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

21 KALI BATES and MICHAEL JOHNSON,
22 individually and on behalf of all other
23 similarly situated employees,

24 Plaintiffs,

25 vs.

26 MVP EVENT PRODUCTIONS, LLC, and
27 LEGENDS HOSPITALITY, LLC; Does 1
28 through 20, inclusive,

Defendants.

Case No. 34-2022-00317653

*Assigned for All Purposes to Hon. Jill Talley,
Department 27*

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Reservation No. A-317653-001

Date: January 19, 2024

Time: 9:00 a.m.

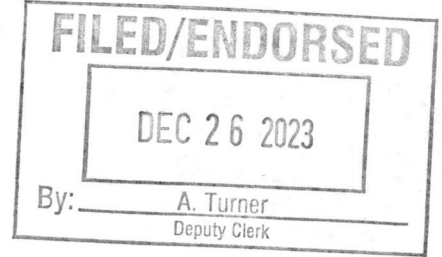
Dept.: 27

Judge: Hon. Jill Talley

Filed: May 18, 2022

FAC Filed: October 25, 2022

Trial Date: None Set



BY FAX

1 I, Brittany V. Berzin, declare:

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

8 2. This case is being brought as a wage and hour class action based on Plaintiffs’
9 contention that Defendant Legends Hospitality, LLC (“Defendant”) violated California law by 1)
10 willfully misclassifying workers as independent contractors; 2) failing to pay all minimum wages; 3)
11 failing to pay all overtime wages; 4) failing to keep accurate records; 5) failing to provide meal periods
12 or pay premiums in lieu thereof; 6) failing to provide rest periods or pay premiums in lieu thereof; 7)
13 failing to provide accurate wage statements; 8) failing to pay final wages; 9) failing to timely pay
14 wages during employment; 10) failing to pay reimbursements for personal cellphone use and mileage;
15 11) failing to pay reporting time; 12) failing to provide or pay all sick time; and 13) failing to correctly
16 calculate employees’ regular rates of pay when bonuses were paid. Plaintiffs also alleged liability for
17 civil penalties under the Private Attorneys General Act (“PAGA”). The PAGA, waiting time penalty,
18 wage statement, and unfair competition claims also derive from these allegations.

19 3. Plaintiffs are the only named class representatives in this matter. From Class Counsel’s
20 initial investigations of Plaintiffs’ claims and documents, we believed these claims had merit and could
21 be maintained as a class action. Plaintiff Kali Bates filed this class action on April 1, 2022, against
22 Defendant and MVP Event Productions, LLC. On May 18, 2022, Plaintiff Michael Johnson filed a
23 class action against the same defendants alleging the same or similar claims. Thereafter, Plaintiffs
24 agreed to consolidate their claims against the defendants in one lawsuit. Accordingly, Plaintiff Michael
25 Johnson dismissed his lawsuit without prejudice and Plaintiff Kali Bates filed a First Amended
26 Complaint to add Michael Johnson as a named plaintiff and include a cause of action under the PAGA
27 after exhausting administrative remedies. Plaintiffs exhausted administrative remedies through the
28 Labor and Workforce Development Agency (“LWDA”) prior to the First Amended Complaint being

1 filed. On March 23, 2022, Plaintiff Kali Bates sent notice to the LWDA setting forth the facts and
2 theories of liability. On May 12, 2022, Plaintiff Michael Johnson sent notice to the LWDA setting
3 forth the facts and theories of liability. On October 27, 2023, Plaintiff Michael Johnson sent an
4 amended notice to the LWDA to include additional Labor Code sections Plaintiffs contend were
5 violated. True and correct copies of the operative notices filed with the LWDA are being filed with this
6 Motion as **Exhibit C**. Copies of the notices were sent to Defendant via certified mail and the \$75.00
7 filing fee was remitted to the LWDA. To date, there has been no response by the LWDA regarding its
8 intent to investigate the claims alleged in Plaintiffs' notices. As such, Plaintiffs became authorized to
9 commence a civil action under the PAGA. The First Amended Complaint adding the PAGA cause of
10 action was filed on October 25, 2022. A true and correct copy of the First Amended Complaint is
11 being filed with this Motion as **Exhibit B**. A copy of the First Amended Complaint was uploaded to
12 the LWDA on October 30, 2022, after we received an endorsed copy back from Court. As part of this
13 Motion, Plaintiffs are seeking to file a Second Amended Complaint that is being filed with this Motion
14 as **Exhibit I**¹. The proposed Second Amended Complaint includes additional allegations from Plaintiff
15 Michael Johnson's original lawsuit, includes the additional Labor Code sections from Plaintiff Michael
16 Johnson's amended PAGA letter in the PAGA cause of action, and matches the scope of the resolution
17 reached by Plaintiffs and Defendant at mediation.

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

19 5. Defendant is represented in this matter by K&L Gates LLP. From the beginning,
20 Defendant has contested that it employed Class Members as a joint employer of MVP Event
21 Productions, LLC, the merits of this case, the suitability of the case for class action or representative
22 treatment, the manageability of the case at trial, and Plaintiffs' ability to prove a violation in each pay
23 period for each employee among other defenses and contentions they made challenging the propriety of
24 this action. Defendant further contended, even assuming there was a finding supporting the imposition
25 of PAGA penalties, that the Court would likely exercise its discretion to substantially reduce any such
26

27 ¹ Plaintiffs are requesting the Court grant leave to amend as part of the settlement approval process because counsel for
28 Defendant MVP Event Productions, LLC withdrew their representation and MVP Event Productions, LLC has not obtained
new counsel nor have they been participating in the litigation, which prevents MVP Event Productions, LLC from
participating in the action.

1 penalties owed based on evidence of good faith attempts to comply with California Labor Code
2 obligations by Defendant and Defendant's contention that it did not employ Class Members. Also,
3 Defendant has contended that this matter is not appropriate for class certification outside of this
4 proposed class settlement.

5 6. Based on the expected testimony from Plaintiffs and Class Members, a review of MVP
6 Event Production, LLC's policies and procedures and other documents relating to the alleged claims,
7 information on the number of Class Members, Class Members' dates of employment, a representative
8 sample of Class Members' timecard data, Plaintiffs' timecard and payroll data, the scope of the potential
9 damages to Plaintiffs and Class Members in light of the claims alleged, the uncertainty in the law with
10 regard to certification, and the negotiations that have taken place, I believe that the proposed settlement
11 is in the best interest of the class. The length and risks of trial and other normal perils of litigation that
12 impact the value of the claims were also considered and weighed in reaching the Agreement. In
13 addition, I carefully considered the prospect of a Court ruling that Defendant was not liable as a joint
14 employer, the uncertainty of class certification, the difficulties of complex litigation, and the lengthy
15 process of establishing specific damages and various possible delays and appeals in agreeing to the
16 proposed settlement. I further considered the fact that penalties under the PAGA could be substantially
17 cut at the discretion of the Court even if Plaintiffs were successful on proving those claims and there was
18 risk that a Court could find no willfulness in the failure to pay wages at separation, which would
19 eliminate the value of the waiting time penalty claim entirely. Overall, I believe it is more beneficial to
20 secure a guaranteed benefit to the class now rather than to proceed with litigation and potentially obtain
21 zero funds to the class due to legal or factual issues in the case.

22 7. I believe the claim form process laid out in the Agreement is necessary in this case because
23 Defendant does not have Class Members' addresses or social security numbers, which are necessary for
24 mailing settlement payments and tax reporting related to the settlement. Defendant contracted with MVP
25 Event Productions, LLC for staffing and it was MVP Event Productions, LLC that did payroll for Class
26 Members. MVP Event Productions, LLC is not represented and has not participated in this litigation for
27 some time now. Although a claim form is necessary for this settlement, there is no reversion. 100% of
28

1 the Net Settlement will be paid out to Class Members. I believe the claims made procedure is appropriate
2 under the facts of this case and does not render the settlement unfair, unreasonable, or inadequate.

3 8. Our co-counsel, my office, including the partners Galen T. Shimoda and Justin P.
4 Rodriguez, our paralegal, and myself, along with Plaintiffs' assistance, thoroughly investigated the
5 merits of the claims and potential damages for such claims. Plaintiffs provided documents and obtained
6 their personnel files and time and pay records from MVP Event Productions, LLC. In addition,
7 Plaintiffs and Defendant engaged in informal discovery and exchange of documents, including a
8 representative sampling of employee timecard data, Class Members' workweeks during the claim
9 period, and a Temporary Staffing Services Agreement Defendant had with MVP Event Productions,
10 LLC. The informal discovery covered all aspects of the asserted claims, including certification issues,
11 merits issues, damages, the content of the wage and hour policies at issue, issues relating to
12 manageability concerns at trial, among other relevant areas. From this production, we were able to
13 determine information for a reliable damages analysis such as the average daily hours worked, an
14 estimated average hourly rate, the number of workweeks and pay periods that had potential violations
15 based on the asserted claims, the frequency with which violations occurred in a given week and/or pay
16 period, and the number of former employees. This information allowed my office to assess both liability
17 and damages and create an accurate damages model. Plaintiffs assisted in all aspects of this litigation
18 including providing factual information relating to Plaintiffs' and Class Members' employment
19 conditions, providing a substantial number of documents, and answering questions regarding
20 Defendant's factual contentions in this matter. This was important because it directly related to our
21 ability to maintain this case as a class action and our ability to obtain a favorable settlement for the class.

22 9. Throughout this litigation our office had numerous communications with Defendant's
23 Counsel discussing our respective positions. The parties engaged in mediation on July 12, 2023, using
24 an experienced mediator, Brandon McKelvey, Esq. It was only after over one year of extensive, arm's
25 length negotiations that the parties were able to reach a settlement, which only occurred after a full-day
26 mediation and further negotiations thereafter with the assistance of the mediator. The negotiations were
27 at all times contentious and adversarial, though still professional in nature.

28 //

1 10. The following represents the potential maximum recovery for each of Plaintiffs' claims
2 based on my office's and a data analysis and damage modeling expert's analysis of Defendant's
3 relevant policies and the data obtained by Plaintiffs and/or produced by Defendant, including time and
4 payroll records for Plaintiffs and a sample of time records for Class Members.

5 a) Minimum Wages: This claim is based on allegations that Class Members were not paid
6 at least minimum wages for all hours worked due to time automatically being deducted
7 from Class Members' hours worked for some meal periods that were not taken, time
8 Class Members were required to be on work premises without being compensated (*e.g.*,
9 time spent walking to the ultimate work location onsite after arriving on work premises
10 and signing in, occasionally Class Members would report to work for events and after
11 arriving were told they weren't needed to work the event, and payments being made to
12 Class Members at less than the State's applicable minimum wage for some hours
13 worked. At the time of mediation, the maximum possible damages for this claim based
14 on time and pay records and information provided by Plaintiffs was \$103,277, including
15 interest on unpaid wages and a calculation for overtime wages based on approximately
16 26.5% of the unpaid time being attributable to overtime worked (as discussed below).
17 This amount was calculated based on an estimate that in the aggregate Class Members
18 were underpaid by approximately one (1) hour each week they worked. The 1,687 Class
19 Members worked a relatively small number of workweeks during the Class Period
20 (5,019) because many of them were temporary employees who only worked a few shifts.
21 This amount does not take into account any potential risks with respect to Plaintiffs
22 proving the merits or damages. Defendant contends it was not a joint employer with
23 MVP Event Productions, LLC and merely contracted with them for staffing. Defendant
24 further contends that it has a good faith defense to this claim because MVP Event
25 Productions, LLC provided instructions to Class Members regarding arriving at the
26 worksite and Defendant did not have knowledge of the hourly rates ultimately paid to
27 Class Members by MVP or whether MVP Event Productions, LLC deducted time from
28 Class Members' hours worked during the payroll process. In order to be liable for off-

1 the-clock work, an employer must know or have reason to know it was occurring.
2 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012). If there was a finding
3 that Defendant's good faith defense has merit, which is a light burden, then no liquidated
4 damages could be recovered for this claim. See Labor Code § 1194.2(b). Taking these
5 factors into account, a more realistic range of recovery for this claim is \$0 to \$51,638.50
6 (reduced by 50% for risk associated with proving Defendant's liability on this claim).

7 b) Overtime Wages: This claim is based on allegations that Class Members were not paid
8 for all hours worked due to time automatically being deducted from Class Members'
9 hours worked for some meal periods that were not taken and time Class Members were
10 required to be on work premises without being compensated (e.g., time spent walking to
11 the ultimate work location onsite after arriving on work premises and signing in, which
12 resulted in off-the-clock time that should have been paid as overtime wages. This claim
13 is also based on allegations that bonuses were paid to Class Members that were not
14 incorporated into the regular rates of pay for the purpose of paying overtime wages. The
15 regular rate of pay claim was included based on a document provided by Michael
16 Johnson that suggested Class Members as new employees were eligible to receive
17 bonuses for completing 4 shifts. However, after reviewing records Class Counsel did
18 not identify any instances of bonuses being paid. As a result, no amount is included in
19 this damage calculation for the regular rate of pay issue². At the time of mediation, the
20 maximum possible damages for this claim were determined based on time and pay
21 records and information provided by Plaintiffs. It was determined based on the records
22 that approximately 26.5% of off-the-clock work alleged would have been overtime
23 hours. The amount stated above, \$103,277 includes an amount for unpaid overtime
24 wages. The calculation does not take into account any potential risks with respect to
25 Plaintiffs proving the merits or damages. Defendant contends it was not a joint
26 employer with MVP Event Productions, LLC and merely contracted with them for
27

28 ² Plaintiffs' sick time allegations were also based on sick time not being paid at the correct regular rate of pay. Accordingly, no amount was calculated for sick time as there is no regular rate violation if bonuses were not paid to Class Members.

1 staffing. Defendant further contends that it did not know or have reason to know about
2 the off-the-clock work because MVP Event Productions, LLC provided instructions to
3 Class Members regarding arriving at the worksite and Defendant did not have
4 knowledge of whether MVP Event Productions, LLC deducted time from Class
5 Members' hours worked during the payroll process. In order to be liable for off-the-
6 clock work, an employer must know or have reason to know it was occurring. *Brinker*
7 *Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012). Taking these factors into
8 account, the more realistic range of recovery for this claim is as stated above.

9 c) Meal and Rest Periods: These claims are based on allegations that Class Members
10 received late lunches, lunches shorter than 30 minutes in length, did not receive all
11 second lunches for shifts longer than 10 hours, and did not receive rest breaks. At the
12 time of mediation, the maximum possible damages for these claims based on time
13 records and information provided by Plaintiffs was \$129,995, including interest
14 (\$109,091 for rest break claims and \$20,904 for meal period claims). These amounts
15 were calculated based on the violation rate found in the sample of time records for the
16 meal period claim and based on an estimate that there was a 100% violation rate for the
17 rest break claim. These amounts do not take into account any potential risks with
18 respect to Plaintiffs proving the merits or damages. Defendant contends it was not a
19 joint employer with MVP Event Productions, LLC and merely contracted with them for
20 staffing. Defendant contends MVP Event Productions, LLC was responsible for
21 providing meal and rest break policies to Class Members and that it was not responsible
22 for policing Class Members' breaks to ensure compliance with MVP Event Productions,
23 LLC's policies. Plaintiffs contend Defendant was a joint employer because there is
24 evidence Class Members were supervised and instructed by Defendant's management
25 and supervisors at the worksite, Defendant controlled what Class Members wore, where
26 they entered and exited the facility, which jobs they would perform, when they would be
27 released from a shift, and how they performed their assigned tasks. Defendant disputes
28 these facts. Defendant contends that even if it would have some information about

1 whether Class Members received breaks, it did not have knowledge regarding whether
2 MVP Event Productions, LLC paid premiums to Class Members for missed meal or rest
3 periods. Taking these factors into account, a more realistic range of recovery for this
4 claim is \$0 to 84,496.75 (reduced by 35% for risk associated with proving Defendant's
5 liability on this claim). This risk reduction is lower for these claims because
6 Defendant's management employees would have at least had knowledge of whether
7 Class Members were getting meal and rest periods because they were working together
8 on shifts.

9 d) Reimbursement: This claim is based on allegations that Class Members were required to
10 download a mobile app on their personal cellphones to request jobs, review schedules,
11 and get ratings. Class Members were also required to confirm their shifts by text
12 message and MVP Event Productions, LLC regularly communicated with employees by
13 text. In addition, there were occasions when Class Members were required to drive
14 between different work locations using their personal vehicles. Class Members were not
15 reimbursed for their cellphone use or mileage. At the time of mediation, the maximum
16 possible damages for this claim based on information provided by Plaintiffs was
17 \$73,841, including interest. This amount was calculated based on an estimate that Class
18 Members would be owed approximately \$20 per month for reimbursement for cellphone
19 use and occasional mileage. This amount does not take into account any potential risks
20 with respect to Plaintiffs proving the merits or damages. Defendant contends it was not
21 a joint employer with MVP Event Productions, LLC and merely contracted with them
22 for staffing. Defendant contends that MVP Event Productions, LLC was responsible for
23 policies/practices relating to cellphone use and driving personal vehicles and that it did
24 not have knowledge Class Members were not reimbursed because Defendant did not do
25 payroll for Class Members. Taking these factors into account, a more realistic range of
26 recovery for this claim is \$0 to 36,920.50 (reduced by 50% for risk associated with
27 proving Defendant's liability on this claim).

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1 e) Waiting Time: This claim is derivative of the failure to pay minimum wages, failure to
2 pay overtime, and failure to provide meal and rest periods. Thus, the same risks
3 identified above apply to this claim. At the time of mediation, the maximum possible
4 damages for this claim based on the data and information provided by Plaintiffs was
5 \$3,513,880. This amount was calculated based on information from Defendant that
6 there were 1,215 former employees. It was assumed that each employee had some
7 amount of wages owing to him or her and the penalty was calculated using a full 30
8 days. This amount does not take into account any potential risks with respect to
9 Plaintiffs proving the merits or damages. Defendant contends it was not a joint
10 employer with MVP Event Productions, LLC and merely contracted with them for
11 staffing. Labor Code section 203 requires that the failure to pay wages be willful in order
12 for a waiting time penalty to be appropriate. Defendant contends that it cannot be liable
13 for waiting time penalties because it did not have knowledge of the alleged violations
14 and has a good faith defense. Defendant contends that because MVP Event Productions,
15 LLC was responsible for payroll for Class Members it did not have reason to know that
16 there were any unpaid wages. *See Noe v. Sup. Ct.*, 237 Cal. App. 4th 316, 331-332
17 (2015) (finding employer without knowledge of unlawful conduct is not liable for
18 willful acts of co-employer with respect to joint employees). Taking these factors into
19 account, it is possible this claim would be eliminated entirely.

20 f) Wage Statement: This claim is derivative of the claims above and therefore carries the
21 same risks. At the time of mediation, the maximum possible damages for this claim
22 based on the data and information provided by Plaintiffs was \$135,350. This amount
23 does not take into account any potential risks with respect to Plaintiffs proving the
24 merits or damages. Labor Code section 226 requires a knowing and intentional
25 violation. Defendant contends it cannot be liable because if wage statements were
26 inaccurate it did not have reason to know and MVP Event Productions, LLC was the
27 entity that provided Class Members with wage statements; not Defendant. Taking these
28

1 factors into account, a more realistic range of recovery for this claim is \$0 to \$33,837.50
2 (reduced by 75% for risk associated with proving Defendant's liability on this claim).

3 g) PAGA: This claim is derivative of the Labor Code violations identified above and would
4 be subject to all the same risks as the underlying claims it is based on. This claim also
5 includes allegations that Defendant is liable for misclassifying Class Members as
6 independent contractors. Defendant contends that it cannot be liable for
7 misclassification of Class Members because it was MVP Event Productions, LLC who
8 was responsible for the misclassification. *See Noe v. Sup. Ct.*, 237 Cal. App. 4th 316,
9 331-332 (2015) (holding the misclassification statute did not permit employer to be
10 penalized based on acts of co-employer in willfully misclassifying joint employees).
11 Additionally, based on our research, we did not find any prior Labor Commissioner or
12 court decisions that stated Defendant's practices and/or policies were improper. As
13 such, a "subsequent violation" may not be found for penalty calculation purposes, and
14 the exposure analysis here is based on an "initial violation" valuation being adopted by
15 any fact finder if this matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163
16 Cal.App.4th 1157, 1207-1209 (2008). Based on the data and information from Plaintiffs
17 the maximum total exposure for this claim is \$750,100. This amount does not take into
18 account any of the risks in proving the merits of the underlying claims that the PAGA
19 damages are based on. I believe the Court may exercise its discretion to reduce PAGA
20 penalties in this case in light of Defendant's contention that it did not employ Class
21 Members and that even if it was found to be a joint employer, it contends it did not have
22 knowledge or control over the policies and practices Plaintiffs alleged were unlawful.
23 Courts are statutorily authorized to use discretion to reduce penalties and the range of
24 discretion used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203
25 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S.
26 DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Thus, even if using the
27 maximum values possible and setting aside risks of proving the claims on the merits, the
28 total exposure may be cut to approximately \$135,018 (82% reduction) to \$525,070

1 (30%) or lower. It is important to note that this discretionary reduction is completely
2 separate and in addition to any risks on the merits. Given Defendant's contentions it
3 would not be liable as a joint employer and did not have knowledge or responsibility for
4 alleged unlawful conduct and the substantial risks associated with the disputed claims,
5 we believe the amount that might ultimately be awarded under this claim would be
6 significantly lower than our maximum exposure calculation. Allocating \$10,000 to the
7 PAGA claims in this case is appropriate, especially in light of amounts that Courts have
8 approved as reasonable valuations in other cases. *See Nordstrom Com. Cases*, 186
9 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
10 based on their being disputed and being part of a class settlement which was evaluated
11 based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*,
12 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement
13 values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL
14 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total
15 estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL
16 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where
17 total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total
18 estimated value); *Davis v. Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS
19 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in
20 \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5
21 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone
22 amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764,
23 *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement);
24 *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010)
25 (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands*
26 *Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA
27 allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880,
28 *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000

1 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total
2 estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at
3 *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement);
4 *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in
5 PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments,*
6 *LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of
7 \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

8 11. In summary, Plaintiffs' gross recovery of \$175,000 under the Agreement equals
9 approximately 3.7% of the maximum likely value of the claims in this matter (\$4,706,433) and 51.2%
10 of the more realistic range of recovery (\$341,911.25 – although it is possible there would be no
11 recovery if a finding was made Defendant was not a joint employer). After deducting from the Gross
12 Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment
13 to the Class Representatives, Claims Administrator Costs, and the PAGA Payment to the LWDA, the
14 net recovery under the Agreement, \$41,250, represents approximately 0.87% of the maximum likely
15 value of the claims in this matter. The net recovery represents 12.1% of the more realistic range of
16 recovery. The average net award is approximately \$24.45. I believe the Agreement represents a
17 reasonable compromise of claims based on the legal and factual disputes in this case as well as the fact
18 that although there are 1,687 Class Members many of them only worked a few shifts. The ability to
19 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than
20 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this
21 Agreement.

22 12. In agreeing to represent Plaintiffs and take on the case for all Aggrieved Employees, our
23 office agreed to take this case on a contingency basis, meaning that we would take a percentage of any
24 settlement or judgment should we recover a monetary amount. We took a risk that we would not
25 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
26 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
27 make sure employees are able to find affordable representation in order to ensure that employers are
28

1 complying with all their legal obligations towards employees and paying employees all their hard-
2 earned wages.

3 13. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique
4 law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
5 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I
6 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &
7 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working
8 on individual, class action and PAGA employment cases throughout law school. I also participated in
9 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal
10 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,
11 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,
12 and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and
13 providing representation in wage claims before the California Labor Commissioner. From 2016-2017,
14 I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I
15 obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented
16 clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and
17 defended a client against five misdemeanor charges in a jury trial in the United States District Court for
18 The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock
19 Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law
20 school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with
21 Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I
22 received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure,
23 Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super
24 Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar
25 Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in
26 2021. I have over seven years of experience working on civil litigation and employment law matters.
27 Most of that experience has been specific to analyzing and litigating wage and hour claims. As an
28 associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and

1 hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and
2 rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time
3 records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition,
4 breach of contract, independent contractor misclassification, and salaried misclassifications. Some of
5 the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include
6 the following:

- 7 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
8 Sup. Ct.);
- 9 • *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- 10 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 11 • *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin
12 Sup. Ct.);
- 13 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
14 Cal.);
- 15 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 16 • *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- 17 • *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- 18 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 19 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 20 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 21 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 22 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 23 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 24 • *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 25 • *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- 26 • *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- 27 • *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 28 • *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);

- 1 • *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- 2 • *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- 3 • *Magat v. Medical Care Professionals, Inc., et al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- 4 • *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup.
5 Ct.);
- 6 • *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- 7 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 8 • *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup.
9 Ct.);
- 10 • *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac.
11 Sup. Ct.);
- 12 • *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- 13 • *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- 14 • *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 15 • *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup.
16 Ct.);
- 17 • *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- 18 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 19 • *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- 20 • *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- 21 • *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup.
22 Ct.);
- 23 • *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac.
24 Sup. Ct.);
- 25 • *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- 26 • *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).
- 27
- 28

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

4 15. The partner, Justin P. Rodriguez, Esq. also worked with me on this matter and was
5 critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated
6 college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for
7 Academic Achievement in the Philosophy program. He was one of only two recipients of this award
8 out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of
9 the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He
10 graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge.
11 Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research
12 and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from
13 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being
14 an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal*
15 from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in
16 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for
17 the Latino Law Students Association from 2009 to 2010.

18 16. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
19 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
20 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
21 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr.
22 Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour
23 litigation in general and complex class and PAGA litigation in particular. These engagements include
24 the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California
25 (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense
26 Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers
27 Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any
28 Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and

1 Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento
2 County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association
3 Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive
4 committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law
5 Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses
6 on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor
7 Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation handled by
8 our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited
9 to, the following:

- 10 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 11 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 12 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 13 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 14 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
15 (San Joaquin Sup. Ct.);
- 16 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 17 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 18 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
19 Sup. Ct.);
- 20 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
21 Ct.);
- 22 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 23 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
24 00271174 (Sac. Sup. Ct.);
- 25 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
26 Ct.);
- 27 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
28 Ct.);

- 1 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
2 Sup. Ct.);
- 3 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 4 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
5 Ct.);
- 6 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 7 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
8 00209613 (Sac. Sup. Ct.);
- 9 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 10 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
11 00222101 (Sac. Sup. Ct.);
- 12 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 13 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 14 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 15 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 16 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 17 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
18 Ct.);
- 19 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 20 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 21 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 22 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 23 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 24 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 25 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 26 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 27 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 28 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);

- 1 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 2 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 3 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 4 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 5 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 6 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 34-2019-00263185
- 7 (Sac. Sup. Ct.);
- 8 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 9 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 10 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 11 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 12 00082201 (Sac Sup. Ct.);
- 13 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 14 • *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- 15 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 16 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 17 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 18 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 19 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac.
- 20 Sup. Ct.);
- 21 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 22 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

26 18. The partner, Galen T. Shimoda, Esq. also assisted with this case. Mr. Shimoda
 27 graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in
 28 Asian Studies, with a minor in Japanese language. He then attended and graduated from the University

1 of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from
2 McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor
3 Society. Since graduating from McGeorge, he has authored a number of employment law articles for
4 journals and regularly publishes articles on our firm's website.

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

27 20. He has practiced law in California since being admitted to the State Bar in 2003,
28 litigating wage and hour class actions and individual wage and hour litigation among other cases. He

1 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
2 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour
3 law. He has litigated several class action cases in California State and Federal Courts, including up to
4 certification, settlement, preliminary and final approval, and disbursement of monies, and has been
5 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA
6 cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include,
7 but are not limited to, the following:

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

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
2 00209613 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 5 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 6 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
7 (San Joaquin Sup. Ct.);
- 8 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 9 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
10 Sup. Ct.);
- 11 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 12 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 13 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
14 Sup. Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 18 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 19 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 20 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 21 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 22 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 23 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 24 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 25 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 26 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 27 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
28 Sup. Ct.);

- 1 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 2 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 3 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 4 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 5 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 6 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 7 00082201 (Sac Sup. Ct.);
- 8 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
- 9 Sup. Ct.);
- 10 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 11 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 12 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 13 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 14 Sup. Ct.);
- 15 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 16 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 17 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 18 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

19 21. The preceding list also does not include those cases where, for various reasons, the case
 20 was filed as a class action and/or PAGA action, but did not maintain that status through the end of the
 21 case. In connection with any final approval hearing, my firm and Castle Law: Employment Law
 22 Counsel will be seeking attorneys' fees and costs, an Enhancement Payment to the Class
 23 Representatives, and Claims Administrator Costs as set forth in the Agreement. My firm and Castle
 24 Law: Employment Law Counsel entered into a Joint Prosecution Agreement that provides for a 50/50
 25 fee split. We will be requesting attorneys' fees and costs pursuant to the common fund doctrine as I
 26 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
 27 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
 28 *Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law supporting the requested amounts

1 will be set forth in the final approval motion, including information for the Court to perform a lodestar
2 cross check of the requested attorney's fees, quantify the amount of time spent by Plaintiffs on this case
3 and any further risks and/or burdens incurred as a result of acting as Class Representatives, an updated
4 declaration in support of actual litigation costs and itemized cost spreadsheet, and declaration from the
5 Claims Administrator detailing the work performed and Claims Administrator Costs incurred. My
6 firm's expected costs through final approval are not expected to exceed \$20,000. Attached as **Exhibit**
7 **E** is a true and correct copy of the costs incurred prior to the filing of this Motion and the expected
8 costs incurred through the final approval and fairness hearing. Any difference in the awarded fees and
9 costs, Class Representatives' Enhancement Payment, and Claims Administrator Costs and the amounts
10 allocated for each under the Agreement will be added back to the Net Settlement Amount and
11 distributed pro rata to Class Members.

12 22. I have used several class action administrator companies in the wage and hour class
13 actions I have resolved in the past and believe Apex Class Action will provide the best service to
14 administer the proposed class settlement. Apex Class Action has provided a quote for the estimated
15 maximum cost of administering the class settlement of approximately \$15,300³. A true and correct copy
16 of a cost estimate provided by Apex Class Action is filed with this Motion as **Exhibit D**. This is only an
17 estimate, and final pricing may vary depending on the issues, if any, that arise during the administration
18 of the settlement. However, the difference between the actual, lesser costs and \$25,000, if any, will be
19 paid to the participating Class Members on a pro rata basis.

20 23. A copy of the proposed Agreement and the entire Motion was submitted to the LWDA
21 for review at the same time the Motion was submitted to the Court pursuant to California Labor Code
22 section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
23 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
24 **Exhibit H**.

25 24. A true and correct copy of the proposed Notice of Settlement is being filed with this
26 Motion as **Exhibit F**.

27
28 ³ We anticipate the cost of administration will increase but remain under the \$25,000 as it is still being determined what the cost of the newspaper ads and interactive website will be.

1 25. A true and correct copy of the proposed Claim Form is being filed with this Motion as
2 **Exhibit G.**

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

6 27. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
7 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
8 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
9 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
10 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
11 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
12 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
13 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
14 Superior Court.

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

25 29. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
26 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
27 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
28 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with

1 workers and advises them as to the available legal remedies. In addition to individual counseling on
2 employment issues, the CFWR educates workers, unions, and community members about workplace
3 laws and remedies through "Know-Your-Rights" trainings conducted by the CFWR staff and volunteers.

4 30. The CFWR provides limited representation for low-wage workers in wage claims before
5 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
6 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
7 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
8 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
9 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
10 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
11 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
12 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
13 respect to those wage claims.

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

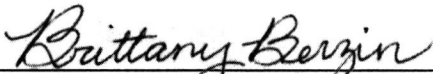
16 32. I have spoken with every other attorney at my firm to determine whether they have any
17 relationship with either of the proposed *cy pres* beneficiaries.

18 33. I have never done any work, volunteer or otherwise with Capital Pro Bono, Inc. During
19 law school, I was a student volunteer for the CFWR for two summers. Since graduating law school, I
20 have volunteered for the CFWR approximately one to two times per year, assisting in the advice clinic.
21 Recently, I volunteered to be on the Board of Directors and am currently the Chair, which is an unpaid
22 position. As Chair, I am one of seven Board Members, who are all from different law firms and/or local
23 public and private organizations. No compensation or benefits, monetary or otherwise, are provided to
24 any Board Member or organization a Board Member is associated with. The Executive Director of the
25 CFWR supervises, directs, and controls the day-to-day operations of the CFWR, not myself or the Board
26 of Directors. As Chair, my additional duties include scheduling meetings, drafting meeting agendas and
27 presiding over meetings. Furthermore, CFWR has not, and does not, provide any referrals to Shimoda
28 & Rodriguez Law, P.C. Justin Rodriguez has volunteered for both CPB and the CFWR numerous times

1 over the past several years, either directly in the advice clinics or by presenting seminars on wage and
2 hour laws for law students seeking to also volunteer at advice clinics. He has also volunteered by sitting
3 on CPB's advisory committee. Mr. Rodriguez has never received payment or compensation of any kind
4 in connection with any work he's done with the CPB or CFWR. Galen T. Shimoda has volunteered for
5 both organizations on and off over the past several years through either presenting wage and hour
6 seminars to law students who staff the free advice clinics or helping at the advice clinics themselves.
7 However, Mr. Shimoda has not performed any volunteer work with either organization since
8 approximately March 2020. Mr. Shimoda has never received payment or compensation of any kind in
9 connection with any work he's done with CPB or CFWR.

10 34. Neither my firm, Myself, Mr. Rodriguez nor Mr. Shimoda have not received any
11 compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection
12 with any of the volunteer work we have done with the organizations.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct. Executed on December 21, 2023 in Lodi, California.

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17 Brittany V. Berzin
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