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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 JONATHAN M.
GENISH IN SUPPORT OF PLAINTIFFS'
MOTION FOR APPROVAL OF PAGA
SETTLEMENT, AWARD OF ATTORNEYS'
FEES AND COSTS, AND SETTLEMENT
ADMINISTRATION COSTS**

Date: May 10, 2023

Time: 8:30 a.m.

Dept.: 24

Reservation ID: 524793800314

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

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I, Jonathan M. Genish, declare and state as follows:

1. I am a shareholder and the founder of 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 as well as this District Court. I submit this declaration in support of Plaintiffs’ Motion for Approval of PAGA Settlement. I have personal knowledge of the facts contained herein, and, if called to testify I could and would competently do so.

8

2. I received my law degree from Benjamin N. Cardozo School of Law and was admitted to the California State Bar in 2008. During law school, I clerked at the litigation firm Oved & Oved, LLP and was published several times in various small publications. Upon graduation, I was hired as an associate with Freedman & Taitelman, LLP where I remained employed through August 2015. During my tenure, I managed hundreds of complex litigation cases, ranging from employment, corporate, entertainment and general business litigation matters, though my primary area of expertise was employment litigation, both single plaintiff and representative actions.

3. In August 2015, I left Freedman & Taitelman to join The Kaufman Law Group as a shareholder. In that role, I ran the entire civil litigation department, again solely managing an array of complex multi-million-dollar and highly publicized litigation matters, with a primary focus on employment litigation, both single plaintiff and representative actions.

4. In February 2018, I started the law firm of Blackstone Law, APC, representing plaintiffs in individual and representative employment litigation. The firm has grown exponentially over the past four-plus years, now maintaining six highly pedigreed attorneys working on almost exclusively labor and employment class actions, Labor Code Private Attorney General Act of 2004 (“PAGA”) cases, and individual matters, with roughly 15% of the firm focused on other complex general litigation matters.

5. I have considerable experience in handling class and representative action lawsuits throughout my career and have been approved as counsel in a number of cases, including, most

1 recently:

- 2 • *DiRico v. Seek Capital, LLC*, Los Angeles Superior Court, Case No. BC698078, a
3 wage and hour class action brought on behalf of a class of hourly-paid employees
4 working the State of California.
- 5 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles Superior
6 Court, Case No. 19STCV29979, a private attorney general action for penalties
7 pursuant to Health and Safety Code section 25249.7.
- 8 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc. et al.*, Los Angeles
9 Superior Court, Case No. 19STCV30306, a private attorney general action for
10 penalties pursuant to Health and Safety Code section 25249.7.
- 11 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles Superior
12 Court, Case No. 19STCV30445, a private attorney general action for penalties
13 pursuant to Health and Safety Code section 25249.7.
- 14 • *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa Superior Court Case No.
15 MSC21-01812, preliminarily approved as Class Counsel in settlement of wage and
16 hour Class and PAGA action.
- 17 • *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange
18 County Superior Court Case No. 30-2021-01220136-CU-OE-CXC, approved as
19 Counsel for Aggrieved Employees in settlement of representative wage and hour
20 action pursuant to PAGA.
- 21 • *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento Superior Court Case No. 34-
22 2020-00290080, approved as Class Counsel in settlement of Class and PAGA wage
23 and hour action.
- 24 • *Daniel Analco v. Felix Chevrolet, LP, et al.* Los Angeles Superior Court Case No.
25 21STCV36654, preliminarily approved as Class Counsel in settlement of Class and
26 PAGA wage and hour action.

27 6. I was counsel of record on several class action and PAGA actions that have since
28 been resolved, the most recent of which are as follows:

- 1 • *Maria Castillo-Rodriguez v. HR Outsourcing Associates, LLC*, Los Angeles Superior
2 Court, Case No. 20STCV44138, a wage and hour PAGA action.
- 3 • *Cruz v. LK Plumbing & Heating, Inc.*, Los Angeles Superior Court, Case No.
4 BC686825, a wage and hour PAGA action.
- 5 • *Savoy v. Collector's Universe, Inc., et al.*, Central District Court of California, Case
6 No.: 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior
7 Court, Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

8 7. I am currently the managing partner overseeing roughly 100 labor and employment
9 cases, approximately 80% of which include a wage and hour component. The majority of those
10 cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on
11 behalf of thousands of California employees.

12 **Procedural History of the Action**

13 8. Defendant Freeway Insurance Services America, LLC (“Defendant”) hired Plaintiff
14 Sindy Aviles as a non-exempt, hourly-paid Sales Agent in the County of Los Angeles on or around
15 January 2020. Plaintiff Aviles is a current employee of Defendant, but is presently on a leave of
16 absence. Defendant employed Plaintiff Bryan Kelly as a non-exempt, hourly-paid Sales Agent in
17 the County of Sacramento from on or around January 2019 until July 2021.

18 9. On September 22, 2021, Plaintiff Aviles provided written notice to the Labor
19 Workforce Development Agency (the “LWDA”) and to Defendant via Certified U.S. Mail pursuant
20 to Labor Code § 2699.3, providing notice of the specific provisions of the California Labor Code
21 which Plaintiff alleged Defendant violated, including the facts and theories to support the
22 allegations. A true and correct copy of Plaintiff’s letter is attached hereto as **Exhibit A**.

23 10. Plaintiff Aviles filed her complaint on September 22, 2021 in the Los Angeles
24 County Superior Court. She alleged one cause of action pursuant to PAGA, alleging PAGA
25 penalties for Defendant’s failure to pay overtime wages (Labor Code §§ 510 and 1198), failure to
26 pay minimum wages (Labor Code §§ 1194, 1197, and 1197.1), failure to provide meal periods
27 (Labor Code §§ 226.7 and 512(a)), failure to provide rest periods (Labor Code § 226.7), failure to
28 timely pay wages during employment (Labor Code § 204), failure to timely pay wages upon

1 termination (Labor Code §§ 201, 202, and 203), failure to provide accurate itemized wage
2 statements (Labor Code § 226(a)), failure to keep complete and accurate payroll records (Labor
3 Code § 1174(d)), and failure to reimburse business expenses (Labor Code §§ 2800 and 2802).
4 Plaintiff sought these penalties on behalf of all individuals who worked for Defendant as hourly-
5 paid and/or non-exempt employees in the State of California at any time during the PAGA period,
6 which is December 16, 2020 through September 30, 2022 (the “Aggrieved Employees”).

7 11. On November 2, 2021, Aviles filed a First Amended Complaint, adding wage and
8 hour class action allegations to the Action. On January 27, 2023, Aviles filed a Second Amended
9 Complaint seeking to dismiss the class allegations without prejudice and to add Bryan Kelly as a
10 named plaintiff in the Action.

11 12. During the course of informal discovery in the Action, Plaintiffs’ Counsel conducted
12 an investigation into the facts of the Action. This included exchanging data and information relating
13 to the underlying alleged violations including Plaintiffs’ employee file, wage statements,
14 Defendant’s policy documents relating to the employment of Plaintiffs and other Aggrieved
15 Employees so that Plaintiffs could assess the number of alleged potential violations and value of the
16 recoverable penalties, as well as evaluate the strengths and weaknesses of their claims.

17 13. Based on the information received, as well as thorough discussions with Defendant’s
18 Counsel, Plaintiffs’ Counsel was able to (i) determine the total number of distinct individuals falling
19 within the definition of “Aggrieved Employee” for the relevant statutory period, (ii) the number of
20 affected pay periods at issue among them, and (iii) construct a damages model that calculated the
21 maximum realistic amount of PAGA penalties that could be levied against Defendant within the
22 PAGA Period. Defendant, however, disputed Plaintiffs’ claims and disputed both the existence of
23 and extent of liability as alleged by Plaintiffs, which allowed Plaintiff’s Counsel to further assess
24 the strength of Plaintiff’s claims. Plaintiffs’ Counsel’s experience in litigating similar representative
25 wage and hour claims, the degree of investigation that was conducted here, and the amount of
26 information that was obtained, was sufficient to determine the potential value of the PAGA claim,
27 and to evaluate the strength of this claim for purposes of settlement.

28 14. After analyzing the data and information, the Parties entered into direct settlement

1 negotiations. The negotiations were rigorous and at arm's length. As a result of the negotiations, the
2 Settlement was reached. The Parties believe the Settlement is fair, reasonable, and adequate. The
3 Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a
4 compromise of the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of
5 the Parties to effect a final and complete resolution of the Released Claims. Attached hereto as
6 **Exhibit B** is a true and correct copy of the PAGA Settlement Agreement ("Settlement" or
7 "Settlement Agreement") entered into between Plaintiffs Sindy Aviles and Bryan Kelly,
8 individually and on behalf of other Aggrieved Employees, on one hand, and Defendant Benefit
9 Cosmetics, LLC on the other hand (collectively, the "Parties").

10 15. The Parties believe the Settlement is fair, reasonable, and adequate. The Parties
11 understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of
12 the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to
13 effect a final and complete resolution of the Released Claims.

14 16. Defendant denies all of the claims in the Action, and does not waive, but rather
15 expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural,
16 and factual grounds should this Settlement Agreement not become final. This Settlement Agreement
17 reflects a compromise reached to end litigation in the Action. Following substantial investigation
18 and extensive settlement negotiations, Plaintiffs now seek approval of the proposed settlement,
19 which will resolve all representative claims alleged in the Complaint.

20 17. Plaintiffs separately negotiated a separate settlement that included a Civil Code §
21 1542 general release of any and all individual claims they had against Defendant which were not at
22 issue in this PAGA Action. Plaintiffs will provide copies of each Plaintiff's individual settlement
23 agreement in camera to the Court if requested.

24 **Notice to the LWDA**

25 18. In accordance with Labor Code sections 2699 et. seq., a copy of the proposed
26 Settlement, as well as information regarding the approval hearing in this matter, were submitted to
27 the LWDA via online submission concurrently with the filing of this motion on April 14, 2023.

1 Agreement ¶ 31b). Within 45 days after the Effective Date, the Settlement Administrator shall issue
2 all payments required by this Agreement (the “Payment Date”). (Settlement Agreement ¶ 31c).
3 Within 10 days after the Effective Date, Defendant will provide a PAGA List to the Settlement
4 Administrator which will identify all Aggrieved Employees by name, social security number, and
5 last known home address (“PAGA List”). The PAGA List will also contain the number of pay
6 periods credited to each Aggrieved Employee during the PAGA Period. (Settlement Agreement ¶
7 32). Within 10 days after the Settlement Administrator receives the PAGA List, the Settlement
8 Administrator will provide to PAGA Counsel and Defendant’s counsel a Proceeds List reflecting
9 the Individual PAGA Payment for each Aggrieved Employee (“Proceeds List”). The Proceeds List
10 provided to PAGA Counsel will not include the Aggrieved Employees’ names, social security
11 numbers or contact information but will include pay period information. (Settlement Agreement ¶
12 33).

13 24. On the Payment Date, the Settlement Administrator will mail to each Aggrieved
14 Employee, via first-class United States Mail, the following: (a) the PAGA Settlement Notice
15 attached as Exhibit 2 to this Agreement and (b) their Individual PAGA Payment (collectively, the
16 “PAGA Packet”). (Settlement Agreement ¶ 34a). Prior to mailing the PAGA Packet, the Settlement
17 Administrator will update all addresses using the National Change of Address System (NCOA). In
18 the event that a PAGA Packet is returned to the Settlement Administrator with a forwarding address,
19 the Settlement Administrator will re-send the PAGA Packet to the forwarding address identified. If
20 no forwarding address is provided, then the Settlement Administrator will promptly conduct a
21 “standard search,” sometimes called, “Skip Trace” or “Credit Header” searches, to locate a better
22 address. If a better address is found, the Settlement Administrator will promptly re-send the PAGA
23 Packet. If a better address is not found or the PAGA Packet is ultimately returned without a
24 forwarding address, neither the Settlement Administrator, Defendant, Defendant’s counsel, or
25 PAGA Counsel shall be required to take further action. (Settlement Agreement ¶ 34b). Aggrieved
26 Employees shall have 180 calendar days after the date the PAGA Packet is mailed to them to cash
27 their settlement payment checks. If any Aggrieved Employee’s check is not cashed within that
28 period, the settlement payment check will be voided and a stop-payment will be issued. Neither

1 Defendant, Defendant's counsel, Plaintiffs, nor PAGA Counsel will have any liability for lost or
2 stolen settlement payment checks, forged signatures on settlement payment checks, unauthorized
3 negotiation of settlement payment checks, or failure to timely cash a settlement payment check
4 within the 180-day period. (Settlement Agreement ¶ 34c). Any unpaid cash residue or unclaimed
5 Aggrieved Employee funds, plus any accrued interest that has not otherwise been distributed
6 pursuant to order of the Court, shall be distributed to the State Controller's Unclaimed Property
7 Fund in the name(s) of the employee(s) who did not claim the funds. (Settlement Agreement ¶ 34d).

8 25. If the total aggregate number of Pay Periods during the PAGA Period is more than
9 10% higher than 16,000, i.e., there are more than 17,600 Pay Periods for the PAGA Period ("Pay
10 Periods Threshold"), the Gross Settlement Amount will increase on a pro rata basis to the extent the
11 Pay Periods Threshold is exceeded. For example, if the Pay Periods for the PAGA Period exceed
12 the Pay Periods Threshold by 1%, then the Gross Settlement Amount will be increased by 1%.
13 (Settlement Agreement ¶ 36).

14 **The Settlement is Fair and Reasonable and Took Into Consideration the Strengths and**
15 **Weaknesses of Plaintiffs' Claims and the Defenses thereto, as well as the Risks and Benefits**
16 **of the Settlement**

17 26. Here, the Settlement is presumptively fair because: (1) it occurred after counsel for
18 the Parties engaged in significant investigation to evaluate the strength and potential value of the
19 PAGA claims, and the risks of litigating these claims through trial; and (2) it was negotiated by
20 counsel with significant experience in similar complex labor and employment matters.

21 27. Crucial to Plaintiffs' analysis of the relative strengths and weaknesses of their claims
22 is the fact that both Plaintiffs, as well as other aggrieved employees, had entered into arbitration
23 agreements with Defendant which contained a "class/collective action waiver". Defendant strongly
24 contended that the agreements were enforceable and therefore prevented Plaintiffs' PAGA claims
25 from going forward based on the United States Supreme Court's ruling in *Viking River Cruises, Inc.*
26 *v. Moriana*. Plaintiffs' position was that the waiver was not enforceable and/or ultimately California
27 law would confirm that employees cannot waive PAGA claims via an arbitration agreement.

28 28. Notwithstanding these considerations, this case and settlement addresses important

1 employee protections embodied in the California Labor Code. Plaintiffs' core allegations are that
2 Defendant systematically violated the Labor Code by, *inter alia*, failing to properly pay wages for
3 all hours worked, failure to pay overtime at the correct rate, failure to provide compliant meal and
4 rest periods, failure to pay premiums at the correct rate of pay, failure to timely pay wages during
5 employment and upon termination, failure to maintain accurate payroll records, failure to provide
6 accurate wage statements, and failure to reimburse necessary business expenses.

7 29. Defendant's maximum theoretical exposure in this Action, without stacking
8 penalties, totals approximately \$1,726,000. computed by multiplying 17,260 aggregate pay periods
9 by \$100 each.

10 30. Defendant maintained several defenses to Plaintiffs' theories of liability, which, if
11 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
12 Throughout this litigation, Defendant maintained, and continues to maintain, that it had, and
13 continues to have, compliant employment policies and practices throughout the time period at issue.
14 Defendant denies that it ever violated any provision of the Labor Code, including, but not limited
15 to, those sections for which Plaintiff seeks penalties under PAGA. Defendant further denied, and
16 continues to deny, that the lawsuit is appropriate for representative treatment for any purpose other
17 than settlement. Defendant also challenged Plaintiffs' standing as an aggrieved employee and
18 Representative Action Member and denied that any of Defendant's other employees whom Plaintiffs
19 seek to represent are aggrieved or Aggrieved Employees. Defendant also argued that an important
20 feature of PAGA is that the Court retains discretion to lower the penalties if, based on the facts and
21 circumstances of the particular case, to do otherwise would result in an award that is "unjust,
22 arbitrary and oppressive, or confiscatory."

23 31. Even if violations of the Labor Code occurred, which Defendant denies, Defendant
24 contended that said violations would only be considered "initial violations" and thus heightened
25 "subsequent violation" penalties were not warranted.

26 32. Defendant also contended that, with respect to PAGA claims, the Court was unlikely
27 to assess cumulative penalties for the maximum number of possible, separate California Labor Code
28 violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where

1 certain conduct may be regulated by multiple provisions of the California Labor Code that are
2 interrelated and work in tandem. As such, Defendant contended that cumulative penalties and
3 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory.

4 33. While Plaintiffs maintain that their PAGA claims have merit, in reaching the
5 settlement, Plaintiffs and their counsel took into account the strengths and weaknesses of each side's
6 position and the uncertainty of how the case might have concluded as litigation continued, at trial,
7 and/or upon appeal. The Settlement achieves a sizeable benefit obtained despite the fact that many
8 Aggrieved Employees signed arbitration agreements with Defendant.

9 **The Amount Offered in Settlement**

10 34. The PAGA Payment Fund is currently estimated to be \$199,688.27. Here, after all
11 deductions are made for administration costs, attorneys' fees and litigation costs, \$149,766.20 (i.e.
12 75%) will go to the LWDA, and \$49,922.07 (i.e. 25%) will go to the Aggrieved Employees, as
13 required by Labor Code § 2699(i) ("civil penalties recovered by aggrieved employees shall be
14 distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . and 25
15 percent to the aggrieved employees."). There is no reason to doubt the fairness of the proposed plan
16 of allocation of the PAGA Payment Fund as it fully complies with California Labor Code section
17 2699(i).

18 35. The Settlement is a compromise of highly disputed claims. Plaintiffs and their
19 counsel recognize the expense and length of continued proceedings necessary to litigate the matter
20 through trial and any possible appeals. Plaintiffs and their counsel have also taken into account the
21 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
22 such litigation. Plaintiffs and their counsel are also aware of the burdens of proof necessary to
23 establish liability, both generally and in response to Defendant's defenses thereto, and the
24 difficulties in establishing Defendant's liability for, and the right to recover, penalties on behalf of
25 Plaintiffs, the State of California, and other Representative Action Members. Plaintiffs and their
26 counsel have also taken into account Defendant's agreement to enter into a settlement that confers
27 significant relief upon the Representative Action Members and the State of California. Considering
28 all of the facts in this case, Plaintiffs and their counsel have determined that the Settlement represents

1 a fair, adequate, and reasonable resolution of the PAGA claims, and that it is in the best interests of
2 the Representative Action Members and the State of California.

3 36. The result achieved in this case is well within the range of what is considered an
4 acceptable settlement under the circumstances, especially when compared to the settlement of
5 PAGA claims in other cases.

6 **The Settlement was Negotiated by Experienced Counsel**

7 37. Plaintiffs' Counsel is experienced in complex representative and class action wage-
8 and-hour litigation. In the view of Plaintiffs' Counsel, the benefits conferred by the settlement are
9 eminently fair and reasonable, and in the best interests of the State and the Aggrieved Employees in
10 light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits
11 provided for by the Settlement.

12 38. Here, the extent of informal discovery conducted was sufficient to enable Plaintiffs'
13 Counsel to evaluate the strength and value of the claim for purposes of settlement. Combined with
14 Plaintiffs' Counsel's experience, the settlement negotiations were conducted by highly capable and
15 experienced counsel. Plaintiff's Counsel are respected members of the bar with strong records of
16 vigorous and effective advocacy, and are experienced in handling complex wage and hour class
17 action litigation. Accordingly, Plaintiff's Counsel had sufficient information and experience to act
18 intelligently in negotiating the Settlement.

19 **The Requested Attorneys' Fees Award is Fair and Reasonable**

20 39. Plaintiff's Counsel's application for attorneys' fees in light of the facts and
21 circumstances surrounding the case is well-within the range of reasonableness. Plaintiff's Counsel
22 has litigated this case since it was commenced, with the very real possibility of an unsuccessful
23 outcome and no fee recovery of any kind.

24 40. In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation
25 and will not receive any compensation until recovery is obtained. Plaintiff's Counsel is experienced
26 in complex wage-and-hour litigation and used that experience to obtain a favorable result for
27 Plaintiff, the Aggrieved Employees, and the State of California. Considering the amount of fees
28 requested, work performed, risks incurred, results obtained, and experience of Plaintiff's Counsel

1 in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and
2 should be awarded.

3 41. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
4 into tangible monetary benefits for the Aggrieved Employees as follows: (1) Aggrieved Employees
5 will obtain monetary recovery over a relatively short period of time, as opposed to waiting additional
6 years for the same, or potentially worse, result; (2) a guaranteed result that compares favorably with
7 other representative PAGA actions of this type, given the strengths and weaknesses of the case; and
8 (3) significant savings in Plaintiff's Counsel's fees and/or costs that would have only increased
9 significantly had the case progress through trial and/or appeals.

10 42. Plaintiffs have each provided written approval of their counsel's fee splitting
11 agreement.

12 **The Requested Costs to be Reimbursed are Fair and Reasonable**

13 43. The Settlement provides for reimbursement of litigation costs and expenses of
14 \$3,895.07. A true and correct itemized list of my firm's litigation costs is attached hereto as **Exhibit**
15 **C**. This amount was reasonable and necessary in the prosecution of this matter, and is less than the
16 maximum amount allocated under the Settlement.

17 **The Settlement Administration Costs are Fair and Reasonable**

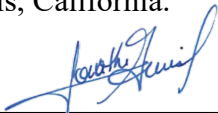
18 44. As set forth in the Settlement Agreement, the Parties have agreed to retain, subject
19 to approval by the Court, CPT Group to handle the administration of the Settlement. The fees and
20 expenses of the PAGA Settlement Administrator are estimated not to exceed \$9,750.00. These costs
21 include, but are not limited to, expenses for preparing, printing, and mailing the Notice of
22 Representative PAGA Action Settlement and Individual Settlement Share checks (i.e., PAGA
23 Settlement Package) to the Aggrieved Employees, re-mailing the returned PAGA Settlement
24 Packages to any new addresses obtained, and handling inquiries from Aggrieved Employees
25 regarding the Settlement, among other things. Accordingly, the Court should grant approval of the
26 Settlement Administration Costs in the amount of up to \$9,750.00 to CPT Group, a necessary third-
27 party for handling the settlement process.

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

Executed on April 14, 2023, at Beverly Hills, California.



Jonathan M. Genish

EXHIBIT A

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 B

1 RUTAN & TUCKER, LLP
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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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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)
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6 ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar No. 277924)
7 Jackland K. Hom (State Bar No. 327243)
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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

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

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

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

IT IS SO AGREED.

Dated: 01/06/2023, 2023


Sindy Aviles

Dated: _____, 2023

Brian Kelly

Dated: _____, 2023

Freeway Insurance Services America, LLC

By:
Its:

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: _____, 2023

17 _____
Sindy Aviles

18
19 Dated: Jan 3, 2023, 2023

20 *Bryan Kelly*
Bryan Kelly (Jan 3, 2023 11:11 PST)
Bryan Kelly

21 Dated: _____, 2023

22 Freeway Insurance Services America, LLC

23 _____
24 By:
25 Its:

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: _____, 2023

17 _____
Sindy Aviles

18
19 Dated: _____, 2023

20 _____
Brian Kelly

21 Dated: January 5, 2023

Freeway Insurance Services America, LLC

22
23 *Tim Clark*

24 _____
By: Tim Clark
Its: CHRO

1 Dated: January 6, 2023
2
3
4
5
6
7 Dated: _____, 2023
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13 Dated: _____, 2023
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18 Dated: January 19, 2023
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28

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

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

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

APPROVED AS TO FORM:

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

1 Dated: _____, 2023

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

3 By: _____

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

7 Dated: January 3, 2023

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

9 By: _____

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

13 Dated: January 3, 2023

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

15 By: _____

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

19 Dated: _____, 2023

APPROVED AS TO FORM:

21 By: _____

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

EXHIBIT C

Date	Type of Expense	Description of Expense	Amount
9/9/2021	Mailing	Records Request to Freeway Insurance Services	\$7.33
9/9/2021	Mailing	Records Request to CSC - Lawyers Incorporating Service	\$7.33
9/22/2021	Filing	LWDA: PAGA Notice	\$75.00
9/22/2021	Mailing	PAGA Notice to Freeway Insurance Services	\$7.33
9/22/2021	Mailing	PAGA Notice to CSC - Lawyers Incorporating Service	\$7.33
9/22/2021	Filing	First Legal: Filing of Complaint/Summons/CCCS	\$514.70
11/2/2021	Filing	First Legal: Filing of FAC	\$36.20
11/20/2021	Service	First Legal: Personal Service of Complaint on Agent	\$277.63
11/4/2021	Filing	First Legal: Filing of POS of Summons & Complaint	\$36.20
1/10/2022	Filing	First Legal: Plaintiff's CMC Statement	\$37.70
1/10/2022	Filing	First Legal: Plaintiff's Opp to Notice of Related Case	\$37.70
1/10/2022	Filing	First Legal: Plaintiff's Opp to Notice of Related Case (in Santos case)	\$37.70
2/2/2022	Filing	First Legal: Filing of Amended CCCS/Complex Civil Case Questionnaire/POS	\$37.70
2/2/2022	Service	First Legal: Deliver courtesy copies to Dept. 11	\$31.00
3/15/2022	Filing	First Legal: Plaintiff's CMC Statement	\$37.70
5/17/2022	Filing	First Legal: Joint CMC Statement	\$37.70
11/7/2022	Filing	First Legal: Notice of Rulings at CMC	\$37.70
11/29/2022	Filing	First Legal: Joint Notice of Settlement	\$37.70
	Other	Future Cost: Motion Reservation	\$61.65
	Filing	Future Cost: Filing of Motion for Approval of PAGA Settlement	\$97.70
	Filing	Future Cost: Filing of Notice of Entry of Order	\$37.70
	Mailing	Future Cost: Settlement Check to Client	\$4.28
Total:			\$1,502.98