pursuant to California Code of Civil Procedure section 664.6. Even after the entry of the
10 Final Order and Judgment, this Court will have and retain continuing jurisdiction over the Action
11 and over all Parties and the Aggrieved Employees, to the fullest extent necessary or convenient to
12 enforce and effectuate the terms and intent of this Settlement Agreement and all matters provided
13 for in it, and to interpret it.

14 39. **Mutual Full Cooperation.** The Parties will fully cooperate with each other to
15 accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such
16 documents and taking such other action as may be reasonably necessary or convenient to implement
17 it.

18 40. **Non-Admission Of Liability.** The Parties enter into this Agreement to resolve the
19 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
20 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
21 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
22 pursuant to any statute or any other applicable laws, regulations or legal requirements; violated or
23 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
24 conduct with respect to the Action. Neither this Agreement, nor any of its terms or provisions, nor
25 any of the negotiations connected with it, shall be construed as an admission or concession by
26 Defendant of any such violations or failures to comply with any applicable law. Except as necessary
27 in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions
28 shall not be offered or received as evidence in any action or proceeding to establish any liability or

admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

41. **Effective Date Of Defendant's Obligations Under This Agreement.** Defendant's obligations under this Settlement Agreement will become final and effective only upon the occurrence of the Effective Date. In the event that any of the conditions specified in this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain approval of the Court for any reason, all matters covered by this Agreement will be null and void. In such event, neither this Agreement nor any negotiations leading to this Settlement will be used or construed by or against any Party as a determination, admission, or concession of any issue of law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their respective rights regarding the prosecution and defense of the Action, including all available defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never existed.

42. **Nullification.** If: (1) the Court should for any reason fail to enter the Final Order and Judgment without material modification; or (2) the Court's Final Order and Judgment is reversed or modified as to any material term as defined above, or declared or rendered void as to any material term as defined above, then (a) the Settlement Agreement shall become null and void; and (b) the Parties will revert to their respective positions immediately prior to reaching the settlement.

43. **Invalidation.** Invalidation of any material term of this Settlement Agreement will invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain in full force and effect.

44. **No Publicity.** Plaintiffs and their counsel agree that the terms of this Settlement Agreement (including, but not limited to, the Gross Settlement Amount), the negotiations leading to the execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be discussed with or publicized or promoted to the media (including, without limitation, legal periodicals and publications such as "Jury Verdicts," or disclosure of the Settlement Agreement on any website of Plaintiffs' counsel), or the public at large, without the advance written consent of Defendant. The Parties intend that this Paragraph shall prohibit Plaintiffs and/or their counsel from

1 discussing, answering questions about, promoting or publicizing the Settlement Agreement, its
2 terms, or the negotiations leading to the Settlement Agreement with anyone other than the Court or
3 those individuals necessary to effectuate the terms of the Agreement (which include Plaintiffs and
4 the Aggrieved Employees, the Court, and the LWDA, on which no publicity or communication
5 restrictions will be placed). Notwithstanding the foregoing, Plaintiffs, and their counsel: (1) may
6 tell the public in general only that certain claims “have been resolved by the Parties,” and (2) may
7 disclose the terms of the Settlement Agreement (a) in appropriate filings with the Court in the
8 Action; (b) where required by law (e.g., income tax returns); and (c) to accountants or other tax
9 professionals for the purpose of preparing tax returns.

10 45. **Entire Agreement.** This Settlement Agreement constitutes the entire integrated
11 agreement between the Parties relating to the Action, and no oral representations, warranties, or
12 inducements have been made to any party concerning this Settlement Agreement other than the
13 representations, warranties, and covenants contained and memorialized in this Settlement
14 Agreement.

15 46. **Authorization To Act.** PAGA Counsel warrant and represent that they are
16 authorized by Plaintiffs, and counsel of record for Defendant warrants that they are authorized by
17 Defendant, to take all appropriate action required or permitted to be taken by such Parties pursuant
18 to this Settlement Agreement to effectuate its terms, and to execute any other documents required
19 to effectuate the terms of this Settlement Agreement, except for any documents, including but not
20 limited to this Settlement Agreement, that are required to be executed by the Parties.

21 47. **Modification Only In Writing.** This Settlement Agreement may be amended or
22 modified only by a written instrument signed by all Parties or their successors in interest.

23 48. **Binding On Successors.** This Settlement Agreement is binding upon and will inure
24 to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present,
25 and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees,
26 representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent
27 corporations, subsidiaries, and related or affiliated entities.

28 49. **No Prior Assignments.** Plaintiffs are deemed by operation of the Final Order and

1 Judgment to represent, covenant, and warrant that they have not directly or indirectly assigned,
2 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
3 portion of any liability, claim, demand, cause of action, or rights released and discharged by this
4 Agreement.

5 50. **Governing Law.** All terms of this Settlement Agreement will be governed by and
6 interpreted according to the laws of the State of California, without giving effect to conflicts of laws
7 principles.

8 51. **Counterparts.** This Settlement Agreement may be executed in one or more
9 counterparts. All executed counterparts and each of them will be deemed to be one and the same
10 instrument. Counsel for the Parties will exchange among themselves signed counterparts.

11 52. **Headings For Convenience Only.** The descriptive headings of any paragraphs or
12 sections of this Settlement Agreement are inserted for convenience of reference only and do not
13 constitute a part of this Settlement Agreement.

14 53. **Construction Of This Agreement.** The Parties agree that the terms and conditions
15 of this Settlement Agreement are the result of arms-length negotiations between the Parties and that
16 this Settlement Agreement will not be construed in favor of or against any Party by reason of the
17 extent to which any Party, or his, her, or its counsel participated in the drafting of this Agreement.
18 This Settlement Agreement constitutes the entire agreement between the Parties. Except as
19 expressly provided in this Agreement, this Settlement Agreement has not been executed in reliance
20 upon any other oral or written representations or terms and no such extrinsic oral or written
21 representations or terms will modify, vary or contradict the terms of this Settlement Agreement. In
22 entering this Settlement Agreement, the Parties explicitly recognize California Civil Code section
23 1625 and California Code of Civil Procedure section 1856(a), which provide that a written
24 agreement is to be construed according to its terms and may not be varied or contradicted by
25 extrinsic evidence. Plaintiffs and Defendant had available to them the advice and assistance of
26 independent counsel. As such, neither Plaintiffs nor Defendant may claim that any ambiguity in
27 this Settlement Agreement should be construed against the other.

28 54. **Corporate Signatories.** Any person executing this Settlement Agreement or any

1 related document on behalf of a corporate signatory warrants and promises for the benefit of all
2 Parties that such person has been duly authorized by such corporation to execute this Settlement
3 Agreement or any related document.

4 55. **Representation By Counsel.** All of the Parties to this Settlement Agreement
5 acknowledge that they have been represented by counsel throughout all negotiations which preceded
6 the execution of this Settlement Agreement and that this Agreement has been executed with the
7 consent and advice of counsel.

8 56. **Attorneys' Fees And Costs.** Except as otherwise provided in this Agreement, the
9 Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred
10 by them or arising out of the Action and will not seek reimbursement thereof from any Party to this
11 Settlement Agreement. In the event of a proven breach of this Agreement, the breaching party will
12 be required to pay the prevailing Party's reasonable attorneys' fees and costs incurred in enforcing
13 this Agreement.

14
15 **IT IS SO AGREED.**

16 Dated: 01/06/2023, 2023

17 
Sindy Aviles

18
19 Dated: _____, 2023

20 Brian Kelly

21 Dated: _____, 2023

Freeway Insurance Services America, LLC

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23 _____
24 By:
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Dated: _____, 2023

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

By: _____
Jonathan M. Genish
BLACKSTONE LAW, APC
Attorneys for Plaintiff Sindy Aviles, individually
and on behalf of all Aggrieved Employees

Dated: _____, 2023

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

By: _____
Jean-Claude Lapuyade
JCL LAW FIRM, APC
Attorneys for Plaintiff Brian Kelly, individually and
on behalf of all Aggrieved Employees

Dated: _____, 2023

APPROVED AS TO FORM AND AGREEMENT TO BE
BOUND BY PARAGRAPH 44:

By: _____
Shani O. Zakay
ZAKAY LAW GROUP, APLC
Attorneys for Plaintiff Brian Kelly, individually and
on behalf of all Aggrieved Employees

Dated: _____, 2023

APPROVED AS TO FORM:

By: _____
Maria Z. Stearns, Esq.
RUTAN & TUCKER, LLP
Attorneys for Defendant Freeway Insurance Services
America, LLC

EXHIBIT 2

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
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Attorneys for Plaintiff Sindy Aviles

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SINDY AVILES and BRYAN KELLY,
individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

FREEWAY INSURANCE SERVICES
AMERICA, LLC, a Delaware limited liability
company; and DOES 1 through 25, inclusive,

Defendants.

Case No. 21STCV34864

Honorable Kristin S. Escalante
Department 24

**[PROPOSED] AMENDED ORDER AND
JUDGMENT GRANTING PLAINTIFFS'
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: June 2, 2023
Time: 8:30 a.m.
Dept.: 24

Complaint Filed: September 22, 2021
Trial Date: None set

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1 5. The individuals covered under the Settlement consist of the following individuals: “all
2 employees who were employed by Defendant as a non-exempt employee in California during the
3 PAGA Period (the “**Aggrieved Employees**”). The PAGA Period is defined as the period commencing
4 on December 16, 2020 through September 30, 2022.

5 6. The Court finds that the Parties reached the Settlement as a result of arm’s-length
6 negotiations.

7 7. Pursuant to California Labor Code section 2699(1)(2), the Court has reviewed the sum
8 allocated for payment of penalties under PAGA (the “**PAGA Payment Fund**”), and determines that
9 it is fair, just, reasonable, and adequate. The Court hereby approves the PAGA Payment Fund, which
10 shall be the Gross Settlement Amount (\$320,000.00) less the approved Attorneys’ Fees and Costs to
11 Plaintiff’s Counsel, and Settlement Administration Costs to CPT Group (the “**Settlement**
12 **Administrator**”). Seventy-five percent (75%) of the PAGA Payment Fund shall be distributed to the
13 LWDA (“**LWDA Payment**”) and twenty-five percent (25%) of the PAGA Payment Fund shall be
14 distributed to the Aggrieved Employees in accordance with this Order and Judgment and the Amended
15 Settlement Agreement.

16 8. The Court has considered the Settlement, and the monetary allocations provided
17 thereby, and finds that they are fair, just, reasonable, and adequate. The Court hereby directs the
18 Settlement Administrator to administer the Settlement and to make the payments as provided for by,
19 and consistent with, this Order and Judgment and the Amended Settlement Agreement.

20 9. The Court approves the payment of \$106,666.66 to Plaintiffs’ Counsel, Blackstone
21 Law, APC, JCL Law Firm, APC and Zakay Law Group, APLC, for attorneys’ fees. This amount shall
22 be paid from the Gross Settlement Amount and shall be disbursed in accordance with this Order and
23 Judgment and the Amended Settlement Agreement.

24 10. The Court approves the payment of \$3,828.90 to Plaintiffs’ Counsel for reimbursement
25 of actual litigation costs and expenses incurred in the Action. This amount shall be paid from the
26 Gross Settlement Amount and shall be disbursed in accordance with this Order and Judgment and the
27 Amended Settlement Agreement.

28 11. The Court approves payment in the amount of up to \$9,750.00 to the Settlement

1 Administrator for the Settlement Administration Costs. This amount shall be paid from the Gross
2 Settlement Amount and shall be disbursed in accordance with this Order and Judgment and the
3 Amended Settlement Agreement.

4 12. The Court approves the Notice of Representative PAGA Action Settlement, attached
5 hereto as Exhibit 1, and the Settlement Administrator shall distribute the Notice of Representative
6 PAGA Action Settlement to Aggrieved Employees at the same time that it distributes Individual
7 PAGA Payment checks to the Aggrieved Employees.

8 13. Upon the Court entering the Final Order and Judgment, and within 7 days after the
9 Effective Date, the Settlement Administrator shall send Defendant's counsel electronic wiring
10 instructions to fund the Gross Settlement Amount.

11 14. Within 21 days after the Effective Date, Defendant shall wire to the Settlement
12 Administrator the Gross Settlement Amount (the "**Funding Date**"). Within 45 days after the Effective
13 Date, the Settlement Administrator shall issue all payments required by the Settlement (the "**Payment**
14 **Date**"). Within 10 days after the Effective Date, Defendant will provide a PAGA List to the Settlement
15 Administrator which will identify all Aggrieved Employees by name, social security number, and last
16 known home address ("**PAGA List**"). The PAGA List will also contain the number of pay periods
17 credited to each Aggrieved Employee during the PAGA Period. Within 10 days after the Settlement
18 Administrator receives the PAGA List, the Settlement Administrator will provide to PAGA Counsel
19 and Defendant's counsel a Proceeds List reflecting the Individual PAGA Payment for each Aggrieved
20 Employee ("**Proceeds List**"). The Proceeds List provided to PAGA Counsel will not include the
21 Aggrieved Employees' names, social security numbers or contact information but will include pay
22 period information.

23 15. On the Payment Date, the Settlement Administrator will mail to each Aggrieved
24 Employee, via first-class United States Mail, the following: (a) the PAGA Settlement Notice attached
25 as Exhibit 1 hereto and (b) their Individual PAGA Payment (collectively, the "**PAGA Packet**"). Prior
26 to mailing the PAGA Packet, the Settlement Administrator will update all addresses using the National
27 Change of Address System (NCOA). In the event that a PAGA Packet is returned to the Settlement
28 Administrator with a forwarding address, the Settlement Administrator will re-send the PAGA Packet

1 to the forwarding address identified. If no forwarding address is provided, then the Settlement
2 Administrator will promptly conduct a “standard search,” sometimes called, “Skip Trace” or “Credit
3 Header” searches, to locate a better address. If a better address is found, the Settlement Administrator
4 will promptly re-send the PAGA Packet. If a better address is not found or the PAGA Packet is
5 ultimately returned without a forwarding address, neither the Settlement Administrator, Defendant,
6 Defendant’s counsel, or PAGA Counsel shall be required to take further action. Aggrieved Employees
7 shall have 180 calendar days after the date the PAGA Packet is mailed to them to cash their settlement
8 payment checks. If any Aggrieved Employee’s check is not cashed within that period, the settlement
9 payment check will be voided and a stop-payment will be issued. Neither Defendant, Defendant’s
10 counsel, Plaintiffs, nor PAGA Counsel will have any liability for lost or stolen settlement payment
11 checks, forged signatures on settlement payment checks, unauthorized negotiation of settlement
12 payment checks, or failure to timely cash a settlement payment check within the 180-day period. Any
13 unpaid cash residue or unclaimed Aggrieved Employee funds, plus any accrued interest that has not
14 otherwise been distributed pursuant to order of the Court, shall be distributed to the State Controller’s
15 Unclaimed Property Fund in the name(s) of the employee(s) who did not claim the funds.

16 16. If the total aggregate number of Pay Periods during the PAGA Period is more than 10%
17 higher than 16,000, i.e., there are more than 17,600 Pay Periods for the PAGA Period (“**Pay Periods**
18 **Threshold**”), the Gross Settlement Amount will increase on a pro rata basis to the extent the Pay
19 Periods Threshold is exceeded. For example, if the pay periods for the PAGA Period exceed the Pay
20 Periods Threshold by 1%, then the Gross Settlement Amount will be increased by 1%.

21 17. Aggrieved Employees shall not have the right to opt out of or object to the Settlement.
22 By way of and upon the entry of this Order and Judgment, Plaintiffs and each Aggrieved Employee is
23 deemed to fully release and forever discharge the Released Parties from the Released Claims.

24 18. As of the Effective Date and upon the Settlement Administrator’s receipt of the Gross
25 Settlement Payment from Defendant, Plaintiffs, the Aggrieved Employees, and the State of California
26 will be deemed to have discharged Defendant and the Released Parties from all PAGA claims during
27 the PAGA Period (December 16, 2020 through September 30, 2022) that were or reasonably could
28 have been alleged against Defendant in the Action on behalf of the Aggrieved Employees based on

the facts or claims alleged in the Action and/or in the Plaintiffs' LWDA Notices. Without limiting the foregoing, and in addition to the foregoing, the release includes all claims and civil penalties under California Labor Code Sections 2699 et seq., attorneys' fees and costs, and interest arising out of the claims at issue, for Defendant's alleged failure to: provide meal periods; provide rest breaks; pay minimum wages; pay and properly calculate overtime wages; properly calculate the regular rate of pay including with respect to meal period and rest break premiums and sick time; furnish accurate itemized wage statements; properly calculate and pay wages for all hours worked; pay all wages due at separation of employment; separately compensate for rest breaks at the correct rate of pay; properly compensate employees for all non-productive time including rest breaks; timely pay all wages due during employment and upon separation; maintain accurate payroll records; and reimburse for all necessary business-related expenses, pursuant to the corresponding alleged violations of California Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194 et seq., 1197 et seq., 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 2698-2699, 2699.3, 2699.5, and the applicable IWC Wage Order provisions (the "**Released Claims**").

19. No individualized notice of this Order and Judgment is required to be provided to the Aggrieved Employees. This Order and Judgment shall be submitted to the LWDA through the online system established for the filing of notices and documents, in conformity with California Labor Code § 2699(l)(3).

IT IS SO ORDERED.

Dated: _____

The Kristin S. Escalante
Judge of the Superior Court

EXHIBIT F