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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

SHAYNIA VERNON, as an individual and on
behalf of all others similarly situated;
BENJAMIN CASTANEDA-RIVERA, as an
individual and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MCLANE/SUNEAST, INC., a Texas
corporation; MCLANE FOODSERVICE,
INC., a Texas corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2123367

[Assigned for All Purposes to Hon. David
Cohn, Dept. S-26]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Date: August 30, 2022
Time: 10:00 a.m.
Dept.: S-26

Complaint Filed: August 12, 2021
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 30, 2022, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable David Cohn, judge presiding, in Department S-26 of
4 the above referenced Court located at 247 W. Third Street, San Bernardino, CA 92415, Plaintiffs
5 Shaynia Vernon and Benjamin Castaneda-Rivera (“Plaintiffs”) will seek an Order:

6 (1) preliminarily approving the Stipulation for Leave to File First Amended Complaint
7 and Settlement and Release of Class Action and PAGA Claims (“Settlement Agreement” or
8 “Agreement”) in this matter;

9 (2) conditionally certifying the following classes for settlement purposes only: (i) all
10 current and former non-exempt employees employed by McLane/Sunecast, Inc. and working in
11 California at any time during the time period from April 6, 2019 through and including October
12 29, 2020 (the “MSE Settlement Period”) who were paid overtime wages at any time during the
13 MSE Settlement Period; and (ii) all current and former non-exempt employees employed by
14 McLane Foodservice, Inc. and working in California at any time during the time period from
15 January 28, 2019 through and including October 29, 2020 (the “MFS Settlement Period”) who
16 were paid overtime wages at any time during the MFS Settlement Period;

17 (3) appointing Plaintiffs as the Class Representatives and Larry W. Lee, Kristen M.
18 Agnew and Nicholas Rosenthal of Diversity Law Group, P.C., and William L. Marder of the
19 Polaris Law Group, as Class Counsel;

20 (4) preliminarily approving the Settlement and the gross settlement amount of Four
21 Hundred Thousand Dollars (\$400,000.00);

22 (5) finding on a preliminary basis that the Settlement Agreement appears to be within
23 the range of reasonableness of a settlement, including the amount of the PAGA penalties,
24 Enhancement Award to Plaintiffs, Class Counsel’s fees and costs, the settlement administration
25 fees, and the allocation of payments to Participating Class Members, that could ultimately be given
26 final approval by this Court;

27 (6) approving the Notice of Class Action Settlement (“Class Notice”) to be sent to
28 Class Members, which is attached as an exhibit to the Settlement Agreement;

1 (7) approving the distribution of the Class Notice to Class Members substantially in
2 the manner and form set forth in the Settlement Agreement;

3 (8) appointing Simpluris as the settlement administrator; and

4 (9) setting the matter for a Final Fairness and Final Approval hearing.

5 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
6 provides for court approval of the settlement of a purported class action and allows the Court to
7 preliminarily certify a class for settlement purposes.

8 The basis for this Motion, filed without any opposition from Defendants McLane/Suneast,
9 Inc. and McLane Foodservice, Inc. ("Defendants"), is that the proposed settlement is fair,
10 adequate, and reasonable and the procedures proposed by the parties are adequate to ensure the
11 opportunity of Class Members to participate in, opt-out of, or object to the settlement.

12 This Motion will be based on the attached Memorandum of Points and Authorities, the
13 Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Larry W.
14 Lee, Kristen M. Agnew, Nicholas Rosenthal, Plaintiff Shaynia Vernon, Plaintiff Benjamin
15 Castaneda-Rivera, and Simpluris (Eric Springer), and upon the oral arguments of counsel (should
16 there be any) and on the complete records and file herein.

17
18 Dated: June 1, 2022

DIVERSITY LAW GROUP, P.C.

19
20 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiffs and the Class

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1 **I. INTRODUCTION**

2 Plaintiffs Shaynia Vernon and Benjamin Castaneda-Rivera (“Plaintiffs”) seek preliminary
3 approval of the Stipulation for Leave to File First Amended Complaint and Settlement and Release
4 of Class Action and PAGA Claims (“Settlement Agreement” or “Agreement”) in this action.
5 Plaintiffs assert a class-wide claim for violation of Labor Code section 226(a), and a representative
6 Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”)
7 claim predicated on Defendants McLane/Suneast, Inc. and McLane Food Service, Inc.’s
8 (collectively, “Defendants”) alleged violation of Labor Code section 226(a).

9 Prior to the settlement of this action, Plaintiffs and Defendants (collectively, the “Parties”)
10 engaged in an extensive exchange of documents and information, including, *inter alia*, data
11 regarding putative class members. With the assistance of experienced mediator, David Rotman,
12 the Parties reached the current settlement. The terms of the settlement provide that Defendants
13 shall pay a gross settlement amount of Four Hundred Thousand Dollars (\$400,000.00).
14 **Significantly, the entire settlement amount is non-reversionary, such that no monies will**
15 **revert back to Defendants.** Further, the Class Members will not need to do anything to participate
16 in the settlement.

17 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
18 risks and uncertainty of class certification and the merits of this case. Therefore, the Parties
19 respectfully request that the Court grant this Motion for Preliminary Approval of Class and
20 Representative Action Settlement.

21 **II. BACKGROUND OF THE SETTLEMENT**

22 **A. The Federal Action**

23 **1. Plaintiffs Filed Separate Lawsuits Alleging Identical Claims Against**
24 **Related Entities**

25 On January 28, 2020, Plaintiff Shaynia Vernon (“Vernon”) filed a putative class and
26 representative action against McLane Foodservice, Inc. (“McLane Foodservice” or “MFS”) in the
27 Riverside County Superior Court, entitled *Shaynia Vernon v. McLane Foodservice, Inc.*, Case No.
28 RIC2000406 (“*Vernon* Action”). Declaration of Kirsten M. Agnew (“Agnew Decl.”) ¶ 4. In the

1 *Vernon* Action, Vernon alleged a class-wide claim for violation of Labor Code section 226. Vernon
2 also asserted a derivative representative Private Attorneys General Act of 2004, California Labor
3 Code section 2698, *et seq.* (“PAGA”) claim predicated on McLane Foodservice’s alleged violation
4 of Labor Code section 226. *Id.*

5 On September 1, 2020, Plaintiff Benjamin Castaneda-Rivera (“Castaneda-Rivera”) filed a
6 separate putative class and representative action against McLane/Suneast, Inc. (“MSE”) in the San
7 Bernardino County Superior Court, entitled *Benjamin Castaneda-Rivera v. McLane/Suneast, Inc.*,
8 Case No. CIVDS2017663. Agnew Decl. ¶ 6. Castaneda-Rivera also alleged class and
9 representative claims for violation of Labor Code section 226. *Id.*

10 **2. Plaintiffs Filed a Consolidated Complaint**

11 On January 12, 2021, Castaneda-Rivera filed a consolidated First Amended Class and
12 Representative Action Complaint for Damages, which added Vernon as a named plaintiff and MFS
13 as a named defendant (the “Consolidated Action”), and Vernon dismissed the earlier-filed *Vernon*
14 Action without prejudice. Agnew Decl. ¶¶ 7, 8.

15 **3. Defendants Remove the Consolidated Action to Federal Court**

16 On March 16, 2021, Defendants removed the Consolidated Action to the United States
17 District Court for the Central District of California. Agnew Decl. ¶ 9.

18 Following the removal, Plaintiffs filed a Second Amended Class and Representative Action
19 Complaint for Damages. Agnew Decl. ¶ 10. As set forth in the Second Amended Complaint,
20 Plaintiffs allege that Defendants failed to provide Class Members with proper and accurate
21 itemized wage statements, in violation of Labor Code section 226(a). Specifically, whenever
22 overtime wages were paid, the corresponding wage statements did not identify the correct rates of
23 pay. Instead, the wage statements showed overtime wages on two separate line items, with each
24 line item showing the base rate of pay, instead of one and one-half times the regular rate of pay.
25 Plaintiffs further allege that Defendants intentionally provided wage statements that displayed the
26 incorrect overtime rate, and that Defendants did not have any good faith belief, in law or fact, as
27 to its actions. Plaintiffs allege that such inaccuracy caused injury to Class Members, as it precluded
28 employees from being able to accurately calculate their wages.

1 **B. The State Court Class and PAGA Actions**

2 On August 12, 2021, Vernon and Castaneda-Rivera filed a separate class action complaint
3 against McLane/Suneast and McLane Foodservice in San Bernardino County Superior Court,
4 entitled *Shaynia Vernon v. McLane Foodservice, Inc.*, Case No. CIVSB2123367 (“State Court
5 Class Action”). Agnew Decl. ¶ 11. The complaint alleged a single class-wide claim for violation
6 of Labor Code section 226.7, predicated on Defendants’ alleged failure to pay meal and rest break
7 premium payments at the regular rate of pay. *Id.*

8 On October 1, 2021, Castaneda-Rivera filed another complaint against MSE entitled
9 *Benjamin Castaneda-Rivera v. McLane/Suneast, Inc.*, in the San Bernardino County Superior
10 Court, assigned Case No. CIVSB2128980 therein (the “State Court PAGA Action”), alleging a
11 derivative PAGA claim based on the alleged underpaid Section 226.7 payments to employees of
12 MSE. Agnew Decl. ¶ 12.

13 **C. A Summary of Discovery and Investigation**

14 The Parties engaged in an extensive exchange of documents and information, through
15 both formal and informal discovery. Agnew Decl. ¶¶ 13-20. Following removal of the
16 Consolidated Action, the Parties meet and conferred as required by Rule 26(f) of the Federal
17 Rules of Civil Procedure. *Id.* at ¶ 15. Plaintiffs also propounded written discovery relevant to the
18 class and PAGA claims alleged in the Consolidated Action. *Id.* at ¶ 18. Amongst other relevant
19 topics, the discovery required Defendants to provide documents and information relevant to class
20 certification, including the number of putative class members, Defendants’ policies and
21 procedures with respect to the display of the hourly rates of pay on wage statements, and payroll
22 records of putative class members. *Id.*

23 On or about July 23, 2021, the Parties agreed to participate in a private global mediation
24 with David Rotman, a respected and experienced mediator knowledgeable of both the wage and
25 hour laws and representative claims at issue in this action. Agnew Decl. ¶ 19. Prior to the
26 mediation, Defendants produced data relevant to the potential value of the claims, including the
27 number of alleged aggrieved employees and wage statements at issue in both actions. *Id.* at ¶ 20.

Using the data provided by Defendants, Class Counsel performed a comprehensive damages analysis. *Id.*

The Parties also extensively met and conferred regarding the underlying merits of the State Court Class Action and State Court PAGA Action. Agnew Decl. ¶ 21. During the alleged liability period, there were only a few workweeks in which putative class members earned both non-discretionary incentive wages and meal/rest period premiums. *Id.* Defendants further represented that the alleged unpaid meal/rest period compensation and derivative waiting time penalties was less than \$5,000. *Id.*

D. The Parties Participate in Private Mediation

On December 10, 2021, the Parties engaged in an all-day mediation session before Mr. Rotman. Agnew Decl. ¶ 22. After a full day of negotiation, the Parties were able to reach an agreement for settlement and the key terms. *Id.*

The Parties thereafter worked to memorialize the terms of the settlement in a long-form settlement agreement. Agnew Decl. ¶ 24. On or about May 12, 2022, the Parties executed a Stipulation for Leave to File First Amended Complaint and Settlement and Release of Class Action and PAGA Claims (“Settlement Agreement” or “Agreement”) resolving all claims alleged in the Federal Action. *Id.* at ¶ 25, Exhibit 1. As a condition of settlement, Plaintiffs agreed to the dismiss the State Court PAGA Action *without* prejudice. *Id.* at ¶ 26.

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of Plaintiffs and the Class, in light of all known facts and circumstances, including the risk of significant delay, the uncertainty associated with litigation, the various defenses asserted by Defendants, and the numerous potential appellate issues. Agnew Decl. ¶ 50; Declaration of Larry W. Lee (“Lee Decl.”) ¶ 3; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 2, 3; Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 4. Defendants and their counsel also agree that the settlement is fair, reasonable, and adequate.

1 **III. PLAINTIFFS SHOULD BE GRANTED LEAVE TO FILE THE**

2 As part of the proposed settlement, Plaintiffs request that the Court permit Plaintiffs to
3 file a First Amended Individual and Class Action Complaint for Damages (“Operative
4 Complaint”). Agnew Decl. ¶ 26. The Operative Complaint pleads the claims alleged in the
5 Federal Action and limits the claims originally alleged in this State Court Class Action to
6 individual, non-class claims solely on behalf of Plaintiffs. *Id.* A copy of the proposed Operative
7 Complaint is attached as **Exhibit A** to the Settlement Agreement.

8 **IV. THE PROPOSED TERMS OF THE SETTLEMENT**

9 **A. Class Definition**

10 The proposed Class consists of the following groups of employees: (i) all current and
11 former non-exempt employees employed by MSE and working in California at any time during
12 the time period from April 6, 2019 through and including October 29, 2020 (the “MSE Settlement
13 Period”) who were paid overtime wages at any time during the MSE Settlement Period (“MSE
14 Subclass”); and (ii) all current and former non-exempt employees employed by MFS and working
15 in California at any time during the time period from January 28, 2019 through and including
16 October 29, 2020 (the “MFS Settlement Period”) who were paid overtime wages at any time during
17 the MFS Settlement Period (“MFS Subclass”). *See* Settlement Agreement (“SA”) § 8. The are
18 approximately 1,452 employees that comprise the Class. *See id.* at § 25.¹

19 **B. Gross Settlement Fund**

20 The Settlement provides for the gross settlement amount of Four Hundred Thousand
21 Dollars (\$400,000.00) (“Gross Settlement Fund” or “GSF”). *See* SA § 14. The Settlement allocates
22 Ten Thousand Dollars (\$10,000.00) of the Gross Settlement Fund to PAGA penalties (“PAGA
23 Amount”). *See* SA § 19. Pursuant to the PAGA, seventy-five percent of the PAGA Amount, *i.e.*,

24
25
26 ¹ Expressly excluded from the Class are any individuals who, as of the date the Court grants
27 preliminary approval of the settlement, have filed a pending, separate lawsuit as a named
28 plaintiff, individually and/or as a putative class or representative action, asserting claims based
on violations of any of the same statutes and/or regulations as those alleged to have been violated
in the Federal Action and/or the State Court Section 226.7 Actions and/or who have released
such claims. *See* SA § 8.

1 the sum of Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to the California
2 Labor and Workforce Development Agency (“LWDA”). *See id.* The remaining twenty-five
3 percent of the PAGA Amount, *i.e.*, the sum of Two Thousand Five Hundred Dollars (\$2,500.00),
4 shall be distributed to Aggrieved Employees.² *See id.*

5 The amount Gross Settlement Fund was calculated with, and is premised on, Defendants’
6 representation that Class Members received 31,013 wage statements reflecting the payment of
7 overtime wage statements during the Settlement Periods. *See SA* §§ 8, 25. If the actual number
8 of overtime wage statements exceeds 32,564, Defendants will have the option to increase the
9 amount of the Gross Settlement Fund in proportion to the increase or end the Settlement Periods
10 on the date at which the overtime wage statements reached 32,564. *See id.* at § 25.

11 **C. Individual Settlement Shares and Aggrieved Employee Payments**

12 The balance of the Gross Settlement Fund remaining after deduction of the approved
13 Settlement Administration Costs, the PAGA Amount, Attorneys’ Fees and Costs, and
14 Enhancement Awards (“Net Settlement Fund” or “NSF”), will be available for distribution to
15 Participating Class Members (*i.e.*, Class Members who do not opt-out). *See SA* §§ 16, 24. The
16 amount allocated to each Participating Class Member will be based on the number of wage
17 statements with overtime wages paid to each Class Member during the applicable Settlement
18 Periods. *See id.* at § 26. Class Members do not need to do anything should they wish to receive
19 their share of the settlement funds.³ *See id.* at § 24.

20 Based on the size of the Class, the number of overtime wage statements at issue and the
21 amount of the Gross Settlement Fund, Class Members will be entitled to recover, on average, up
22 to \$123.96 each or \$5.80 per overtime wage statement received during the Settlement Periods,
23 after deductions for the Settlement Administration Costs, the PAGA Amount, Attorneys’ Fees
24

25 ² The Aggrieved Employees has the same composition as the Class and will be subject to the
26 same Settlement Periods. *See SA* § 19.

27 ³ This substantially decreases the amount of burden each Class Member must bear in order to
28 receive his/her settlement share. If a Class Member does not wish to take part in this settlement
and be bound by the release of the class claims, he/she must submit an exclusion request. Such
obligations are thoroughly identified in the Notice Packet. *See SA*, Ex. B.

1 and Costs, and Enhancement Awards. Agnew Decl. ¶¶ 37. The amount any particular Class
2 Member will be entitled to recover will be greater or lower than this average depending on the
3 number of overtime wage statements he or she received, with some entitled to receive more, and
4 others less. *Id.* This is fair, as it directly allocates greater recovery to individual Class Members
5 who have allegedly suffered greater harm. *Id.*

6 In addition to the Individual Settlement Shares, Class Members are also entitled to
7 receive a pro rata share of the Aggrieved Employee Payment. *See* SA §§ 19, 27. As detailed in
8 the Settlement, the amount of the payment will be based on the number of overtime wage
9 statements he or she received during the applicable PAGA Periods, regardless of whether the
10 employee submits a timely and valid Request for Exclusion from the Settlement Agreement. *See*
11 *id.* at § 27.⁴

12 The Settlement Agreement provides that all Individual Settlement Shares and each
13 Aggrieved Employee Payment shall be allocated as 100% to statutory non-wage damages and
14 civil penalties. *See* SA § 34.

15 **D. The Settlement is Non-Reversionary**

16 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
17 paid out. *See* SA §14. Participating Class Members and Aggrieved Employees will have 180 days
18 from the mailing of the settlement payment to cash the check. *See id.* at § C-24. After the expiration
19 of 180 days, the funds represented by uncashed settlement checks will be remitted to the California
20 State Controller’s Office—Office of Unclaimed Property Fund in the name of the Participating
21 Class Member or Aggrieved Employee. *Id.*

22 **E. Attorneys’ Fees and Reimbursement for Litigation Costs**

23 As part of the Settlement, Defendants do not object to Class Counsel’s request for
24 attorney’s fees up to thirty-five percent (35%) of the Gross Settlement Fund, *i.e.*, the sum of One
25

26 ⁴ There is no right to opt-out of or object to the PAGA settlement under the Settlement
27 Agreement. Any Class Member who opts out of the Settlement Agreement for purpose of the
28 proposed class action settlement will still be bound by the release of the PAGA claims and
receive a portion of the Aggrieved Employee Payment. *See* SA § 28.

1 Hundred Forty Thousand Dollars (\$140,000.00), plus up to Thirty Thousand Dollars (\$30,000.00)
2 for reimbursement of litigation costs, subject to the Court finally approving this Settlement. *See*
3 SA § 20. Any portion of the requested attorneys' fees and/or litigation costs not awarded to Class
4 Counsel shall be added to the Net Settlement Fund. *See id.* at § 22.

5 **F. Enhancement Award to Plaintiffs**

6 Subject to approval by the Court, Plaintiffs may each request an Enhancement Award in
7 the amount of Ten Thousand Dollars (\$10,000.00). *See* SA § 21. Both Plaintiffs and Class Counsel
8 expressly acknowledge that the Court has final discretion in any fee award or Enhancement Award.
9 *See id.* at §§ 20-22.

10 **G. Settlement Administration Costs**

11 Finally, the Settlement provides for the payment of the fees and expenses reasonably
12 incurred by the Settlement Administrator. *See* SA § 23. The Parties have received a quote from
13 Simpluris for a fee of approximately Twenty Thousand Dollars (\$20,000.00). *See id.* Any portion
14 of the Settlement Administration Costs not used or approved by the Court shall be added to the
15 Net Settlement Fund. *Id.*

16 **H. Scope of the Class Members' Release**

17 Participating Class Members will release all claims for violation of Labor Code section
18 226 that accrued during the applicable Settlement Periods. *See* SA § 42. The scope of the release,
19 as listed below, is identified in the Settlement at section 42, as well as in the Class Notice:

20 Any and all allegations, claims, debts, rights, demands, charges,
21 complaints, actions, causes of action, guarantees, costs, expenses,
22 attorneys' fees, economic damages, non-economic damages,
23 restitution, civil penalties, statutory penalties, liquidated damages,
24 punitive damages, interest, obligations, liabilities, or other monies
25 and remedies, of any and every kind, contingent or accrued, that
26 have been or reasonably could have been alleged or asserted in the
27 FAC and/or any of the pleadings filed in the Federal Action based
28 on the factual and/or legal violations allegations contained therein,
and in any notice Plaintiffs sent to the LWDA pursuant to PAGA
based on the factual and/or legal violations allegations contained
therein, including, without limitation, for failure to furnish accurate
itemized wage statements arising out of, based on, or related to any
violation of Cal. Lab. Code § 226, and/or civil penalties pursuant to
PAGA, based in whole or in part on any direct or imputed violation

1 of any federal, state, local or administrative constitution, charter,
2 law, rule, regulation or ordinance, during the applicable Settlement
Periods.

3 Additionally, Class Members will entire into a release of derivative PAGA claims. *See id.* The
4 scope of the release, as listed below, is identified in the Settlement at section 42, as well as in the
5 Class Notice:

6 Upon the Settlement Administrator's receipt of the GSF from
7 Defendants, Plaintiffs, the LWDA and the Aggrieved Employees
8 who are members of the MFS Subclass shall be deemed to have
9 released the Released Parties of and from all claims for any civil
10 penalties recoverable under the California Labor Code, including
PAGA, as well as costs and attorneys' fees related thereto,
predicated on any violations of California Labor Code section 226
that arose, accrued and/or have been asserted during the MFS
Settlement Period.

11 Upon the Settlement Administrator's receipt of the GSF from
12 Defendants, Plaintiffs, the LWDA and the Aggrieved Employees
13 who are members of the MSE Subclass shall be deemed to have
14 released the Released Parties of and from all claims for any civil
15 penalties recoverable under the California Labor Code, including
PAGA, as well as costs and attorneys' fees related thereto
predicated on any violations of California Labor Code section 226
that arose, accrued and/or have been asserted during the MSE
Settlement Period.

16
17 As shown, the scope of the release is narrow and is limited to the claims asserted in the Operative
18 Complaint.

19 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
20 **SETTLMENT**

21 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
22 requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). In
23 considering whether a settlement is reasonable, the trial court should consider relevant factors,
24 which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration
25 of further litigation, the risk of maintaining class action status through trial, the amount offered in
26 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
27 views of counsel, the presence of a governmental participant, and the reaction of the class members
28 to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008).

1 In order to approve a class action settlement, the court must satisfy itself that the class
2 settlement is within the “ballpark” of reasonableness. *Kullar*, 168 Cal. App. 4th. at 133. The record
3 need not contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-*
4 *Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408-409 (2010).

5 **A. The Settlement Was Reached Through Arm’s Length Negotiations Between**
6 **Experienced Wage and Hour Attorneys**

7 The Parties attended a full-day mediation with experienced wage and hour mediator, David
8 Rotman. Agnew Decl. ¶ 22. Both during and prior to the mediation, the Parties spoke at length
9 about the strengths and weaknesses of each sides’ claims and defenses, the certifiability of the
10 claims, and the scope of Defendants’ liability. *Id.* at ¶¶ 13-23. After a full day of mediation, the
11 Parties were able to reach an agreement on the key terms of settlement. *Id.* at ¶ 24.

12 **B. The Parties Engaged in Significant Investigation and Informal Discovery**

13 Class Counsel conducted an adequate investigation of the allegations involved in this case.
14 *See* Agnew Decl. ¶¶ 13-20. In advance of the mediation, Defendants produced data regarding the
15 number of putative class members and the number of overtime wage statements at issue during the
16 liability periods. *Id.* Using the data provided by Defendants, Class Counsel conducted a full
17 damage analysis. *Id.* at ¶ 20.

18 **C. The Strengths and Weaknesses of the Claims**

19 Although Class Counsel believe in the merits of Plaintiffs’ claims, they are experienced
20 and realistic, and understand the possibility of non-certification on one or more of the theories
21 alleged in the operative complaints. Agnew Decl. ¶ 50; Lee Decl. ¶ 3; Marder Decl. ¶ 3; Rosenthal
22 Decl. ¶ 3.

23 **1. Strength and Weaknesses of the First Cause of Action for Violation of**
24 **Labor Code § 226(a)**

25 Labor Code section 226(a)(9) expressly requires that wage statements display “all
26 applicable hourly rates in effect during the pay period.” As touched on above, Plaintiffs allege that
27 Defendants’ wage statements improperly list the overtime rate as two line items, such that an
28 employee cannot simply add the rates listed on the wage statement and arrive at the correct

overtime rate. *See Soto v. Motel 6 Operating, L.P.*, 4 Cal .App. 5th 385, 390 (2016) (A compliant wage statement “**must** contain the information specified in the statute”) (emphasis in original). Courts have consistently found employers to be in violation of Section 226(a) where their wage statements failed to provide the accurate rates and corresponding hours worked during the pay period. *See McKenzie v. Federal Exp. Corp.*, 765 F.Supp.2d 1222 (C.D. Cal. 2011) (finding that the wage statements do comply with § 226(a)(9) for failure to list the correct overtime rate and number of hours worked overtime); *Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL 2839417, at *5 (S.D.Cal.,2010) (same). Furthermore, Labor Code section 226 requires that the employee be permitted to readily ascertain the applicable rate and corresponding number of hours from the wage statement alone. Labor Code § 226(e)(2)(B) (emphasis added). Courts routinely grant class certification for similar wage statement violations. *See Lubin v. The Wackenhut Corp.*, 5 Cal. App. 5th 926, 959 (2016); *Boyd v. Bank of America Corp.*, 300 F.R.D. 431, 440-44; *Magadia v. Wal-Mart Associates, Inc.*, 2018 WL 339139 (N.D. Cal. 2018).

Plaintiffs’ claims, however, are contested. Defendants raised numerous defenses to class certification and liability. Agnew Decl. ¶¶ 16, 42, 43. Defendants contend that recent state appellate court cases have held that section 226(a)(9) allows employers to display the base rate paid for overtime hours separately from the overtime premium rate paid for overtime hours, including *General Atomics v. Superior Court*, 64 Cal. App. 5th 987 (2021). As argued by Defendants, multiplying the overtime rate by .5, and adding that result to the employee’s total contractual compensation, results in the correct total pay. Relatedly, Defendants contend that Class Members can determine the overtime rate with “simple math.” *See Morgan v. United Retail, Inc.*, 186 Cal. App. 4th 1136, 1147 (2010) (finding no violation of Section 226(a) where “[t]he employee could simply add together the total regular hours figure and the total overtime hours figure shown on the wage statement to arrive at the sum of hours worked”).

Defendants further argued that, even if Plaintiffs established a technical violation of the statute, the alleged violation was not a “knowing and intentional failure” by Defendants to comply with Labor Code section 226(a), and penalties are therefore unwarranted. *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (summary adjudication warranted

1 on Section 226(e) claim where dispute existed as to whether plaintiff was independent contractor
2 or employee and record lacked evidence that conduct was knowing or willful); *Woods v. Vector*
3 *Mktg. Corp.*, 2015 U.S. Dist. LEXIS 67303, at *8-*9, *12-*14 (N.D. Cal. May 22, 2015) (finding
4 that when the defendant made a good faith claim that the employee was properly classified as
5 exempt its failure to provide accurate wage statements was not knowing and intentional).

6 Additionally, Defendants presented argument that Plaintiffs would be unable to establish a
7 common “actual injury” on a class-wide basis. Agnew Decl. ¶ 43. As argued by Defendants, an
8 actual injury is shown where “there is a need for [] additional documentation.” *Raines v. Coastal*
9 *Pac. Food Distribs., Inc.*, 23 Cal. App.5th 667, 676 (2018) (internal citations omitted); *see also*
10 *Hernandez v. BCI Coca-Cola Bottling Co.*, 554 Fed. App’x 661, 662 (9th Cir. 2014) (finding that
11 a wage statement does not violate Section 226(a) if “a plaintiff employee can ascertain the required
12 information by performing simple math, using figures on the face of the wage statement”). Here,
13 Defendants maintain that employees fully understand the display of overtime pay on their wage
14 statements. Agnew Decl. ¶ 43. Thus, as argued by Defendants, the wage statements provided
15 sufficient information to allow an employee promptly and easily determine their overtime
16 compensation.

17 **2. The Strengths and Weaknesses of the Second Cause of Action for** 18 **Violation of PAGA**

19 Plaintiffs also pursued a derivative representative PAGA claim predicated on Defendants’
20 alleged failure to provide accurate wage statements. For the purpose of PAGA liability, a plaintiff
21 only needs to establish a violation of Labor Code section 226(a) —he need not establish the
22 “knowing and intentional” and “injury” elements of section 226(e) to prevail. *See Lopez v. Friant*
23 *& Associates, LLC*, 15 Cal. App. 5th 773, 784-85 (2017). As touched on above, Plaintiffs believe
24 that they could recover PAGA penalties had this matter proceeded to trial.

25 However, even if Plaintiffs were to prevail on the merits of the PAGA claim, the potential
26 recovery is uncertain. Defendants argue that a court would not award duplicative statutory and
27 PAGA civil penalties for the same alleged wage statement violations. Agnew Decl. at ¶ 43; *Guifu*
28 *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal. Jun. 15, 2012) (finding

1 that the plaintiffs “are not entitled to PAGA penalties for failure to provide accurate wage
2 statements under [Section] 226” because “granting PAGA penalties for failure to provide accurate
3 wage statements would be duplicative recovery”).

4 Furthermore, the trial court has the discretion to reduce PAGA civil penalties “if, based on
5 the facts and circumstances of the particular case, to do otherwise would result in an award that is
6 unjust, arbitrary and oppressive, or confiscatory.” Labor Code §2699(e)(2). Defendants argue that
7 trial courts regularly exercise this discretion to award PAGA civil penalties far below the statutory
8 maximums. For example, in *Fleming v. Covidien*, the Court reduced PAGA civil penalties for
9 wage statement violations from \$2,800,000 to \$500,000, an 82% discount, because “the aggrieved
10 employees suffered no injury” as a result of the violations, the defendants “were not aware” their
11 wage statements violated the law, and the defendants “took prompt steps to correct all violations
12 once notified.” 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011); *Carrington v. Starbucks Corp.*,
13 30 Cal. App. 5th 504, 529 (2018) (affirming reduction of PAGA penalties where the trial court
14 found the reduction was warranted based on the employer’s “good faith attempts” to comply with
15 the Labor Code and “because the court found the violations were minimal”).⁵

16 Under the particular circumstances of this case, Defendants could make a persuasive
17 argument that nominal PAGA penalties should be awarded. In this respect, Defendants point to
18 the absence of willfulness as grounds for the Court to award modest, if not nominal, penalties.
19 Agnew Decl. ¶ 43

20 **D. Potential Estimated Value of the Class and Representative PAGA Claims**

21 Based on the class data provided by Defendants, Class Counsel estimates that Defendants
22 would realistically face liability in the amount of approximately \$3,338,830 for the class and
23 PAGA claims. Agnew Decl. ¶ 48. Thus, the Gross Settlement Fund represents 11.98% of the
24

25
26 ⁵ As the California Supreme Court and Courts of Appeal have held, the purpose of PAGA is not
27 to seek wages or recovery for the individual employees. *Arias v. Superior Court*, 46 Cal. 4th 969,
28 986 (2009) (holding that an action to recover civil penalties “is fundamentally a law enforcement
action designed to protect the public and **not** to benefit private parties”) (emphasis added);
Brown v. Ralphs Grocery Co., 197 Cal. App. 4th 489, 1499 (2011).

1 realistic maximum damages and penalties at issue. *Id.* at ¶ 49.⁶

2 **1. Wage Statement Penalties**

3 Based on Defendants' payroll data, 1,452 Class Members received 31,013 overtime wage
4 statements during the Settlement Periods. Agnew Decl. ¶ 44. Thus, the maximum Labor Code
5 section 226(e) penalties total \$3,028,700 [(\$50 x 1,452) + (\$100 x 29,561)].

6 **2. PAGA Penalties**

7 The Class and Aggrieved Employees completely overlap. Agnew Decl. ¶ 45, fn. 1. The
8 data produced by Defendants indicates there were approximately 31,013 pay periods in which
9 Aggrieved Employees received an overtime wage statement during the PAGA Periods. *Id.* at ¶ 45.
10 Applying the standard civil penalty of \$100 per pay period, yields \$3,101,300 in potential civil
11 penalties under PAGA. *Id.*

12 It is unrealistic to assume that the Court will award the full amount of PAGA penalties if
13 Plaintiffs are able to prevail at trial. Indeed, the potential recovery is uncertain because the Court
14 can decline to award the full amount of PAGA penalties where "...if, based on the facts and
15 circumstances of the particular case, to do otherwise, would result in an award that is unjust,
16 arbitrary and oppressive, or confiscatory." As shown in the Court of Appeal's decision in
17 *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial
18 court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith
19 attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of
20 Appeal found such reduction to be proper. *Id.* at 539; *see O'Connor v. Uber Techs., Inc.*, 2016 WL
21 4398271, at *17 (noting that even if PAGA penalties amounted to \$1 billion, such award "could
22 well be reduced, as a court may reduce the penalty when to do otherwise would result in an award
23

24 ⁶ Courts have held that gross settlements approximating between only 8 and 25% of the
25 defendant's potential exposure are fair and reasonable. *See Bellinghausen v. Tractor Supply Co.*,
26 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (approving class settlement recovering
27 between 8.5% and 25% of the defendant's potential exposure); *Van Ba Ma v. Covidien Holding*
28 *Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (approving wage and hour class
settlement which obtained only 9.1% of projected damages); *Villegas v. J.P. Morgan Chase &*
Co., 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that settlement of
approximately 15% of the potential recovery was fair and reasonable).

that is unjust, arbitrary and oppressive, or confiscatory”). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA penalties of approximately 10% of the total maximum, a more realistic estimate of the PAGA penalties at issue is \$310,130. Agnew Decl. ¶ 47.

E. The Court Should Preliminarily Approve the Proposed Payment to the Class Representatives

Plaintiffs request an enhancement of Ten Thousand Dollars (\$10,000.00) each. *See* SA § 21. Plaintiffs personally met with Class Counsel on various occasions to discuss the case, provide documents and information to Class Counsel, and review the Settlement Agreement. Declaration of Shaynia Vernon (“Vernon Decl.”) ¶ 6; Declaration of Benjamin Castaneda-Rivera (“Castaneda-Rivera Decl.”) ¶ 6. In addition to the invaluable services that Plaintiffs provided, they also took significant risks, both professionally and monetarily, in acting as the Class Representatives and seeking benefits on behalf of the Class. Vernon Decl. ¶¶ 8, 9; Castaneda-Rivera Decl. ¶¶ 8, 9. Because the claims alleged by the Class Representatives involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the fees and costs of Defendants, had Plaintiffs not prevailed in this action. Vernon Decl. ¶ 9; Castaneda-Rivera Decl. ¶ 9.

Further, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice in the future from other potential employers. Plaintiffs took this risk upon themselves and the whole Class benefited from these risks taken by Plaintiffs. Vernon Decl. ¶ 8; Castaneda-Rivera Decl. ¶ 8. Class Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

Notably, courts have routinely granted approval of representative enhancements for far greater amounts than the \$10,000 sought by Plaintiffs in this case. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141

1 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy*
2 *Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000
3 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
4 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
5 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
6 \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiffs request a modest
7 enhancement of \$10,000, which is reasonable and consistent with case law.

8 **F. The Requested Attorneys' Fees and Litigation Costs Are Reasonable, Fair,**
9 **and Appropriate**

10 California state and federal courts have recognized that an appropriate method for
11 determining award of attorneys' fees is based on a percentage of the total value of benefits to Class
12 Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001);
13 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S.
14 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
15 of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
16 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
17 burden alone." *Vincent*, 557 F.2d at 769.

18 Under California law, the award of attorneys' fees in common fund wage and hour class
19 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal.
20 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in
21 holding that when class action litigation establishes a monetary fund for the benefit of the class
22 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
23 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
24 fund created"). Under the percentage of the fund method, the Court's objective remains to "mimic
25 the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998)
26 (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level
27 that will approximate what the market will set...The judge, in other words, is trying to mimic the
28 market in legal services").

1 The results delivered by Class Counsel also support the requested percentage of the fund.
2 Here, the Parties have agreed to a payment of a maximum of thirty-five percent (35%) of the Gross
3 Settlement Fund for payment to Class Counsel as attorneys' fees. The Parties have agreed to a
4 payment of the foregoing attorney's fees and, thus, this payment should be presumed to be fair.
5 Further, it is not uncommon for courts to award attorneys' fees as one-third or 33.3% of the
6 settlement amount in wage and hour class action settlements. For example, in *McKinnon v. Best*
7 *Buy Co., Inc.*, (Alameda Superior Court Case No. RG03082294), the court awarded over \$9
8 million as attorneys' fees, which was 33% of the maximum settlement amount of \$26.9 million.
9 At the time of Final Approval, Class Counsel will also provide the court with declarations and time
10 records to show that a payment of 35% of the recovery is justified and fair even under the lodestar
11 method.

12 Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class
13 Counsel have, at their own risk, expended costs, for example, to file this instant action, service of
14 process, payment of mediation fees and other litigation related costs. Lee Decl. ¶ 4. Based on the
15 foregoing, the court should preliminarily approve the attorney's fees and costs being requested by
16 the Parties.

17 **G. The Settlement Administrator's Fees are Reasonable**

18 The parties request that Simpluris be appointed as the claims representative in this case.
19 The Parties have agreed to an estimated payment of \$20,000 to Simpluris to send notices and to
20 administer this settlement. Simpluris is a well-recognized class action settlement administrator.
21 Declaration of Eric Springer ¶ 4, Ex. A.

22 **VI. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS**

23 **A. The Class is Ascertainable and Sufficiently Numerous**

24 The Class that Plaintiffs seek to conditionally certify is ascertainable. "Class members are
25 'ascertainable' where they may be readily identified without unreasonable expense or time by
26 reference to official records." *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008); *see also*
27 *Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 4th 220, 240 (2013) (same). Here, members
28 of the Class are readily identifiable. Defendants have determined that there are approximately

1 1,452 employees that comprise the Class. *See* SA at § 25. Furthermore, the Class is sufficiently
2 numerous. Courts generally find that numerosity is satisfied if the class includes forty or more
3 members. *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see*
4 *also Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir.) (noting, in dicta, that the court “would
5 be inclined to find the numerosity requirement...satisfied solely on the basis of [39] ascertained
6 class members”), *vacated on other grounds*, 459 U.S. 810 (1982).

7 **B. There are Common Questions of Law and Plaintiffs’ Claims are Typical of the**
8 **Class**

9 The commonality requirement is met when there are questions of law and fact common to
10 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
11 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
12 facts couple with disparate legal remedies within the class”). Commonality requires only that some
13 common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation
14 are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981) Defendants’
15 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d
16 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s
17 conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the
18 Defendants’ policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward &*
19 *Co.*, 193 Cal. App. 3d 411, 421 (1987).

20 Plaintiffs allege, in part, that Defendants, as a matter of its corporate policy, practice, or
21 procedure violated the Labor Code by failing to provide accurate itemized wage statements. In
22 other words, Plaintiffs were allegedly subjected to the same policy and practice as other Class
23 Members. Vernon Decl. ¶ 3; Castaneda-Rivera Decl. ¶ 3. Thus, Plaintiffs’ claims are typical to
24 those of Class Members.

25 **C. Plaintiffs and Class Counsel Have Adequately Represented the Class**

26 The adequacy requirement is also met. “Adequacy of representation depends on whether
27 the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests
28 are not antagonistic to the interests of the class.” *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442,

1 450 (1976). Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues
2 been raised or presented. Vernon Decl. ¶ 5; Castaneda-Rivera Decl. ¶ 5. Plaintiffs have taken all
3 necessary steps to represent the interests of the Class, by providing information and documents.
4 Vernon Decl. ¶ 6; Castaneda-Rivera Decl. ¶ 6. For such reasons, Plaintiffs have adequately
5 represented the Class Members and will continue to do so.

6 Further, as detailed in their declarations, Class Counsel are experienced and well-qualified
7 class action litigators who have litigated many wage and hour class actions and have each been
8 certified as class counsel in numerous other class actions, particularly wage and hour class actions.
9 Agnew Decl. ¶¶ 52, 54-58; Lee Decl. ¶¶ 6, 7; Marder Decl. ¶¶ 5-10; Rosenthal Decl. ¶ 7. From the
10 inception of the case, Class Counsel have solely represented the interest of the Class. For example,
11 Class Counsel expended significant time and resources propounding written discovery,
12 exchanging informal discovery, drafting a mediation statement, and attending mediation. *See*
13 Agnew Decl. Finally, the mediation and settlement were also obtained for the benefit of the Class,
14 not for the individual Plaintiffs.

15 **VII. CONCLUSION**

16 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
17 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the
18 result of informed, extensive, and arm's length negotiations conducted by counsel for the
19 respective Parties who are experienced in wage and hour class action litigation. For the foregoing
20 reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed
21 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice,
22 and set a date for a final approval hearing.

23
24 Dated: June 1, 2022

DIVERSITY LAW GROUP, P.C.

25
26 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

27
28 Attorneys for Plaintiffs and the Class

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On June 1, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
- 12 **APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT;**
- 13 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFFS'**
- 15 **MOTION FOR PRELIMINARY APPROVAL OF CLASS AND**
- 16 **REPRESENTATIVE ACTION SETTLEMENT**
- 17 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
- 18 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 19 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
- 20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
- 21 **SETTLEMENT**
- 22 **5. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**
- 23 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
- 24 **SETTLEMENT**
- 25 **6. DECLARATION OF BENJAMIN CASTANEDA-RIVERA IN SUPPORT OF**
- 26 **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
- 27 **SETTLEMENT**
- 28 **7. DECLARATION OF ERIC SPRINGER REGARDING NOTICE AND**
- ADMINISTRATION OF SETTLEMENT**
- 8. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
- PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 1, 2022, at Los Angeles, California.


Erika Mejia