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9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12 MARK WILSON, individually, and on  
13 behalf of other members of the general  
public similarly situated,

14 Plaintiff,

15 vs.

16 PACTIV LLC, a Delaware limited  
17 liability company; and DOES 1 through  
10, inclusive,

18 Defendants.  
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Case No. 5:20-cv-01691-SB-KK

Assigned to: Hon. Stanley Blumenfeld, Jr.

**NOTICE OF MOTION AND MOTION  
 FOR FINAL APPROVAL OF CLASS  
 ACTION SETTLEMENT;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

Date: November 8, 2022  
 Time: 8:30 a.m.  
 Place: Department 6C

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on November 8, 2022 at 8:30 a.m., or as soon  
3 thereafter as counsel may be heard, in Department 6C of the above-captioned court,  
4 located at 350 West 1st Street, Los Angeles, California 90012, the Honorable Stanley  
5 Blumenfeld Jr. presiding, Plaintiffs Mark Wilson and Jack Rodriguez will, and hereby  
6 do, move this Court for entry of an order and judgment granting final approval of the  
7 class action settlement and all agreed-upon terms therein. This Motion, unopposed by  
8 Defendant Pactiv LLC, seeks final approval of: (1) the Joint Stipulation of Class Action  
9 Settlement and Release, (2) settlement payments to Participating Class Members and the  
10 LWDA, and (3) costs/expenses to the settlement administrator, CPT Group, Inc.

11 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the  
12 Memorandum of Points and Authorities in Support of Motion for Final Approval of  
13 Class Action Settlement; (3) the previously filed Motion for Attorneys’ Fees, Costs and  
14 Expenses, and Class Representative Enhancement Payments; (4) the Declaration of Raul  
15 Perez; (5) the Declaration of Justin F. Marquez; (6) the Declaration of Jeremy Romero  
16 on behalf of CPT Group, Inc. Group, Inc., the settlement administrator; (7) the  
17 [Proposed] Order and Judgment Granting Final Approval of Class Action Settlement;  
18 (8) the records, pleadings, and papers filed in this action; and (9) upon such other  
19 documentary and/or oral evidence as may be presented to the Court at the hearing.

20 Dated: October 7, 2022

Respectfully submitted,

21 By: /s/ Brandon Brouillette

22 Raul Perez  
23 Mark A. Ozzello  
24 Brandon Brouillette  
25 Joseph Hakakian  
26 **CAPSTONE LAW APC**  
27 Attorneys for Plaintiff Mark Wilson

26 By: /s/ Christina M. Le

27 Justin F. Marquez  
28 Christina M. Le  
**WILSHIRE LAW FIRM, PLC**  
Attorneys for Plaintiff Jack Rodriguez

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On July 1, 2022, this Court granted preliminary approval of the Joint Stipulation  
4 of Class Action Settlement and Release<sup>1</sup> and approved distribution of the Notice of Class  
5 Action Settlement to all Class Members. Class Members were given 45 days to opt out  
6 or object to the Settlement (“Response Deadline”). Now that the Response Deadline has  
7 passed, Plaintiffs Mark Wilson and Jack Rodriguez are pleased to report that: (1) only 4  
8 individuals opted out of the Settlement Class (4 out of 2,028 or 0.2%); (2) no Class  
9 Members objected to the Settlement; (3) the **entire Net Settlement Amount will be**  
10 **disbursed to all 2,024 Participating Class Members**; (4) the average payment to  
11 Participating Class Members from the Net Settlement Fund is approximately \$100, and  
12 the highest is approximately \$225. (Declaration of Jeremy Romero [“Romero Decl.”] ¶¶  
13 6-8.)

14 Plaintiffs now move for final approval of the class action settlement. This motion  
15 is unopposed by Defendant Pactiv LLC (collectively with Plaintiffs, the “Parties”). The  
16 principal terms of the Settlement provide for the following:

- 17 (1) Conditional certification of a Settlement Class defined as: All persons who  
18 are employed or have been employed by Defendant in California as  
19 hourly-paid or non-exempt employees at any time during the time period  
20 from May 29, 2016 to July 1, 2022 (“Class Members”).
- 21 (2) A **non-reversionary** Gross Settlement Amount of \$500,000. The Gross  
22 Settlement Amount includes:
- 23 (a) A Net Settlement Fund (the Gross Settlement Amount minus the  
24 requested Attorneys’ Fees and Costs, Settlement Administration  
25 Costs, the PAGA Settlement Amount, and the Class Representative

26  
27 <sup>1</sup> Hereinafter, the “Settlement” or “Settlement Agreement.” Unless indicated  
28 otherwise, capitalized terms used herein have the same meaning as those defined by the  
Settlement.

1 Enhancement Payments), which will be allocated to all Class  
2 Members on a pro-rata basis according to the number of pay  
3 periods each Class Member worked during the Class Period. **The**  
4 **Entire Net Settlement Fund will be paid to all Participating**  
5 **Class Members.**

6 (b) Attorneys' fees in the amount of one-third of the Gross Settlement  
7 Amount (or \$166,667), and litigation costs and expenses not to  
8 exceed \$50,000, to Capstone Law APC and Wilshire Law Firm,  
9 PLC ("Plaintiffs' Counsel").

10 (c) Settlement administration costs of \$19,000, to be paid to the jointly  
11 selected Settlement Administrator, CPT Group, Inc. ("CPT").

12 (d) A \$40,000 PAGA settlement, of which 75% (\$30,000) will be paid  
13 to the Labor & Workforce Development Agency ("LWDA"), and  
14 the remaining 25% (\$10,000) ("PAGA Fund"), will be payable to  
15 PAGA Members, defined as: All persons who are employed or  
16 have been employed by Defendant in California as hourly-paid or  
17 non-exempt employees at any time during the time period from  
18 May 29, 2019 to July 1, 2022. **The Entire PAGA Fund will be**  
19 **paid to all PAGA Members.**

20 (e) Class Representative Enhancement Payments of \$10,000, each, to  
21 Mark Wilson and Jack Rodriguez for their service on behalf of the  
22 Settlement Class, the risks they took in bringing the action on behalf  
23 of the class, and for general releases of all claims arising out of their  
24 employment with Defendant.

25 An objective evaluation of the Settlement confirms that the relief negotiated on  
26 the Settlement Class's behalf is fair, reasonable, and valuable. The Settlement was  
27 negotiated by the Parties at arm's length with helpful guidance from Louis Marlin, an  
28 experienced and well-respected class action mediator, and the Settlement confers



1 substantial benefits to Class Members. This relief—averaging approximately \$100 per  
2 Class Member from the Net Settlement Fund—is particularly impressive when viewed  
3 against the difficulties encountered by plaintiffs pursuing wage and hour cases.  
4 Moreover, by settling now rather than proceeding to trial, Class Members will not have  
5 to wait (possibly years) for relief, nor will they have to bear the risks of continued  
6 litigation.

7 Accordingly, given the Settlement’s favorable terms, the Court’s previous  
8 findings concerning the Settlement’s fairness and reasonableness, and the complete  
9 absence of objection to the Settlement, Plaintiffs respectfully request that the Court: (1)  
10 grant this Motion for Final Approval of the Settlement Agreement; (2) grant final  
11 approval of the settlement administration costs/expenses; (3) enter judgment pursuant to  
12 the Settlement Agreement; and (4) retain jurisdiction to enforce the Settlement.

## 13 **II. FACTS AND PROCEDURE**

### 14 **A. *Wilson v. Pactiv LLC*, No. 5:20-cv-01691-SB-KK (C.D. Cal.)**

15 Pactiv employed Plaintiff Mark Wilson as a non-exempt, hourly paid employee  
16 from August 2017 through March 19, 2020. (Dkt. No. 23; First Amended Complaint  
17 [“FAC”] ¶ 5.) He worked as a Lift Truck Operator at Pactiv’s warehouse location in San  
18 Bernardino, California, where he unloaded and loaded trailers, organized produce in the  
19 warehouse, and formed and packaged pallets for shipment. (*Id.*)

20 On May 29, 2020, Plaintiff Wilson filed this action in the Superior Court of  
21 California for the County of San Bernardino. (Dkt. No. 1-Ex. A.) On August 21, 2020,  
22 Defendant removed the action to this Court. (Dkt. No. 1.)

23 On April 28, 2021, Plaintiff amended his complaint to include a claim under the  
24 Private Attorneys General Act, Labor Code §§2698, *et seq.* (Dkt. No. 23.) On August 6,  
25 2021, Plaintiff filed his motion for class certification. (Dkt. No. 31.) On December 3,  
26 2021, the Court denied the motion. (Dkt. No. 46.) Following the denial of the motion,  
27 Plaintiff resumed litigation as to his claim for PAGA civil penalties.  
28

1           **B.     *Jack Rodriguez v. Pactiv LLC, No. 5:21-cv-00841-SB-KK (C.D. Cal.)***

2           Pactiv employed Plaintiff Jack Rodriguez as a non-exempt, hourly paid employee  
3 from August 24, 2017 through February 27, 2020. (Dkt. No. 5 – Ex. A.) Like Plaintiff  
4 Wilson, Plaintiff Rodriguez also worked as a Lift Truck Operator at Pactiv’s warehouse  
5 location in San Bernardino, sharing the same duties as Plaintiff Wilson, while working  
6 the swing shift (1:00 pm to 9:30 pm). (*Id.*)

7           On February 22, 2021, Plaintiff Rodriguez filed this action in the Superior Court  
8 of California for the County of San Bernardino, alleging violations of the following  
9 Labor Code and Business and Professions Code sections: (1) 204, 1194, 1194.2, and  
10 1197 (failure to pay minimum and straight time wages), (2) 1194 and 1198 (failure to  
11 pay overtime wages), (3) 226.7, 512 (failure to provide meal periods), (4) 226.7 (failure  
12 to provide rest periods), (5) 201-203 (failure to timely pay final wages at termination),  
13 (6) 226 (failure to provide accurate itemized wage statements); and (7) Cal. Bus. & Prof.  
14 Code §§ 17200, *et seq.* (unlawful and unfair business practices). (*Id.*)

15           On May 12, 2021, Defendant removed the action to this Court. (Dkt. No. 1.)

16           **C.     The Parties Settled After Mediation**

17           On April 7, 2022, the Parties participated in full-day mediation with Mr. Marlin,  
18 an experienced mediator of wage and hour class and representative actions. Mr. Marlin  
19 helped to manage the Parties’ expectations and provided a useful, neutral analysis of the  
20 issues and risks to both sides. With Mr. Marlin’s guidance, the Parties were eventually  
21 able to negotiate a complete settlement of Plaintiffs’ claims. The terms of the settlement  
22 are now set forth in complete and final form in the Settlement. (Perez Decl. ¶ 4.) At all  
23 times, the Parties’ negotiations were adversarial and non-collusive.

24           **D.     The Proposed Settlement Fully Resolves Plaintiffs’ Claims**

25           **1.     Composition of the Settlement Class**

26           The proposed Settlement Class consists of all persons who are employed or have  
27 been employed by Defendant in California as hourly-paid or non-exempt employees at  
28 any time during the time period from May 29, 2016 to July 1, 2022. (Settlement

1 Agreement ¶ 5.)

2 **2. Settlement Consideration**

3 Plaintiffs and Defendant have agreed to settle the underlying class claims in  
4 exchange for the Gross Settlement Amount of \$500,000. The Gross Settlement Amount  
5 includes: (1) automatic payments to all Participating Class Members—meaning, all  
6 Class Members except those who submit timely and valid Requests for Exclusion—  
7 from the Net Settlement Fund; (2) \$166,667 in attorneys’ fees (i.e., one-third of the  
8 common fund) and up to \$50,000 in litigation costs to Plaintiffs’ Counsel; (3) Settlement  
9 Administration Costs of \$19,000; (4) a \$30,000 payment to the LWDA and a \$10,000  
10 payment to PAGA Members; and (5) Class Representative Enhancement Payments of  
11 \$10,000, each, for Plaintiffs’ service on behalf of the Settlement Class, the risks they  
12 took in bringing their representative claims, and for general releases of all claims arising  
13 out of their employment with Defendant. (Settlement Agreement ¶¶ 32-36.)

14 **3. Formula for Calculating Payments from the Net Settlement**  
15 **Fund and PAGA Fund**

16 Payments to Class Members from the Net Settlement Fund, and payments to  
17 PAGA Members from the PAGA Fund, will be in proportion to the number of Pay  
18 Periods during which Class Members and PAGA Members worked during the  
19 applicable Class Period and PAGA Period. (Settlement Agreement ¶ 40.)

20 **4. Release by the Settlement Class and PAGA Members**

21 In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class  
22 Members will agree to release the Released Class Claims during the Class Period.  
23 (Settlement Agreement ¶¶ 25, 50.) And in exchange for the PAGA Settlement Amount,  
24 Plaintiffs and PAGA Members will agree to release the Released PAGA Claims during  
25 the PAGA Period. (Settlement Agreement ¶¶ 26, 51.)

26 **E. The Notice and Settlement Administration Processes Were**  
27 **Completed Pursuant to the Court’s Order**

28 As authorized by the Court’s Order preliminarily approving the Settlement

1 Agreement, the Parties engaged CPT to provide settlement administration services.  
2 (Romero Decl. ¶ 2.) CPT’s duties have, and if the Court enters the final approval order,  
3 will include: (1) printing and mailing the Notice of Class Action Settlement (“Notice”);  
4 (2) receiving and processing undeliverable Notices and locating updated addresses for  
5 Class Members; (3) receiving and validating Requests for Exclusion; (4) calculating and  
6 distributing the Class Settlement Amount; (5) tax reporting; (6) providing necessary  
7 reports and declarations; and (7) performing such other tasks as set forth in the  
8 Settlement Agreement or as the Parties mutually agree or that the Court orders. (*Id.*)

9 On July 6, 2022, CPT received the Class Notice prepared jointly by Plaintiffs’  
10 Counsel and counsel for Defendant and approved by the Court. (Romero Decl. ¶ 3.) The  
11 Class Notice summarized the Settlement’s principal terms, provided Class Members  
12 with an estimate of how much they would be paid if the Settlement received final  
13 approval, and advised Class Members about how to opt out of the Settlement and how to  
14 object. (*Id.*)

15 Separately, counsel for Defendant provided CPT with a mailing list (the “Class  
16 List”), which included each Class Member’s full name, last known address, Social  
17 Security Numbers, and information necessary to calculate payments. (*Id.*) The mailing  
18 addresses contained in the Class List were processed and updated using the National  
19 Change of Address Database maintained by the U.S. Postal Service. (*Id.* at ¶ 4.)

20 On August 4, 2022, CPT mailed Class Notices to Class Members via First-Class  
21 U.S. mail. (*Id.*) Class Members were given 45 days to opt out or object to the Settlement.  
22 Plaintiffs are pleased to report that only 4 individuals opted out of the Settlement Class,  
23 and no Class Members objected to the Settlement. (*Id.* at ¶¶ 6-7.)

24 **III. ARGUMENT**

25 **A. Class Certification Requirements Are Met**

26 The Court certified the Class for settlement purposes upon Preliminary Approval,  
27 finding that requirements under Rule 23(a) and Rule 23(b)(2) were satisfied. (*See* Dkt.  
28 No. 69.) Nothing has changed that would affect the Court’s ruling on class certification.

1 *See Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877 (C.D. Cal. 2016) (reconfirming  
2 the certification set forth in the preliminary approval order “[b]ecause the circumstances  
3 have not changed” since that order); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d  
4 539, 556 (9th Cir. 2019) (en banc) (courts must apply the criteria for class certification  
5 “differently in litigation classes and settlement classes”). Therefore, the Court should  
6 grant final certification of the Settlement Class.

7 **B. The Court Should Grant Final Approval of the Class Settlement**

8 Upon final approval, the Court’s duty is to determine whether the proposed  
9 Settlement is “fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*,  
10 150 F.3d 1011, 1026 (9th Cir. 1998). In evaluating the Settlement, the Court is guided by  
11 several important policies. First, federal courts favor settlements, particularly in class  
12 actions, where the costs, delays and risks of continued litigation might otherwise  
13 overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v.*  
14 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong policy that favors  
15 settlements, particularly where complex class action litigation is concerned”). Second,  
16 for settlements reached through arms’-length negotiations, courts are to give:

17 [P]roper deference to the private consensual decision of the parties. . . .  
18 [T]he court’s intrusion upon what is otherwise a private consensual  
19 agreement negotiated between the parties to a lawsuit must be limited to  
20 the extent necessary to reach a reasoned judgment that the agreement is  
not the product of fraud or overreaching by, or collusion between, the  
negotiating parties, and that the settlement, taken as a whole, is fair,  
reasonable and adequate to all concerned.

21 *Hanlon*, 150 F.3d at 1027.

22 Guided by these policies, the district court then may consider some or all of the  
23 following factors in evaluating the reasonableness of a settlement: (1) the strength of the  
24 plaintiff’s case and the risk, expense, complexity, and likely duration of further litigation;  
25 (2) the risk of maintaining class action status throughout trial; (3) the amount offered in  
26 settlement; (4) the extent of discovery completed and the stage of proceedings; (5) the  
27 participation of a governmental participant; (6) the experience and views of counsel; and  
28 (7) the reaction of class members. *See Hanlon*, 150 F.3d at 1026 (“*Hanlon* factors”).

1           The amendments to Rule 23 direct the Court to consider a similar list of factors,  
2 including whether: (A) the class representatives and class counsel have adequately  
3 represented the class; (B) the proposal was negotiated at arm's length; (C) the relief  
4 provided for the class is adequate, taking into account: (i) the costs, risks, and delay of  
5 trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the  
6 class, including the method of processing class-member claims; (iii) the terms of any  
7 proposed award of attorney's fees, including timing of payment; and (iv) any agreement  
8 required to be identified under Rule 23(e)(3); and (D) the proposal treats class members  
9 equitably relative to each other. FED. R. CIV. P. 23(e)(2). The Advisory Committee's  
10 notes clarify that this list of factors does not "displace" the *Hanlon* factors, "but instead  
11 aim to focus the court and attorneys on 'the core concerns of procedure and substance  
12 that should guide the decision whether to approve the proposal.'" *In re Extreme*  
13 *Networks, Inc. Sec. Litig.*, No. 15-04883, 2019 WL 3290770, at \*6 (N.D. Cal. July 22,  
14 2019) (quoting FED. R. CIV. P. 23(e)(2) advisory committee's note to 2018 amendment).

15           Additionally, for class action settlements prior to contested certification, the Ninth  
16 Circuit further requires that the Court scrutinize the settlement even more closely,  
17 applying the so-called *Bluetooth* factors.<sup>2</sup> See *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th  
18 Cir. 2015). As set forth below, the Settlement satisfies all of these factors, meriting final  
19 approval.

20           By granting preliminary approval, this Court has already determined that the  
21 Settlement Agreement is fair and reasonable, subject to objections. With no objections to  
22 the Settlement, the Court's preliminary assessment has been separately endorsed by the  
23 Settlement Class. Accordingly, for these and the reasons discussed in more detail below,  
24 the Court should grant final approval.

25  
26  
27  
28           <sup>2</sup> *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 938 (9th Cir. 2011).

1                   **1. Plaintiffs’ Counsel Conducted a Thorough Investigation of the**  
2                   **Factual and Legal Issues and Were Thus Able to Objectively**  
3                   **Assess the Settlement’s Reasonableness**

4                   Plaintiffs’ Counsel thoroughly engaged in the discovery process and made use of  
5 documents and data produced by Defendant (including Class Members’ payroll records  
6 and Defendant’s written labor policies manuals), information provided by Class Member  
7 declarants and interviewees, and deposition testimony (from over 30 depositions) to  
8 assess Defendant’s potential exposure as to Plaintiffs’ claims. (*See* Perez Decl. ¶¶ 5-12;  
9 Marquez Decl. ¶¶ 12-15.) By engaging in such a thorough investigation and evaluation  
10 of Plaintiffs’ claims, Plaintiffs’ Counsel can opine that the Settlement, for the  
11 consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable,  
12 adequate, and is in the best interests of Class Members in light of all known facts and  
13 circumstances, including the risk of significant delay and uncertainty associated with  
14 litigation. (*Id.*)

15                   **2. The Settlement Was Reached Through Arm’s-Length**  
16                   **Bargaining in Which All Parties Were Represented by**  
17                   **Experienced Counsel**

18                   “[W]hat transpires in settlement negotiations is highly relevant to the assessment  
19 of a proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482  
20 (1986). Courts presume the absence of fraud or collusion in the negotiation of a  
21 settlement, unless evidence to the contrary is offered; thus, there is a presumption that  
22 settlement negotiations are conducted in good faith. Newberg, § 11.51.

23                   As explained above, the Parties participated in a mediation with Mr. Louis  
24 Marlin, Esq., an experienced mediator of wage and hour class actions. Mr. Marlin helped  
25 manage the Parties’ expectations and provided a useful, neutral analysis of the issues and  
26 risks to both sides. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948  
27 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of  
28 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF

1 (HRL), 2008 WL 4820784, at \*3 (N.D. Cal. Nov. 5, 2008) (mediator’s participation  
2 weighs considerably against any inference of a collusive settlement); *D’Amato v.*  
3 *Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in pre-  
4 certification settlement negotiations helps to ensure that the proceedings were free of  
5 collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261,  
6 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to  
7 support the conclusion that the settlement process was not collusive”); *Ogbuehi v.*  
8 *Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal.  
9 2014) (accord). At all times, the Parties’ negotiations were adversarial and non-collusive.  
10 (Perez Decl. ¶ 4.)

11 The Parties were represented by experienced class action counsel throughout the  
12 negotiations resulting in this Settlement. Plaintiffs are represented by Capstone Law  
13 APC and Wilshire Law Firm, PLC. Plaintiffs’ Counsel employ seasoned class action  
14 attorneys who regularly litigate wage and hour claims through certification and on the  
15 merits, and have considerable experience settling wage and hour class actions. (Perez  
16 Decl. ¶¶ 13-21, Ex. 1; Marquez Decl. ¶¶ 43-51.)

17 Defendant is represented by Seyfarth Shaw LLP, a respected defense firm.

18 **3. The Proposed Settlement Is Reasonable Given the Strengths of**  
19 **Plaintiffs’ Claims and the Risks and Expense of Continued**  
20 **Litigation**

21 As discussed in detail below, an objective evaluation of the Settlement confirms  
22 that the relief negotiated on the Class’s behalf—a \$500,000 non-reversionary total Gross  
23 Settlement Amount—is fair, reasonable, and valuable. The Settlement was negotiated by  
24 the Parties at arm’s length with helpful guidance from Mr. Marlin, and the Settlement  
25 confers substantial benefits to Class Members. The relief offered by the Settlement is  
26 particularly impressive when viewed against the difficulties encountered by plaintiffs  
27 pursuing wage and hour cases.

28 In determining whether a settlement agreement is fair, adequate, and reasonable



1 to all concerned, the Court may consider the strength of the plaintiff’s case and the  
 2 amount offered in settlement, among other factors. *Linney v. Cellular Alaska P’ship*, 151  
 3 F.3d 1234, 1242 (9th Cir. 1998). Ultimately, “the district court’s determination is  
 4 nothing more than an amalgam of delicate balancing, gross approximations, and rough  
 5 justice,” and there is no single “formula” to be applied; rather, the Court may presume  
 6 that the parties’ counsel and the mediator arrived at a reasonable range of settlement by  
 7 considering Plaintiffs’ likelihood of recovery. *Officers for Justice v. Civil Serv. Comm’n*,  
 8 688 F.2d 615, 625 (9th Cir. 1982); *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 965 (9th  
 9 Cir. 2009).

Plaintiffs’ Calculations of Defendant’s Theoretical Estimated Exposure	
Regular Rate Claim <sup>3</sup>	\$6,000.00
Rest Period Claim <sup>4</sup>	\$10,648,225.00
Meal Period Claim <sup>5</sup>	\$4,259,290.00
Business Expense Claim <sup>6</sup>	\$182,000.00
Rounding / Off-the-Clock <sup>7</sup>	\$1,271,810.00
Wage Statement Claim <sup>8</sup>	\$2,200,000.00

16 <sup>3</sup> Plaintiffs’ expert found that 10% of Class Members in a sample received  
 17 overtime in the same pay period that they received bonus payments. Assuming a regular  
 18 rate violation in each of those pay periods, Plaintiffs conservatively estimate that these  
 19 Class Members were each underpaid \$30 in overtime during the Class Period. Based  
 20 thereon, Defendant’s exposure would be calculated as follows: 2,000 Class Members ×  
 21 10% × \$30 per class member = \$6,000.00

22 <sup>4</sup> Plaintiffs allege that employees were not permitted to leave the worksite during  
 23 their rest periods. Conservatively assuming that at least 50% of the Settlement Class  
 24 would have left the worksite if allowed, Defendant’s exposure would be: ≈ 1,071,250 rest-  
 25 period eligible shifts × 50% × \$19.88 average hourly wage = \$10,648,225.

26 <sup>5</sup> Plaintiffs allege that Pactiv failed to provide second meal periods when  
 27 employees worked more than 10 hours. Plaintiffs estimated Defendant’s exposure as  
 28 follows: ≈ 1,071,250 meal-period eligible shifts × 20% with second-meal period violations  
 × \$19.88 average hourly wage = \$4,259,290.

<sup>6</sup> Plaintiffs allege that Pactiv failed to reimburse its employees for steel-toed boots  
 required for work, and for the cost of mileage to use personal vehicles to travel to and from  
 employer-mandated drug tests and physical examinations. Pactiv’s exposure for this claim  
 was estimated as follows: (2,000 Class Members × \$80 boots) + (2,000 × 20 miles ×  
 \$0.55) = \$182,000.

<sup>7</sup> In total, Plaintiffs estimate that Class Members lost 63,974.3 hours due to Pactiv’s  
 allegedly unlawful time rounding and/or discounting hours worked prior to an employee’s  
 scheduled start time. Based thereon, Defendant’s exposure for this claim would be  
 calculated as follows: 63,974.3 hours × \$19.88/hour ≈ \$1,271,810.

<sup>8</sup> Based on the foregoing allegations, Plaintiffs allege that Defendant failed to issue  
 Class Members accurately itemized wage statements, with exposure for the claim

<b>Plaintiffs' Calculations of Defendant's Theoretical Estimated Exposure</b>	
Final Pay Claim <sup>9</sup>	\$2,266,320.00
<b>Total</b>	<b>\$20,833,645.00</b>

These estimates assume that each and every one of Plaintiffs' claims would have been certified for class-wide resolution, that Plaintiffs' would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. Understandably, for purposes of evaluating the settlement's reasonableness, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

Ultimately, Plaintiffs' Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiffs' claims; (ii) the risk of class certification being denied, a risk that materialized in the Wilson Action; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiffs'

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calculated as follows; 1,100 Class Members employed during the 1-year wage statute of limitations period  $\times$  \$4,000 maximum penalty = \$4,400,000. However, because this claim is only as strong as the underlying predicate claims, Plaintiffs reduced the value of this claim by 50%, or to \$2,200,000.

<sup>9</sup> Plaintiffs' off-the-clock claims trigger derivative waiting time penalties at the rate of 30 days' wages for each former class member. Based thereon, Plaintiffs estimate Defendant's exposure as follows: 950 former employees  $\times$  30 days wages  $\times$  8 hours  $\times$  \$19.88 = \$4,532,640. However, while Section 203 penalties are relatively straightforward to calculate, the analysis becomes more difficult for settlement purposes as derivative waiting-time penalties are only as strong as the underlying predicate claims, and are subject to good faith defenses. For example, defendants commonly argue that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiffs acknowledge would have been difficult to prove. *See* Cal. Code Regs. tit. 8, § 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."). Plaintiffs accordingly discounted the value of this claim by 50%, or to \$2,266,320.

1 claims, or barred evidence/testimony in support of the claims; (iv) the risk of losing at  
 2 trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the  
 3 difficulties attendant to collecting on a judgment.

4 Given the preceding risks of continued litigation, Plaintiffs believe that a  
 5 \$500,000 settlement is fair and reasonable, and courts routinely approve settlements that  
 6 provide a similar discounted range of the maximum potential recovery.<sup>10</sup>

#### 7 **4. The Settlement Class Has Responded Positively to the** 8 **Settlement**

9 In evaluating the fairness of a Settlement, the “absence of a large number of  
 10 objections to a proposed class action settlement raises a strong presumption that the  
 11 terms of a proposed class settlement action are favorable to the class members.” *National*  
 12 *Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Here, only 4  
 13 individuals opted out of the Settlement Class, and not a single Class Member objected to  
 14 the Settlement. (Romero Decl. ¶¶ 6-7.) The Class’s response is “overwhelmingly  
 15 positive,” supporting approval of the Settlement. *See 7-Eleven Owners for Fair*  
 16 *Franchising*, 85 Cal. App. 4th at 1152-53 (finding support for the settlement where 80  
 17 out of 5,454 class members elected to opt out and nine class members objected); *Chun-*  
 18 *Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (finding 0  
 19 objections and 16 opt-outs out of 329 class members [4.86%] “strongly support[  
 20 settlement”); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC,  
 21 2010 WL 1687832, at \*15 (N.D. Cal. Apr. 22, 2010) (finding an opt-out rate of 0.4%  
 22 supported settlement). In other words, “[t]he fact that the overwhelming majority of the  
 23 class willingly approved the offer and stayed in the class presents at least some objective

24 <sup>10</sup> *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del.  
 25 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total  
 26 estimated damages); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D.  
 27 Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were  
 28 approved); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at \*2  
 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement  
 amount is [. . .] only about five percent of the estimated damages before fee and costs—  
 even before any reduction thereof for attorney’s fees and costs.”).

1 positive commentary as to its fairness.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027  
2 (9th Cir. 1998).

3 The average settlement payment from the Net Settlement Fund is approximately  
4 \$100 and the highest is approximately \$225. (Romero Decl. ¶ 8.) This average net  
5 recovery is significantly higher than many wage and hour class action settlements  
6 approved by California state and federal courts. *See, e.g., Badami v. Grassroots*  
7 *Campaigns, Inc.*, Case No. C 07-03465 JSW (N.D. Cal. Sept. 15, 2008) (average net  
8 recovery of approximately \$195); *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-  
9 00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145);  
10 *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net  
11 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No.  
12 BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120);  
13 *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super.  
14 Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case  
15 No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of  
16 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD  
17 (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria’s Secret Stores,*  
18 *Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of  
19 approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.  
20 Super. Ct.) (average net recovery of approximately \$20).

### 21 C. The Court Should Approve the PAGA Settlement

22 Pursuant to the Settlement Agreement, \$40,000 from the Gross Settlement  
23 Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$30,000)  
24 will be paid directly to the LWDA, and the remaining 25% (\$10,000) will be paid to  
25 PAGA Members. (Settlement Agreement ¶ 36.)

26 This result was reached after good-faith negotiation between the parties. The  
27 amount was valued as follows: Based on information and evidence produced by  
28 Defendant during discovery, Plaintiffs’ Counsel determined that aggrieved employees

1 worked a combined total of approximately 115,000 pay periods during the PAGA  
2 statute of limitations period (“PAGA Period”). Although PAGA provides for a \$200  
3 penalty for “subsequent” violations,<sup>11</sup> a number of courts have found that the  
4 “subsequent” penalty under PAGA applies only after a court or the Labor Commissioner  
5 determines that the employer has violated the Labor Code. *See Bernstein v. Virgin Am.,*  
6 *Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil  
7 penalties” because the defendant was not given notice by the Labor Commissioner when  
8 the “subsequent” violations occurred). Under this line of cases, Defendant’s exposure  
9 would be approximately \$11.5 million = 115,000 violative pay periods × \$100.

10 It should be noted that PAGA gives the Court wide latitude to reduce the amount  
11 of civil penalties “based on the facts and circumstances of a particular case” when “to do  
12 otherwise would result in an award that is unjust, arbitrary and oppressive, or  
13 confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA penalties, courts have  
14 considered issues including whether the employees suffered actual injury from the  
15 violations, whether the defendant was aware of the violations, and the employer’s  
16 willingness to fix the violation. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504,  
17 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum).

18 For example, during the penalty phase of trial in *Carrington*, the plaintiff  
19 requested PAGA penalties in the amount of approximately \$70 million. The trial court  
20 instead awarded only \$150,000—**or 0.21% of the maximum**—and stated that this  
21 reduction was warranted because imposing the maximum penalty would be “unjust,  
22 arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply with  
23 meal period obligations and because the court found the violations were minimal.  
24 *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s  
25

26 <sup>11</sup>, PAGA civil penalties for Labor Code violations are calculated according to  
27 Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or  
28 more employees, the civil penalty is \$100 for each aggrieved employee per pay period  
for the initial violation and \$200 for each aggrieved employee per pay period for each  
subsequent violation (the “subsequent violation penalty”).

1 reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had  
 2 been applied here, Plaintiffs would have recovered only approximately \$24,150 (\$11.5  
 3 million  $\times$  0.0021 reduction).

4 Plaintiffs therefore determined an appropriate range of settlement for PAGA  
 5 penalties as a percentage of the settlement range that was consistent with other hybrid  
 6 class/PAGA settlements approved by California courts.<sup>12</sup> Where PAGA penalties are  
 7 negotiated in good faith and “there is no indication that [the] amount was the result of  
 8 self-interest at the expense of other Class Members,” such amounts are generally  
 9 considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL  
 10 928133, at \*9 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App.  
 11 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement  
 12 which does not allocate any damages to the PAGA claims.”).

13 **D. The Requested Payment to the Settlement Administrator Is**  
 14 **Reasonable and Should Receive Final Approval**

15 Plaintiffs request final approval of settlement administration costs in the amount  
 16 of \$19,000. (Romero Decl. ¶ 10.) CPT has promptly and properly distributed the Class  
 17 Notice to all Class Members and completed its duties in accordance with the settlement  
 18 terms and the Court’s preliminary approval Order. (*See generally* Romero Decl.)  
 19 Accordingly, the \$19,000 payment is fair and reasonable and should be accorded final  
 20 approval along with the rest of the Settlement terms.

21 **IV. CONCLUSION**

22 The Parties have negotiated a fair Settlement of the wage and hour claims that  
 23 likely would not have been brought, let alone successfully resolved, but for the effort and

24 <sup>12</sup> *See Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473  
 25 at \*3 (E.D. Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement  
 26 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon*  
 27 *Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at \*7 (E.D. Cal. Oct.  
 28 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA penalties with  
 \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP, 2011 WL  
 672645 at \*1 (N.D. Cal Feb. 16, 2011) (approving \$6.9 million settlement containing  
 \$10,000 PAGA penalties with \$7,500 paid to LWDA).

1 resolve of the Plaintiffs and their counsel. The Class Members’ positive response  
2 indicates that the Settlement is fair and reasonable. Accordingly, Plaintiffs respectfully  
3 request that this Court grant final approval of the Settlement Agreement and enter  
4 judgment.

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Dated: October 7, 2022

Respectfully submitted,

By: /s/ Brandon Brouillette  
Raul Perez  
Mark A. Ozzello  
Brandon Brouillette  
Joseph Hakakian  
**CAPSTONE LAW APC**  
Attorneys for Plaintiff Mark Wilson

By: /s/ Christina M. Le  
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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

MARK WILSON, individually, and on  
 behalf of other members of the general  
 public similarly situated,  
  
 Plaintiff,  
  
 vs.  
  
 PACTIV LLC, a Delaware limited  
 liability company; and DOES 1 through  
 10, inclusive,  
  
 Defendants.

Case No. 5:20-cv-01691-SB-KK  
 Assigned to: Hon. Stanley Blumenfeld, Jr.  
  
**DECLARATION OF RAUL PEREZ IN  
 SUPPORT OF MOTION FOR FINAL  
 APPROVAL OF CLASS ACTION  
 SETTLEMENT**  
  
 Date: November 8, 2022  
 Time: 8:30 a.m.  
 Place: Department 6C



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**DECLARATION OF RAUL PEREZ**

I, Raul Perez, hereby declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California and the United States District Court, Central District of California. I am a Partner at Capstone Law APC (“Capstone,” or with Wilshire Law Firm PLC, “Plaintiffs’ Counsel”), counsel for Plaintiff Mark Wilson (“Plaintiff” or with Jack Rodriguez, the “Plaintiffs”) in the above-captioned action. Unless indicated otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently to them. I make this declaration in support of the Motion for Final Approval of Class Action Settlement.

**BRIEF OVERVIEW OF THE LITIGATION**

2. On May 29, 2020, Plaintiff Wilson originally filed this action against Defendant Pactiv LLC (“Defendant” or “Pactiv”) (collectively with Plaintiffs, the “Parties”) in the Superior Court of California for the County of San Bernardino. (Dkt. No. 1-Ex. A.) On August 21, 2020, Defendant removed the action to this Court. (Dkt. No. 1.)

3. On April 28, 2021, Plaintiff amended his complaint to include a claim under the Private Attorneys General Act, Labor Code §§2698, *et seq.* (Dkt. No. 23.) On August 6, 2021, Plaintiff filed his motion for class certification. (Dkt. No. 31.) On December 3, 2021, the Court denied the motion. (Dkt. No. 46.) Following the denial of the motion, Plaintiff resumed litigation as to his claim for PAGA civil penalties.

4. On April 7, 2022, the Parties participated in full-day mediation with Mr. Louis Marlin, an experienced mediator of wage and hour class and representative actions. Mr. Marlin helped to manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. With Mr. Marlin’s guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs’ claims. The terms of the settlement are now set forth in complete and final form in the Joint Stipulation of Class Action Settlement and Release. At all times, the Parties’

1 negotiations were adversarial and non-collusive.

2 **INVESTIGATION AND DISCOVERY**

3 5. Plaintiffs' Counsel's evaluation of the settlement's reasonableness was  
4 obtained by Plaintiffs' Counsel's independent investigation into Plaintiffs' claims and  
5 Defendant's defenses, and their review of the considerable discovery produced by  
6 Defendant during the matter's pendency.

7 6. Prior to filing this action, Mr. Wilson contacted Capstone to discuss the  
8 factual bases for pursuing an action against Defendant for Labor Code violations. Mr.  
9 Wilson was familiar with Defendant's labor policies and practices, and over the course  
10 of multiple interviews, knowledgeably summarized those policies and practices to  
11 Capstone's attorneys. During those conversations, he explained how the policies and  
12 practices were instituted and provided valuable insight into how they gave rise to the  
13 alleged Labor Code violations. Based on these interviews, Capstone's attorneys  
14 determined that there were legally sufficient grounds for pursuing an action against  
15 Defendant.

16 7. In preparation for drafting the Complaint, Capstone's attorneys conducted  
17 their own preliminary investigation into the factual bases for Mr. Wilson's claims, which  
18 entailed, *inter alia*, a careful examination of Mr. Wilson's personnel file and associated  
19 records.

20 8. Capstone's attorneys also prepared a detailed letter (11.5 pages, single-  
21 spaced) to notify the LWDA of Mr. Wilson's intent to seek civil penalties and other  
22 available relief recoverable under PAGA for Labor Code violations. Significant research  
23 and effort were expended to prepare a PAGA notice that was consistent with the  
24 developing legal requirements so as to withstand any challenge from Defendant  
25 regarding the notice's sufficiency.

26 9. Following the filing of the Complaint and the Parties Initial Disclosures,  
27 Mr. Wilson's written discovery requests led to the production of considerable evidence,  
28 including the policies and practices directly at issue, as well as those policies and

1 procedures that allegedly affected Defendant’s ability to comply with the Labor Code.  
2 Capstone’s attorneys analyzed hundreds of pages of documents that were produced by  
3 Defendant, and identified the policies and procedures were used in connection with  
4 Plaintiff Wilson’s motion for class certification. Capstone’s attorneys also sought a  
5 sample of Class Members’ time and wage records, and their analysis of these records  
6 was used in connection with Plaintiff Wilson’s motion for class certification, and  
7 thereafter, in connection with Plaintiffs’ Counsel’s evaluation of Defendant’s potential  
8 liability for the claims.

9 10. Following the production of the Class Members’ contact information,  
10 Capstone’s attorneys interviewed numerous Class Members to determine the extent and  
11 frequency of the alleged violations and to learn more about the day-to-day circumstances  
12 giving rise to the alleged violations. Capstone also obtained declarations from Class  
13 Members in support of Mr. Wilson’s motion for class certification.

14 11. In addition to written discovery, the Parties took or defended over 30  
15 depositions in the Wilson Action, including the deposition of Defendant’s corporate  
16 designees, the Class Members who provided declarations in support of Mr. Wilson’s  
17 motion for class certification, and the Class Members who provided declarations in  
18 support of Defendant’s opposition to certification. These depositions provided  
19 considerable evidence concerning, *inter alia*, the strengths and weaknesses of the claims.

20 12. By engaging in such a thorough investigation and evaluation of Plaintiffs’  
21 claims, Plaintiffs’ Counsel can opine that the Settlement, for the consideration and on the  
22 terms set forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the  
23 best interests of Class Members in light of all known facts and circumstances, including  
24 the risk of significant delay and uncertainty associated with litigation, and various  
25 defenses asserted by Defendant.

26 **CAPSTONE LAW APC FIRM PROFILE**

27 13. Since its founding in 2012, Capstone has emerged as a major force in  
28 aggregate litigation, making law on cutting-edge issues.

1           14.     In February, 2015, Ryan H. Wu and I were honored with the *California*  
2 *Lawyer* Attorney of the Year (CLAY) award in labor and employment for our work in  
3 the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014),  
4 which preserved the right of California workers to bring representative actions under the  
5 Labor Code Private Attorneys General Act (“PAGA”) notwithstanding a representative  
6 action waiver in an arbitration agreement.

7           15.     Recognized as a leading firm in the prosecution of PAGA enforcement  
8 actions, Capstone is responsible for some of the most important decisions in this area. In  
9 *Williams v. Superior Court (Marshalls of Calif.)*, 3 Cal.5th 531 (2017), Capstone  
10 attorneys achieved a watershed decision before the California Supreme Court as to the  
11 broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747  
12 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that  
13 PAGA actions are state enforcement actions not covered by the Class Action Fairness  
14 Act.

15           16.     Capstone has made important contributions to consumer protection law. In  
16 *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a  
17 major decision holding that the right to seek public injunctive relief under the state’s  
18 consumer protection laws cannot be waived and that consumers need not satisfy class  
19 certification requirements to enjoin unfair business practices on behalf of the public. In  
20 *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a  
21 denial of class certification, making law that clarified the use of “benefit of the bargain”  
22 damages models in consumer class actions.

23           17.     Capstone served as class counsel in a number of significant wage and hour  
24 settlements, including \$12 million on behalf of a nationwide class of in *Hightower v.*  
25 *JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of  
26 non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No.  
27 BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v.*  
28 *Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA*,

1 *Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an  
2 \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code  
3 violations.

4 18. Capstone has an established practice in automotive defect class actions and  
5 is currently appointed sole class counsel, following contested class certification, in  
6 *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17,  
7 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL  
8 1940619 (C.D. Cal. Mar. 27, 2019).

9 19. Capstone has settled over 100 high-stakes class and representative actions.  
10 Capstone's settlements have directly compensated hundreds of thousands of California  
11 workers and consumers. Capstone's actions have also forced employers to modify their  
12 policies for the benefit of employees, including changing the compensation structure for  
13 commissioned employees and changing practices to ensure that workers will be able to  
14 take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions,  
15 Capstone has secured millions of dollars in civil penalties for the State of California.

16 20. The following is a representative sample of Capstone's settlements:

17 a. *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-  
18 01802-PSG-PLA (N.D. Cal.): gross settlement of \$12  
19 million on behalf of approximately 150,000 personal  
20 bankers, tellers, sales associates, and assistant branch  
21 manager trainees for wage and hour violations;

22 b. *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.):  
23 providing cash payments and unique buyback program for  
24 nearly 2 million consumers;

25 c. *Moore v. Petsmart, Inc.*, No. 5:12-cv-03577-EJD (N.D.  
26 Cal.): gross settlement of \$10 million on behalf of over  
27 19,000 non-exempt PetSmart employees for wage and hour  
28 violations;

- 1 d. *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.):  
2 gross settlement of \$9 million on behalf of approximately  
3 1,200 pharmacists for wage and hour violations;
- 4 e. *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718  
5 (Ventura Super. Ct.): gross settlement of over \$6.5 million  
6 on behalf of oil rig workers for sleep time and other wage  
7 violations;
- 8 f. *Cook v. United Insurance Co.*, No. C 10-00425 (Contra  
9 Costa Super. Ct.): gross settlement of \$5.7 million on behalf  
10 of approximately 650 sales representatives;
- 11 g. *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San  
12 Bernardino Super. Ct.): gross settlement of \$5.5 million for  
13 approximately 5,500 non-exempt employees.
- 14 h. *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross  
15 settlement of \$5.4 million in a case alleging FCRA  
16 violations;
- 17 i. *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628  
18 (N.D. Cal.): gross settlement of \$5 million on behalf of over  
19 12,000 nonexempt employees;
- 20 j. *The Children's Place Retail Stores Wage & Hour Cases*, No.  
21 JCCP 4790: gross settlement of \$5 million on behalf of  
22 15,000 non-exempt employees;
- 23 k. *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.):  
24 gross settlement of nearly \$5 million on behalf of over  
25 100,000 non-exempt workers for meal break and wage  
26 statement claims;
- 27 l. *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles  
28 Super. Ct.): gross settlement of nearly \$5 million on behalf of

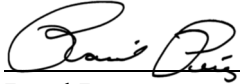
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2,700 non-exempt employees following contested certification;

- m. *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- n. *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

21. Attached as Exhibit 1 is a true and correct copy of Capstone’s firm resume.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 7th day of October, 2022, at Los Angeles, California.

  
\_\_\_\_\_  
Raul Perez

# Exhibit 1





## FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).



## SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- *Moore v. Petsmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.



## PROFESSIONAL BIOGRAPHIES

### Partners

**Rebecca Labat.** Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

**Raul Perez.** Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4<sup>th</sup> 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.



**Melissa Grant.** Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

**Ryan H. Wu.** Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshalls of CA LLC)*, 3 Cal.5th 531(2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

**Robert Drexler.** Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims



such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2020.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

**Jamie Greene.** Jamie Greene is a partner with Capstone Law, where she leads the firm's business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm's client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

**Bevin Allen Pike.** Bevin Allen Pike is a partner with Capstone Law, where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

#### **Senior Counsel**

**Brandon Brouillette.** Brandon Brouillette is a senior counsel with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. Mr. Brouillette's entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, he served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California, where he majored in Business Administration and spent a semester abroad in Budapest, Hungary. In 2016, Brandon was selected as one of Super Lawyers' "Rising Stars" in Southern California.



**Theresa Carroll.** Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

**Liana Carter.** Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

**Anthony Castillo.** Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

**Molly DeSario.** Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Ms. DeSario's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. She has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.



Ms. DeSario began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, she has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated summa cum laude.

**Helga Hakimi.** Helga Hakimi is a senior counsel at Capstone Law. Her practice primarily involves employment law class action litigation, namely wage-and-hour class actions and PAGA litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work, and related employer violations under the Fair Labor Standards Act and California Labor Code.

Prior to joining Capstone, Ms. Hakimi was a partner at a civil litigation firm in West Los Angeles, where she handled mainly real estate litigation, business litigation, and defense of some employment law matters; prior to that, she worked as a civil litigation attorney handling complex personal injury litigation. Ms. Hakimi's interest in advocating for employee rights began in law school, where she volunteered for the Workers' Rights Clinic and assisted low-income community members in Northern California's greater Bay Area region with employment-related legal issues. Upon graduating from law school, Ms. Hakimi worked as an associate for a municipal law firm, and thereafter at the local City Attorney's Office, where she advised municipalities and cities in civil matters involving land use, environmental law, development issues, Constitutional law, and First Amendment rights. Ms. Hakimi graduated from Berkeley Law (Boalt Hall School of Law), where she earned her Juris Doctorate and was awarded the Prosser Award in Remedies. Ms. Hakimi received her Bachelor of Arts degree in Political Science with a minor in Education Studies from the University of California, Los Angeles, and graduated summa cum laude and with Departmental Highest Honors.

**Daniel Jonathan.** Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

**Jonathan Lee.** A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.



Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

**Mark A. Ozzello.** Mark A. Ozzello is a senior counsel with Capstone Law. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. He has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mr. Ozzello is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Freniere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal, and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mr. Ozzello attended Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mr. Ozzello has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals.

**Cody Padgett.** A senior counsel at Capstone Law, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

**Eduardo Santos.** Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

**Mao Shiokura.** Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-





and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

**John Stobart.** John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

**Roxanna Tabatabaepour.** Roxanna Tabatabaepour is a senior counsel with Capstone Law. Her practice primarily involves representing employees in class actions and representative actions for various violations of the California Labor Code.

Before joining Capstone, Ms. Tabatabaepour's experience included representing workers in single-plaintiff and class/representative action lawsuits regarding wage-and-hour violations, as well as individual claims for discrimination, retaliation, failure to accommodate, harassment, and wrongful termination, under both California and federal laws. Ms. Tabatabaepour received her undergraduate degrees from the University of California San Diego. She subsequently graduated from the American University, Washington College of Law, where she was a Marshall-Brennan Constitutional Literacy Fellow and taught Constitutional Literacy to teens in marginalized communities.

**Orlando Villalba.** Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.



**Tarek Zohdy.** A senior counsel with Capstone Law, Tarek Zohdy develops, investigates and litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class actions from investigation through settlements that have provided significant relief to millions of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as “Lemon Law.” He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

#### **Associates**

**Tyler Anderson.** Tyler Anderson is an associate with Capstone Law. His practice focuses on complex motions, writs, and appeals. Before joining Capstone, Mr. Anderson was Co-Director of the Los Angeles Center for Community Law and Action (“LACCLA”), a nonprofit law firm that represents tenant unions and union organizers. While there, Mr. Anderson tried a disparate impact federal Fair Housing Act case that resulted in a jury verdict of over \$1,000,000. He also frequently used California Anti-SLAPP laws to block attempts to silence tenant union organizers. Prior to working at LACCLA, Mr. Anderson clerked for the Honorable Martha Vazquez, a federal district court judge for the District of New Mexico who, at the time, sat on the Executive Committee of the Federal Judiciary. Before that, Mr. Anderson was a litigation associate at the international law firm Jenner & Block LLP. Mr. Anderson graduated from Harvard Law School, where he was the Executive Articles Editor of the Harvard Journal on Legislation as well as President of one of the largest student-run pro bono organizations at Harvard University, Project No One Leaves. He graduated with several “Dean’s Scholar” prizes for receiving top grades in his constitutional law courses.

**Sairah Budhwani.** Sairah Budhwani is an associate with Capstone Law. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Previously, Ms. Budhwani litigated employment discrimination, harassment, and retaliation claims, and also represented incarcerated individuals contesting the conditions of their confinement. Ms. Budhwani graduated from UCLA School of Law in 2019 and received an undergraduate degree in Urban Studies from University of California, Irvine in 2012. Ms. Budhwani is admitted to practice law in California. She is fluent in Urdu.

**Laura Goolsby.** Laura Goolsby is an associate with Capstone Law. Her practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. Prior to joining Capstone Law, Ms. Goolsby was an associate at a California civil litigation practice representing individuals in toxic tort disputes. Previous to that, Ms. Goolsby was a trial attorney in a California lemon law firm, trying cases against automobile manufacturers in state and federal court. Ms. Goolsby is published in the University of Pennsylvania Journal of Law and Change law review and served as a judicial intern to the U.S. Department of Justice Immigration Court while in law school. Ms. Goolsby graduated from California Western School of Law, where she was a member of the award-winning Philip C. Jessup International Moot Court team and spent multiple trimesters on the Dean’s List. She graduated with several Academic Excellence Awards for receiving top grades in various international law, civil rights law, and legal skills courses.



**Joseph Hakakian.** Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Mr. Hakakian served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. He graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney's Office. Prior to attending law school, Mr. Hakakian received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean's Honor List, and College Honors, and received scholastic achievement awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

**Ninel Kocharyan.** Ninel Kocharyan is an associate with Capstone Law. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violation of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Ms. Kocharyan began her career in entertainment law reviewing, drafting, and negotiating contracts for talent and ensuring FTC compliance. She immigrated to the United States from Russia at the age of 15 with a passion to pursue a career in law. Ms. Kocharyan graduated from Thomas Jefferson School of Law in 2014 and received her undergraduate degree from University of California, Los Angeles where she majored in Political Science. Ms. Kocharyan is admitted to practice law in California.

**Alexander Lima.** Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. Mr. Lima graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

**Trisha Monesi.** Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

**Jezzette Ron.** Jezzette Ron is an associate with Capstone Law. Her practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. She began her career as in-house counsel for a private entity reviewing and drafting company policies. During this time, she actively supported the company with human resource and workers compensation matters. Additionally, she ensured company compliance with California Labor Codes and Occupational Safety and Health Administration (OSHA) regulations. She also implemented an Illness Injury Prevention Program, which included a COVID-19 Exposure Control and Response procedure in



compliance with OSHA. Ms. Ron graduated from Whittier Law in 2017, where she served as a board member of the Student Bar Association. She received her undergraduate degree from the University of California, Riverside in 2012 where she majored in Business Management and Public Policy. Ms. Ron is admitted to practice law in California and takes pride in being an advocate for creating a work friendly environment for all employees.

**OUTREACH AND EDUCATION**

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal ([www.impactlitigation.com](http://www.impactlitigation.com)). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California’s consumer and workplace protection laws.

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6 Attorneys for Plaintiff JACK RODRIGUEZ

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 MARK WILSON, individually, and on  
12 behalf of other members of the general  
13 public similarly situated,

14 Plaintiff,

15 vs.

16 PACTIV LLC, a Delaware limited  
17 liability company; and DOES 1 through  
18 10, inclusive,

19 Defendants.  
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Case No. 5:20-cv-01691-SB-KK

Assigned to: Hon. Stanley Blumenfeld, Jr.

**DECLARATION OF JUSTIN F.  
MARQUEZ IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: November 8, 2022  
Time: 8:30 a.m.  
Place: Courtroom 6C

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**DECLARATION OF JUSTIN F. MARQUEZ**

I, Justin F. Marquez, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Jack Rodriguez in the action entitled, *Jack Rodriguez v. Pactiv LLC*, No. 5:21-cv-00841-SB-KK (C.D. Cal.) (the “Rodriguez Action”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement.

**CASE BACKGROUND**

2. The Rodriguez Action is a wage and hour class action. Plaintiff Rodriguez and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period.

3. On February 22, 2021, Plaintiff Rodriguez filed a putative wage-and-hour class action complaint against Defendant Pactiv LLC for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194, and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); and (7) unfair business practices (Business and Professions Code 17200 et seq.).

4. On February 23, 2021, Plaintiff Rodriguez submitted his PAGA Notice to the Labor and Workplace Development Agency (“LWDA”) and served Defendant employer. Plaintiff Rodriguez received no response from the LWDA to his PAGA Notice.

5. On May 12, 2021, Defendant removed this case to the U.S. District Court for the Central District of California, and it was assigned to the Honorable George H. Wu,

1 Case No. 5:21-cv-00841-GW-SHK.

2 6. On May 19, 2021, Defendant filed an Answer to the Complaint, and denied  
3 any liability.

4 7. On May 21, 2021, this case was transferred to the Honorable Stanley  
5 Blumenfeld, Jr., and assigned Case No. 5:21-cv-00841-SB-KK. A Mandatory Scheduling  
6 Conference that was scheduled on June 28, 2021. The Mandatory Scheduling Conference  
7 was subsequently continued to July 2, 2021. On July 24, 2021, as a result of a motion for  
8 class certification pending in a prior filed class action case in this same Court against  
9 Defendant involving overlapping wage and hour claims, entitled *Mark Wilson v. Pactiv*  
10 *LLC*, No. 5:20-cv-01691-SB-KK (C.D. Cal.) (the “Wilson Action”), the Parties in this case  
11 stipulated to a stay of this case until a decision was entered by the Court on the motion.  
12 On July 28, 2021, the Court signed the Order granting the Parties’ Joint Stipulation to stay  
13 these proceedings, with the Court further ordering that upon resolution of the Wilson  
14 Action certification motion, the Parties were to file an updated joint status report with the  
15 Court no later than 14 days.

16 8. On December 3, 2021, the Court denied the motion for class certification in  
17 the Wilson Action.

18 9. On December 17, 2021, the parties submitted a Joint Status Report to the  
19 Court, with the Parties indicating different positions on whether Plaintiff Rodriguez could  
20 proceed forward with his claims after the denial of the Wilson Action motion for class  
21 certification. After further briefing on the issue of whether Plaintiff Rodriguez may  
22 proceed with class certification and briefing on the discovery the Parties intended to  
23 proceed with, on February 1, 2022, the Court lifted the stay and scheduled a Mandatory  
24 Scheduling Conference on February 18, 2022.

25 10. At the February 18, 2022 Mandatory Settlement Conference hearing, after  
26 reviewing the Joint Rule 26(f) Report submitted and after hearing from the Parties’  
27 counsels, the Court scheduled a June 3, 2023 deadline for Plaintiff Rodriguez to file his  
28 motion for class certification deadline, and a February 13, 2023 Trial date.

1           11.    On March 25, 2022, Plaintiff Rodriguez filed a motion for leave to file a  
2 First Amended Complaint to add his PAGA claim after meet and confer discussions  
3 between the Parties had failed and after the Court had rejected a prior filing of the motion  
4 on March 18, 2022 due to the listed hearing date being “closed.” This motion was  
5 subquently vacated as “moot” after the Parties globally settled this case with the Wilson  
6 Action.

7   DISCOVERY AND INVESTIGATION

8           12.    After the the Court lifted the stay on February 1, 2022, Defendant produced  
9 to Plaintiff Rodriguez the documents it believed were relevant to the Rodriguez Action.  
10 Most of these documents were previously produced in the Wilson Action, which included  
11 a sample of time and pay records for class members. Defendant also provided documents  
12 of their wage and hour policies and practices during the class period. At this time, the  
13 Parties also proceeded forward with discovery necessary for class certification, which  
14 included written discovery and the start of the scheduling relevant depositions. Plaintiff  
15 Rodriguez also obtained the Class list, which was the same list Defendant provided in the  
16 Wilson Action after the Belaire West notice process was completed.

17           13.    In or around March 10, 2022, when the Parties in both the Rodriguez Action  
18 and Wilson Action agreed to a global mediation of the claims in both cases with  
19 experienced class action mediator Lou Marlin, the Parties in the Rodriguez Action agreed  
20 to a stay of formal discovery until after the mediation was completed on April 7, 2022.

21           14.    In advance of the mediation, Defendant also provided the Plaintiffs with  
22 information regarding the total number of current and former employees in order for  
23 Plaintiffs to complete their evaluations of the claims prior to the mediation.

24           15.    After reviewing documents regarding Defendant’s wage and hour policies  
25 and practices, analyzing Defendant’s timekeeping and payroll records, and interviewing  
26 Class Members, Class Counsel was able to evaluate the probability of class certification,  
27 success on the merits, and Defendant’s maximum monetary exposure for all claims. Class  
28 Counsel also investigated the applicable law regarding the claims and defenses asserted in



1 the litigation. Class Counsel reviewed these records and prepared a damage analysis prior  
2 to mediation.

3 SETTLEMENT NEGOTIATIONS AND PRELIMINARY APPROVAL

4 16. On April 7, 2022 the Parties in both the Rodriguez Action and Wilson  
5 Action participated in private mediation with experienced class action mediator Lou  
6 Marlin. The mediation was conducted via Zoom. The settlement negotiations were at  
7 arm’s length and, although conducted in a professional manner, were adversarial. The  
8 parties went into the mediation willing to explore the potential for a settlement of the  
9 dispute, but each side was also prepared to litigate their position through trial and appeal  
10 if a settlement had not been reached.

11 17. After extensive negotiations and discussions regarding the strengths and  
12 weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a global  
13 settlement of all claims on the date of the mediation.

14 18. The Parties agreed to settle the underlying class claims in exchange for the  
15 Gross Settlement Amount of \$500,000. The Gross Settlement Amount includes: (1)  
16 automatic payments to all Participating Class Members—meaning, all Class Members  
17 except those who submit timely and valid Requests for Exclusion—from the Net  
18 Settlement Fund; (2) \$166,667 in attorneys’ fees (i.e., one-third of the common fund) and  
19 up to \$50,000 in litigation costs to Plaintiffs’ Counsel; (3) Settlement Administration Costs  
20 of approximately \$20,000; (4) a \$30,000 payment to the LWDA and a \$10,000 payment  
21 to PAGA Members; and (5) Class Representative Enhancement Payments of \$10,000,  
22 each, for Plaintiffs’ service on behalf of the Settlement Class, the risks they took in  
23 bringing their representative claims, and for general releases of all claims arising out of  
24 their employment with Defendant.

25 19. The Settlement also provides that Defendant will not oppose a fee  
26 application of up to \$166,667 in attorneys’ fees (i.e., one-third of the common fund) of  
27 the Settlement Amount, plus out-of-pocket costs not to exceed \$50,000.

28 20. Plaintiff Rodriguez does not have any interest, financial or otherwise, in the

1 third-party administrator, CPT Group, Inc.

2 21. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone  
3 employed at the law firm) has any interest, financial or otherwise, in the third-party  
4 administrator CPT Group, Inc.

5 22. Wilshire Law Firm, PLC has a fee-splitting agreement with Capstone Law  
6 APC, counsel for Plaintiff Wilson.

7 23. On July 1, 2022, the Court entered and order granting Plaintiffs' Motion  
8 for Preliminary Approval.

9 24. On July 8, 2022, the Court entered an order approving the schedule for  
10 settlement, which includes setting September 9, 2022 as the last day for Plaintiffs to file  
11 the Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments,  
12 among other things.

13 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

14 25. Class Counsel has conducted a thorough investigation into the facts of this  
15 case. Based on the foregoing discovery and their own independent investigation and  
16 evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and  
17 adequate and is in the best interests of the Settlement Class Members in light of all known  
18 facts and circumstances, the risk of significant delay, the defenses that could be asserted  
19 by Defendant both to certification and on the merits, trial risk, and appellate risk.

20 26. Based on an analysis of the facts and legal contentions in this case,  
21 documents and information from Defendant, and working with Class Counsel from  
22 Capstone Law, APC, we evaluated Defendant's maximum exposure. We took into  
23 account the risk of the denial of class certification in the Wilson Action, not having the  
24 claims certified in the Rodriguez Action and the risk of not prevailing at trial, even if the  
25 claims are certified. After using the data Defendant provided, including a random sample  
26 of timekeeping and payroll records, as well as class member demographics (i.e., the  
27 number of class members, workweeks, and average total compensation of the class), with  
28 the assistance of a statistics experts, we created a damages model to evaluate the realistic

1 range of potential recovery for the class.

2 27. I have reviewed the declaration of counsel for Plaintiff Mark Wilson and  
3 agree with his analysis of Defendant’s potential liability. My expert analyzed the same  
4 data and reached a similar conclusion.

5 28. As discussed in detail below, based on my experience handling such matters  
6—a \$500,000 non-reversionary total Gross Settlement Amount—is fair, reasonable, and  
7 valuable. The Settlement was negotiated by the Parties at arm’s length with helpful  
8 guidance from Mr. Marlin, and the Settlement confers substantial benefits to Class  
9 Members. The relief offered by the Settlement is particularly impressive when viewed  
10 against the difficulties encountered by plaintiffs pursuing wage and hour cases

11 29. This estimate assumes that each and every one of Plaintiffs’ claims would  
12 have been certified for class-wide resolution, that Plaintiffs would have prevailed at trial,  
13 and that the jury’s verdict would have been affirmed on appeal.

14 30. Ultimately, Plaintiffs’ Counsel determined an appropriate range of recovery  
15 for settlement purposes by offsetting Defendant’s maximum theoretical liability by: (i) the  
16 strength of the defenses to the merits of Plaintiffs’ claims; (ii) the risk of class certification  
17 being denied, a risk that materialized in the Wilson Action; (iii) the risk of losing on any  
18 of a number of dispositive motions that could have been brought between certification and  
19 trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions  
20 in limine) that might have eliminated all or some of Plaintiffs’ claims, or barred  
21 evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances  
22 of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to  
23 collecting on a judgment.

24 31. Given the preceding risks of continued litigation, Plaintiffs believe that a  
25 \$500,000 settlement is fair and reasonable, and courts routinely approve settlements that  
26 provide a similar discounted range of the maximum potential recovery.

27 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

28 32. Class Counsel represent that Plaintiff Rodriguez devoted a great deal of time

1 and work assisting counsel in the case, communicated with counsel very frequently for  
2 litigation and to prepare for mediation, and was frequently in contact with Class Counsel  
3 during the mediation. Plaintiff's requested enhancement award is reasonable particularly  
4 in light of the substantial benefits Plaintiff generated for all class members.

5 33. Throughout this litigation, Plaintiff, who is a former employee of Defendant,  
6 has cooperated immensely with my office and has taken many actions to protect the  
7 interests of the class. Plaintiff provided valuable information regarding unpaid overtime,  
8 meal period, and rest period claims. Plaintiff also informed my office of developments  
9 and information relevant to this action, participated in decisions concerning this action,  
10 made himself available to answer questions during the mediation, and provided my office  
11 with the names and contact information of potential witnesses in this action. Before we  
12 filed this case, Plaintiff provided my office with valuable information and documents  
13 regarding Defendant's policies and practices regarding the claims alleged in this action.  
14 The information and documentation provided by Plaintiff was instrumental in establishing  
15 the wage and hour violations alleged in this action, and the recovery provided for in the  
16 Settlement Agreement would have been impossible to obtain without Plaintiff's  
17 participation.

18 34. At the same time, Plaintiff faced many risks in adding himself as the class  
19 representative in this matter. Plaintiff faced actual risks with his future employment, as  
20 putting himself on public record in an employment lawsuit could also very well affect his  
21 likelihood for future employment. Furthermore, as part of this settlement, Plaintiff is  
22 executing a general release of all claims against Defendant.

23 35. In turn, class members will now have the opportunity to participate in a  
24 settlement, reimbursing them for alleged wage violations they may have never known  
25 about on their own or been willing to pursue on their own. If these class members would  
26 have each tried to pursue their legal remedies on their own, that would have resulted in  
27 each having to expend a significant amount of their own monetary resources and time,  
28 which were obviated by Plaintiff putting herself on the line on behalf of these other class

1 members.

2 36. In the final analysis, this class action would not have been possible without  
3 the aid of Plaintiff, who put his own time and effort into this litigation, sacrificed the value  
4 of his own individual claims, and placed himself at risk for the sake of the class members.  
5 The requested enhancement award for Plaintiff for his service as the class representative  
6 and for his general release of all individual claims is a relatively small amount of money  
7 when the time and effort put into the litigation are considered and in comparison to  
8 enhancements granted in other class actions. The requested incentive award is therefore  
9 reasonable to compensate Plaintiff for his active participation in this lawsuit. Indeed, in  
10 *Karl Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, a  
11 wage and hour class action alleging that class members were misclassified as exempt  
12 outside salespersons, I was co-lead Class Counsel and helped negotiate a \$2.5 million class  
13 action settlement for 339 class members, and the court approved a \$25,000 class  
14 representative incentive award for each named plaintiff.

15 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

16 37. The Settlement provides for attorney's fees payable to Class Counsel in an  
17 amount up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award  
18 of \$166,667, plus actual costs and expenses not to exceed \$50,000.00. The proposed  
19 award of attorneys' fees to Class Counsel in this case can be justified under either method  
20 – lodestar or percentage recovery. Class Counsel, however, intend to base the proposed  
21 award of fees, costs and expenses on the percentage method as many of the entries in the  
22 time records will have to be redacted to preserve attorney-client and attorney work product  
23 privileges.

24 38. I am informed and believe that the fee and costs provision is reasonable.  
25 The fee percentage requested is less than that charged by my office for most employment  
26 cases. My office invested significant time and resources into the case, with payment  
27 deferred to the end of the case, and then, of course, contingent on the outcome.

28 39. Although Capstone Law APC is taking lead on behalf of Plaintiffs, it is

1 further estimated that my office will need to expend at least another 20 to 30 hours to  
2 monitor the process leading up to the final approval and payments made to the class. My  
3 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

4 40. The risk to my office has been very significant, particularly if we would not  
5 be successful in pursuing this class action. In that case, we would have been left with no  
6 compensation for all the time taken in litigating this case. Indeed, I have taken on a number  
7 of class action cases that have resulted in thousands of attorney hours being expended and  
8 ultimately having certification denied or the defendant company going bankrupt. The  
9 contingent risk in these types of cases is very real and they do occur regularly.  
10 Furthermore, we were precluded from focusing on, or taking on, other cases which could  
11 have resulted in a larger, and less risky, monetary gain.

12 41. Because most individuals cannot afford to pay for representation in litigation  
13 on an hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law  
14 clients on a contingency fee basis. Pursuant to this arrangement, we are not compensated  
15 for our time unless we prevail at trial or successfully settle our clients' cases. Because  
16 Wilshire Law Firm, PLC is taking the risk that we will not be reimbursed for our time  
17 unless our client settles or wins his or her case, we cannot afford to represent an individual  
18 employee on a contingency basis if, at the end of our representation, all we are to receive  
19 is our regular hourly rate for services. It is essential that we recover more than our regular  
20 hourly rate when we win if we are to remain in practice so as to be able to continue  
21 representing other individuals in civil rights employment disputes.

22 42. As of the drafting of this motion, my office has incurred certain costs in  
23 expenses litigating this action, and we anticipate accruing additional costs up to Final  
24 Approval of the Settlement. These expenses were reasonably necessary to the litigation  
25 and were actually incurred by my office. They should be reimbursed in full, up to the  
26 maximum amount allowed in the Settlement Agreement. Additional information on  
27 Plaintiff Rodriguez's costs will be provided at the time Plaintiffs submit their motion for  
28 attorneys' fees and costs.

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MY EXPERIENCE AND QUALIFICATIONS

43. Wilshire Law Firm was selected by Best Lawyers and U.S. News & World Report as one of the nation’s Best Law Firms in 2022 and is comprised of over 50 attorneys and over 250 employees. Wilshire Law Firm is actively and continuously practicing in employment litigation, representing employees in both individual and class actions in both state and federal courts throughout California.

44. Wilshire Law Firm is qualified to handle this litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. Wilshire Law Firm has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

45. I graduated from the University of California, Los Angeles’s College Honors Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in 2008.

46. My practice is focused on advocating for the rights of consumers and employees in class action litigation and appellate litigation. I am currently the primary attorney in charge of litigating several class action cases in state and federal courts across the United States.

47. I have received numerous awards for my legal work. From 2017 to 2020, Super Lawyers selected me as a “Southern California Rising Star,” and in 2022 I was selected as a “Southern California Super Lawyer.” In 2023, I was selected as one of the “Best Lawyers in America.” In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40” attorney. I am also rated 10.0 (“Superb”) by Avvo.com.

48. I am on the California Employment Lawyers Association (CELA)’s Wage and Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced Wage & Hour Seminar on the topic of manageability of class actions. Since

1 2013, I have actively mentored young attorneys through CELA’s mentorship program.

2 49. I am also an active member of the Consumer Attorneys of California  
3 (CAOC). In 2020, I was selected for a position on CAOC’s Board of Directors. I am also  
4 a past member of CAOC’s Diversity Committee, and I helped assist the CAOC in  
5 defeating bills that harm employees. Indeed, I recently helped assist Jacqueline Serna,  
6 Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation  
7 that sought to limit the enforceability of California Labor Code § 226.

8 50. As the attorney responsible for day-to-day management of this matter at the  
9 Wilshire Law Firm, I have over thirteen years of experience with litigating wage and hour  
10 class actions. Over the last thirteen years, I have managed and assisted with the litigation  
11 and settlement of several wage and hour class actions. In those class actions, I performed  
12 similar tasks as those performed in the course of prosecuting this action. My litigation  
13 experience includes:

- 14 a. I served as lead or co-lead in negotiating class action settlements worth over  
15 \$10 million in gross recovery to class members for each year since 2020,  
16 including over \$27.5 million in 2022.
- 17 b. I was part of the team of attorneys that prevailed in *Moore v.*  
18 *Centrelake* (Cal. Ct. App. Sept. 16, 2022) 2022 WL 4285804, ---  
19 Cal.Rptr.3d ----, the first California appellate decision in a data  
20 breach class action holding that consumer plaintiffs adequately  
21 alleged injury in fact under the benefit of the bargain theory and  
22 monitoring-costs theory.
- 23 c. In 2022, Top Verdict recognized Wilshire Law Firm and myself for  
24 having one case in the Top 20 Labor & Employment Settlements  
25 (including number 15 for the \$1.6 million settlement in *Moreno v.*  
26 *Pretium Packaging, L.L.C.*) and three additional cases in the Top 50  
27 Labor & Employment Settlements (numbers 25, 28, and 31).
- 28 d. To my knowledge, I am the only attorney to appear on each of the following



1 *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation  
2 Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class  
3 Action Settlements.

- 4 e. As lead counsel, on April 29 2021, I prevailed against CVS Pharmacy, Inc.  
5 by winning class certification on behalf of hundreds of thousands of  
6 consumers for misleading advertising claims in *Joseph Mier v. CVS*  
7 *Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 8 f. As lead counsel, I prevailed against Bank of America by: winning class  
9 certification on behalf of thousands of employees for California Labor Code  
10 violations; defeating appellate review of the court’s order certifying the  
11 class; defeating summary judgment; and defeating a motion to dismiss.  
12 (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020  
13 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct.  
14 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018).). The decision  
15 certifying the class in *Frausto* is also discussed in *Class Certification Under*  
16 *Fed. R. Civ. P. 23 in Action by Information Technology or Call Center*  
17 *Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.  
18 3d Art. 8.
- 19 g. I was the primary author of the class certification and expert briefs in *ABM*  
20 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour  
21 class action for over 40,000 class members for off-the-clock, meal period,  
22 split shift, and reimbursement claims. *ABM Industries Overtime Cases* is  
23 the first published California appellate authority to hold that an employer’s  
24 “auto-deduct policy for meal breaks in light of the recordkeeping  
25 requirements for California employers is also an issue amenable to  
26 classwide resolution.” (*Id.* at p. 310.)<sup>1</sup> Notably, the Court of Appeal also  
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28 <sup>1</sup> As a California district court observed before the *ABM Industries Overtime*  
decision, “[t]he case law regarding certification of auto-deduct classes is mixed.”

1 held that expert analysis of timekeeping records can also support the  
2 predominance requirement for class certification. (*Id.* at p. 310-311.) In  
3 2021, the case settled for \$140 million, making it one of the largest ever  
4 wage and hour class action settlements for hourly-paid employees in  
5 California.

6 h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015)  
7 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that  
8 non-class claims under California’s Private Attorney Generals Act  
9 (“PAGA”) cannot be used to calculate the amount in controversy under the  
10 Class Action Fairness Act (“CAFA”). This case is cited in several leading  
11 treatises such as *Wright & Miller’s Federal Practice & Procedure*, and  
12 *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court  
13 denied review of a case that primarily concerned *Yocupicio*. That effort was  
14 led by Theodore J. Boutrous, who brought the cert petition, with amicus  
15 support from a brief authored by Andrew J. Pincus.<sup>2</sup> Considering that  
16 leading Supreme Court practitioners from the class action defense bar were  
17 very motivated in undermining *Yocupicio* case, but failed, this demonstrates  
18 the national importance of the *Yocupicio* decision.

19 i. On December 13, 2018, the United States District Court granted final  
20 approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v.*  
21 *DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433  
22 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing  
23 so, the Court found: “Class Counsel’s declarations show that the attorneys  
24 are experienced and successful litigators.” (*Id.* at p. \*10.)

25 j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS  
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27 (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-  
28 EDL, 2017 WL 1758048, \*7.)

<sup>2</sup> <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>

1 129852, a reported decision permitting class-wide discovery even though  
2 the employer has a lawful policy because “[t]he fact that a company has a  
3 policy of not violating the law does not mean that the employees follow it,  
4 which is the issue here.” The court also ordered defendant to pay for the  
5 cost of *Belaire-West* notice.

6 k. In 2013, I represented a whistleblower that reported that his former  
7 employer was defrauding the State of California with the help of bribes to  
8 public employees. The case, a false claims (*qui tam*) action, resulted in the  
9 arrest and criminal prosecution of State of California employees by the  
10 California Attorney General’s Office.

11 l. In 2013, I was part of a team of attorneys that obtained conditional  
12 certification for over 2,000,000 class members in a federal labor law case  
13 for misclassification of independent contractors that did crowdsourced work  
14 on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-  
15 05524-JST (MEJ), resulting in the following pro-plaintiff reported  
16 decisions:

17 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013)  
18 (holding that an unaccepted Rule 68 offer doesn’t moot  
19 plaintiff’s claims, and granting plaintiff’s motion to strike  
20 defendant’s affirmative defenses based on *Twombly/Iqbal*).

21 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013)  
22 (order granting conditional collective certification).

23 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013)  
24 (affirming the magistrate judge’s discovery ruling which held  
25 that “evidence of other sources of income is irrelevant to the  
26 question of whether a plaintiff is an employee within the  
27 meaning of the FLSA”).

28 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013)

1 (granting broad discovery because “an FLSA plaintiff is  
2 entitled to discovery from locations where he never worked if  
3 he can provide some evidence to indicate company-wide  
4 violations”).

5 j. From 2012 to 2013, I was part of a team of attorneys that obtained class  
6 certification for over 60,000 class members for off-the-clock claims, *Linares*  
7 *v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No.  
8 BC416555. We also successfully opposed subsequent appeals to the  
9 California Court of Appeal and California Supreme Court.

10 51. Christina M. Le is a Senior Associate Attorney at Wilshire Law Firm.  
11 She is admitted to practice in the State of California, the Ninth Circuit Court of  
12 Appeals, and the United States District Courts for the Central, Southern, Eastern,  
13 and Northern Districts of California. She graduated from Loyola Law School, Los  
14 Angeles and attended the University of California, Berkeley for her undergraduate  
15 studies, where she obtained a Bachelor of Arts in History. She has over 15 years of  
16 litigation experience, which includes the successful handling of numerous  
17 employment, wage and hour, and class and representative action matters during the  
18 latter half of her career in state and federal court through inception through case  
19 resolution. Prior to joining Wilshire Law Firm in November 2021, Ms. Le gained  
20 invaluable litigation experience working at various plaintiff and defense firms,  
21 including Kristensen Weisberg PLC, Jones Bell LLP, Archer Norris PLC, and  
22 Lewis Brisbois Bisgaard & Smith LLP, which is a large firm with a national  
23 practice. Ms. Le is a member of NELA, CAALA, LACBA, and the Vietnamese Bar  
24 Association of Southern California.

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

3 Executed on October 6, 2022, at Los Angeles, California.

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 Telephone: (310) 556-4811  
 7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiff Mark Wilson

9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

12 MARK WILSON, individually, and on  
 13 behalf of other members of the general  
 public similarly situated,

14 Plaintiff,

15 vs.

16 PACTIV LLC, a Delaware limited  
 17 liability company; and DOES 1 through  
 10, inclusive,

18 Defendants.  
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Case No. 5:20-cv-01691-SB-KK

Assigned to: Hon. Stanley Blumenfeld, Jr.

**DECLARATION OF JEREMY  
 ROMERO ON BEHALF OF CPT  
 GROUP, INC., THE SETTLEMENT  
 ADMINISTRATOR**

Date: November 8, 2022

Time: 8:30 a.m.

Place: Department 6C

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**DECLARATION OF JEREMY ROMERO**

I, Jeremy Romero, hereby declare:

1. I am employed as a case manager by CPT Group, Inc. (“CPT”), the Court-appointed settlement administrator. I am authorized to make this declaration on behalf of CPT. As the case manager for this settlement, I have personal knowledge of the information provided herein, and if called as a witness, I could and would accurately testify thereto.

2. CPT was engaged by Plaintiffs Mark Wilson and Jack Rodriguez (“Plaintiffs”) and Defendant Pactiv LLC (“Defendant”) (collectively, the “Parties”) to provide settlement administration services. CPT has been, and if the Court grants final approval of the Settlement, will be responsible for: (a) printing and mailing the Notice of Class Action Settlement (“Notice Packet”) to all Class Members; (b) calculating and distributing the Individual Settlement Payments; (c) tax reporting; (d) providing necessary reports and declarations; and (e) performing such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or that the Court orders.

3. On July 6, 2022, CPT received from Class Counsel the Notice Packet prepared by the Parties and approved by the Court. On July 20, 2022, counsel for Defendant provided CPT with a complete mailing list (“Class List”) which included each Class Member’s full name, most recent mailing addresses, Social Security Numbers, and other relevant information needed to calculate settlement payments.

4. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. On August 4, 2022, Notice Packets were mailed to the 2,028 Class Members identified in the Class List by First Class mail.

5. As of this date, 60 Notice Packets have been returned by the post office. For those without forwarding addresses, CPT performed skip traces to locate new mailing addresses. A total of 48 Notice Packets were re-mailed because a better mailing address was found. Additionally, a total of 3 Notice Packets were forwarded by the U.S.

1 Postal Service. Altogether, 12 Notice Packets were unable to be delivered because a  
2 better mailing address could not be found.

3 6. CPT has received 4 valid Requests for Exclusion.

4 7. CPT has received no objections to the settlement.


5 8. A total of 2,024 Class Members will be paid their portion of the Net  
6 Settlement Fund. Each Class Member's share of the Net Settlement Fund will be  
7 proportional to the number of Pay Periods he or she worked during the Class Period.  
8 According to Defendant's records, Class Members in aggregate worked a total of  
9 290,106 Pay Periods during the Class Period. Each Pay Period is accordingly valued at  
10 \$0.70. The average estimated payment is \$100.95 and the highest is \$224.68.

11 9. A total of 1,662 PAGA Members will be paid their portion of the PAGA  
12 Fund. Each PAGA Member's share of the PAGA Fund will be proportional to the  
13 number of Pay Periods he or she worked during the PAGA Period. According to  
14 Defendant's records, PAGA Members in aggregate worked a total of 148,891 Pay  
15 Periods during the PAGA Period. Each PAGA Pay Period is accordingly valued at  
16 \$0.07. The average estimated PAGA payment is \$6.02 and the highest is \$10.88.

17 10. CPT's costs in connection with the administration of this Settlement are  
18 \$19,000.

19 11. Attached as Exhibit A is a true and correct copy of the Notice of Class  
20 Action Settlement template that CPT mailed to all Class Members. Attached as Exhibit  
21 B is a true and correct copy of CPT's invoice for settlement administration costs.

22  
23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct. Executed this 7th day of October, 2022, at Irvine,  
25 California.

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Jeremy Romero