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5 Attorneys for Plaintiff GILBERTO TORRES  
6 individually and on behalf of similarly situated employees

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9  
10 **FOR THE COUNTY OF CONTRA COSTA**

11 GILBERTO TORRES, individually and on  
12 behalf of all other similarly situated  
13 employees,  
14 Plaintiff,  
15 vs.  
16 KIPER DEVELOPMENT, INC., a California  
17 Corporation; and DOES 1 to 100, inclusive,  
18 Defendants.

**Case No. MSC21-02153**  
*Assigned for All Purposes to Hon. Edward G. Weil, Department. 39*

**CLASS ACTION**

**DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Date:  
Time: 9:00 a.m.  
Dept.: 39  
Judge: Edward G. Weil

Filed: October 12, 2021  
Trial Date: None Set

1 I, Justin P. Rodriguez, 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 Gilberto Torres (“Plaintiff”) herein. I am making this  
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s  
5 Motion for Preliminary Approval of Class Action Settlement (“Motion”). A true and correct copy of  
6 the Joint Stipulation Regarding Class Action Settlement and Release (“Agreement”) in this matter is  
7 filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention  
9 that Defendant Kiper Development, Inc., (“Defendant”) 1) Failure to Pay Overtime Wages 2) Failure to  
10 Pay Minimum Wages 3) Meal Period Violations 4) Rest Period Violations 5) Wage Statement  
11 Violations 6) Waiting Time Penalties 7) Failure to Reimburse Expenses 8) Unfair Competition. These  
12 claims were based allegations that Defendant violated California law by 1) failing to properly record  
13 and pay for all hours worked due to requiring off-the-clock-work, 2) failing to authorize and permit  
14 timely meal periods and/or a second meal period, 3) failing to authorize and permit timely rest periods  
15 and/or second and third rest period, 4) failing to reimburse employees for using their own tools, 5)  
16 failing to pay overtime, and 6) failing to provide accurate wage statements because of the practices of  
17 recording overtime wages as straight time or paying employees off-the-books at a piece rate. The  
18 waiting time penalties, wage statement violations, and unfair competition claims also derive from these  
19 violations.

20 3. Plaintiff is the only named representative in this matter. From our initial investigations  
21 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a  
22 class action. We began investigation on these claims in July 2021. After numerous discussions and  
23 review of the documents, we filed the action on or about October 12, 2021. A true and correct copy of  
24 Plaintiff’s operative Complaint is filed with this Motion as Exhibit B.

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

26 5. Defendant is represented in this matter by Hoge, Fenton, Jones & Appel, Inc. From the  
27 beginning, Defendant has contested the merits of this case, the suitability of the case for class action or  
28 representative treatment, the manageability of the case at trial, and Plaintiff’s ability to prove a violation

1 in each pay period for each employee among other defenses and contentions they made challenging the  
2 propriety of this action. Notwithstanding its agreement to settle this matter, Defendant believes the  
3 practices Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully  
4 comply with all state and federal employment laws with respect to Plaintiff and Class Members. Also,  
5 Defendant has contended that this matter is not appropriate for class certification outside of this  
6 proposed class settlement.

7         6.         Based on the expected testimony from Plaintiff and Class Members, a review of  
8 Defendant's policies and procedures and other documents relating to the alleged claims, information on  
9 the number of Class Members, Class Members' dates of employment, and a representative sample of  
10 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light  
11 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that  
12 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The  
13 length and risks of trial and other normal perils of litigation that impact the value of the claims were also  
14 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of  
15 potential class certification issues as well as the uncertainty of class certification, the difficulties of  
16 complex litigation, and the lengthy process of establishing specific damages and various possible delays  
17 and appeals in agreeing to the proposed settlement. Overall, I believe it is more beneficial to secure a  
18 guaranteed benefit to the class now rather than to proceed with litigation and potentially obtain zero  
19 funds to the class due to legal or factual issues in the case.

20         7.         My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along  
21 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for  
22 such claims. The parties engaged in informal discovery and exchange of documents, including a  
23 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies  
24 for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all  
25 aspects of the asserted claims, including certification issues, merits issues, damages, the scope and  
26 configuration of Class Members, the content and implementation of the wage and hour policies at issue,  
27 issues relating to manageability concerns at trial, among other relevant areas. From this production we  
28 were able to determine information critical to a reliable damages analysis such as the average hourly

1 rate, average daily hours worked, average number of workweeks and pay periods that had potential  
2 violations based on the asserted claims, the frequency with which violations occurred in a given week  
3 and/or pay period, and the number of former employees. This information allowed my office to assess  
4 both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this  
5 litigation including providing factual information relating to Plaintiff's and Class Members'  
6 employment conditions, providing a substantial number of documents, and answering questions  
7 regarding Defendant's factual contentions in this matter. This was important because it directly related  
8 to our ability to maintain this case as a class action and our ability to obtain a favorable settlement for  
9 the class.

10 8. Throughout this litigation our office had numerous communications with Defendant's  
11 Counsel discussing our respective positions. It was only after approximately fifteen (15) months of  
12 extensive, arm's length negotiations that the parties were able to reach a settlement. The negotiations  
13 were at all times contentious and adversarial, though still professional in nature.

14 9. The parties reviewed and analyzed substantial amounts of data regarding the class  
15 claims. Based on our analysis and review of all relevant documents and Class Member information, I  
16 have determined that the likely damages for the asserted class claims is approximately \$210,465.71.  
17 Based on our research, we did not find any prior Labor Commissioner or court decisions that stated  
18 Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be  
19 found for penalty calculation purposes and the exposure analysis here is based on an "initial violation"  
20 valuation being adopted by any fact finder if this matter went to trial. Additionally, Defendant  
21 contended, and provided information and documents, regarding attempts at good faith compliance and  
22 good faith disputes, which a court could find eliminated any recovery for waiting time penalties and  
23 liquidated damages for minimum wage violations. As such, the likely damages calculations do not  
24 include any amounts for those potential claims.

25 10. The \$50,000 Gross Settlement Amount represents approximately 23.76% of the likely  
26 recovery in this matter. After deducting from the Gross Settlement Amount the proposed allocations  
27 for attorneys' fees and costs, any Enhancement Payment to the Class Representative, and Settlement  
28 Administrator Costs, the net recovery under the Agreement represents approximately 6% of the likely

1 recovery in this matter. There are approximately 27 Class Members, which equates to an average net  
2 award of approximately \$500.00. I believe the Agreement represents a reasonable compromise of  
3 claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement  
4 now and ensure Class Members receive some compensation, rather than proceed to further litigation  
5 and potentially recover nothing, was a motivating factor in reaching this Agreement.

6 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office  
7 agreed to take this case on a contingency basis, meaning that we would take a percentage of any  
8 settlement or judgment should we recover a monetary amount. We took a risk that we would not  
9 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case  
10 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to  
11 make sure employees are able to find affordable representation in order to ensure that employers are  
12 complying with all their legal obligations towards employees and paying employees all their hard-  
13 earned wages.

14 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law  
15 practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I  
16 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the  
17 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two  
18 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the  
19 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris  
20 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at  
21 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my  
22 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the  
23 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from  
24 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*  
25 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar  
26 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society  
27 and an officer for the Latino Law Students Association from 2009 to 2010.

1           13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda  
2 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.  
3 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent  
4 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have  
5 been recognized as a Super Lawyer (Rising Star). In September 2018, I was a panel speaker for the  
6 Sacramento County Bar Association Labor and Employment Law Section’s presentation of “*Epic*  
7 *Systems*, PAGA, and the Future of Employment Arbitration in California.” In July 2020, I was a panel  
8 speaker for the Association of Defense Counsel of Northern California & Nevada presentation of  
9 “Class Actions and PAGA Claims.” My practice focuses on complex civil litigation, including wage  
10 and hour class actions, PAGA claims, and Fair Labor Standards Act (“FLSA”) claims. I am actively  
11 involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have  
12 litigated or am currently litigating, including the instant case, includes, but is not limited to, the  
13 following:

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

- 1 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.  
2 Ct.);
- 3 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.  
4 Ct.);
- 5 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.  
6 Sup. Ct.);
- 7 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 8 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.  
9 Ct.);
- 10 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 11 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-  
12 00209613 (Sac. Sup. Ct.);
- 13 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 14 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-  
15 00222101 (Sac. Sup. Ct.);
- 16 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 17 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 18 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 19 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 20 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 21 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.  
22 Ct.);
- 23 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 24 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 25 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 26 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 27 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 28 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);

- 1 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 2 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 3 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 4 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 5 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 6 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 7 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 8 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 9 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 10 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-
- 11 EFB (E.D. Cal.);
- 12 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 13 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 14 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 15 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 16 00082201 (Sac Sup. Ct.);
- 17 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 18 • *Salmon v. Ovations Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- 19 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 20 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 21 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 22 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 23 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 24 Sup. Ct.);
- 25 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 26 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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



1           15.     My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in  
2 assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of  
3 plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda  
4 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a  
5 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the  
6 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He  
7 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and  
8 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of  
9 employment law articles for journals and our firm regularly publishes articles on our firm's website.  
10 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)  
11 Employment Review seminars from 2014 to the present. His speaking engagements include the  
12 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual  
13 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the  
14 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in  
15 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)  
16 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law  
17 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class  
18 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,  
19 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the  
20 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour  
21 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance  
22 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –  
23 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento  
24 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of  
25 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and  
26 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -  
27 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);  
28 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a

1 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,  
2 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized  
3 as a Super Lawyer from 2014 to present.

4 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in  
5 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.  
6 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &  
7 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is  
8 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and  
9 Federal Courts, including up to certification, settlement, preliminary and final approval, and  
10 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.  
11 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel  
12 include the following:

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

1 Sup. Ct.);

- 2 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 3 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 4 Ct.);
- 5 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 6 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 7 00209613 (Sac. Sup. Ct.);
- 8 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 9 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 10 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 11 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 12 (San Joaquin Sup. Ct.);
- 13 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 14 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 15 Sup. Ct.);
- 16 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 17 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 18 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
- 19 Sup. Ct.);
- 20 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 21 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 22 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 23 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 24 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 25 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 26 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 27 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 28 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);

- 1 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 2 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 3 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 4 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
- 5 Sup. Ct.);
- 6 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 7 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (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 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 11 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 12 00082201 (Sac Sup. Ct.);
- 13 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
- 14 Sup. Ct.);
- 15 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 16 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 17 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 18 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 19 Sup. Ct.);
- 20 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 21 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 22 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 23 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

27 18. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I  
 28 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),

1 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*  
2 *Graultry*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an  
3 identifiable benefit on behalf of the class and equity counsels that the cost of the representation should  
4 be born equally amongst all class members receiving these benefits. The settlement recovery provides  
5 an excellent result and is the product of substantial time and effort in analyzing the facts and law  
6 applicable to this case. I agreed to take this case on a contingency basis and as a class action with the  
7 possibility that I would not receive any compensation for my time and efforts due to issues regarding  
8 the merits and/or certification and have carried that risk over the course of the case. I have reviewed  
9 fee arrangements and Court ordered fee awards in similar class cases and I believe that the forty percent  
10 (40%) fee request is within the accepted ranges. In my experience with contingency cases in  
11 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to  
12 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own  
13 firm and working with several other firms has been that the typical percentage negotiated between  
14 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same  
15 factors. I have also reviewed several Federal District Court Cases where the Court has approved  
16 common fund based fee requests. These cases include *See Martin v. Ameripride Servs.*, 2011 U.S. Dist.  
17 LEXIS 61796, \*22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern  
18 District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class  
19 action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM  
20 (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement), which are cited  
21 in Plaintiff's Memorandum of Points and Authorities. I believe my request of \$20,000 (approximately  
22 40%) for attorneys' fees is justified given the results obtained on behalf of the class. In fact, even at  
23 40% I believe this will result in a negative multiplier of our lodestar. Moreover, at this time, my firm  
24 has advanced all costs for Plaintiff and Class Members and has not received any compensation  
25 whatsoever for our time expended in this case. The expected costs through final approval are not  
26 expected to exceed \$4,000. Attached as Exhibit D is a true and correct copy of the costs incurred prior  
27 to the filing of this Motion and the expected costs incurred through the final approval and fairness  
28

1 hearing. Any difference in the actual costs and the maximum amount allocated under the Agreement  
2 will be added to the Net Settlement Amount.

3 19. I have used several class action administrator companies in the wage and hour class  
4 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to  
5 administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated  
6 maximum cost of administering the class settlement of approximately \$5,000. A true and correct copy  
7 of a cost estimate provided by ILYM Group, Inc. is filed with this Motion as Exhibit C. This is only an  
8 estimate, and final pricing may vary depending on the issues, if any, that arise during the administration  
9 of the settlement. However, the difference between the actual, lesser costs and \$5,000, if any, will be  
10 paid to the Participating Class Members on a pro rata basis.

11 20. A true and correct copy of the proposed Notice of Settlement is being filed with this  
12 Motion as Exhibit E.

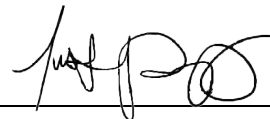
13 21. At the conclusion of the check cashing period in any class settlement, there is always a  
14 potential for uncashed checks and some provision must be made for what to do with those funds. For  
15 any portion of the Gross Settlement Amount allocated to Qualified Class Members and/or Aggrieved  
16 Employees that is not claimed by them by cashing their respective settlement checks within 180  
17 calendar days of issuance, that remaining amount shall be donated equally, *i.e.*, 50/50 to Capital Pro  
18 Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. See Exhibit A, at ¶ 5.5.  
19 Designating a *cy pres* beneficiary is an authorized means of addressing this and I believe that Capital  
20 Pro Bono, Inc., and the Center for Workers Rights are appropriate *cy pres* beneficiaries in this matter  
21 because they clearly promote the law consistent with the objectives and purposes underlying the  
22 lawsuit. I have volunteered for both organizations numerous times over the past several years, either  
23 directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking  
24 to also volunteer at advice clinics. I have also volunteered by sitting on Capital Pro Bono, Inc.'s  
25 advisory committee. These organizations are non-profits that assist low-income workers throughout  
26 California, giving free legal advice regarding employment law issues and representing employees with  
27 wage claims before the California Labor Commissioner. I have witnessed firsthand the quality service  
28 and attention these entities provide to individuals in need of employment law advice and representation

1 at the California Labor Commissioner. I do not receive any compensation, whether direct or indirect,  
2 for my time spent volunteering for these entities or for designating them as *cy pres* beneficiaries.

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

10 23. Brittany V. Berzin has never done any work, volunteer or otherwise, with Capital Pro  
11 Bono, Inc. During law school, Ms. Berzin was a student volunteer for the Center for Workers Rights  
12 for two summers. Since graduating law school, she has volunteered for the Center for Workers Rights  
13 approximately one to two times per year, assisting in the advice clinic and currently sits on the Board of  
14 Directors. Ms. Berzin has never received payment or compensation of any kind in connection with any  
15 work she's done with the Center for Workers Rights. Renald Konini has never done any work,  
16 volunteer or otherwise, with Capital Pro Bono, Inc., or the Center for Workers Rights.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
18 true and correct. Executed this 16 day of December 2022 in Sacramento, California.

19  
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21 

22 Justin P. Rodriguez  
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