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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BELIA RAMIREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RUBBERCRAFT CORPORATION OF
CALIFORNIA, LTD., a California Corporation;
and DOES 1 through 100,

Defendants.

Case No. 20STCV11935

*[Assigned for all Purposes to the Hon.
Kenneth R. Freeman, Dept. 14]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 24, 2022
Time: 10:00am
Dept: 14

Action Filed: March 25, 2020
Trial Date: None Set

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I, Fletcher W. Schmidt, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff Belia Ramirez (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the defense team for two class actions, including one wage and hour class action in Los Angeles County Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval: *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving

an hourly rate of \$350 for work performed in 2013, 2014 and 2015); *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015); *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016); *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016); *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016); *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016); *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016); *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw

1 presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Nieves v.*
2 *Ta Chen International, Inc.*, Case No. BC609005, Superior Court of California, County of Los
3 Angeles, Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for
4 work performed in 2016 and 2017); *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-
5 CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster
6 presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018); *Ruvalcaba*
7 *Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court
8 of California, County of Orange, Honorable William D. Claster presiding (approving an hourly
9 rate of \$425 for work performed in 2016, 2017 and 2018); *Armenta, et al., v. California Friends*
10 *Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of
11 California, County of Orange, Honorable Randall J. Sherman presiding (approving an hourly rate
12 of \$425 for work performed in 2016, 2017 and 2018); *Sandra Zinnerman v. Tumbleweed*
13 *Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los
14 Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of \$425 for work
15 performed in 2016, 2017, and 2018); *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No.
16 BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding; *William*
17 *Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County Superior Court,
18 Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for work performed in
19 2017, 2018 and 2019); *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case
20 No. BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding
21 (approving an hourly rate of \$475 for work performed in 2018 and 2019); *Arturo Delgado v.*
22 *Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable
23 Maren E. Nelson, presiding (approving an hourly rate of \$595 for work performed in 2018, 2019
24 and 2020); *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego
25 County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly rate of \$595
26 for work performed in 2017-2020); *Michael Fishback v. Paragon Framing, Inc.*, Case No.
27 CIVDS1906610, San Bernardino County Superior Court, Honorable David Cohn, presiding
28 (approving an hourly rate of \$595 for work performed in 2019 and 2020); *Francisco Garcia v.*

1 *Searing Industries, Inc.*, Case No. CIVDS1932477, San Bernardino County Superior Court,
2 Honorable David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019
3 and 2020); *David Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles
4 County Superior Court, Honorable Daniel J. Buckley, presiding; and *Angel Ochoa v. Fonseca*
5 *Construction, Inc.*, Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable
6 David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019 to 2021);
7 *William Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County
8 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$595 for work
9 performed in 2018 to 2021); and *David Alvarado, et al. v. J.G. Boswell Company*, Case No.
10 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding
11 (approving an hourly rate of \$595 for work performed in 2019 to 2021).

12 5. I have also moved to certify and have received an order certifying a class action
13 and/or conditionally certifying a collective action as Class Counsel in the following cases:
14 *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC,
15 California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding
16 (certifying a class of employees who were misclassified as independent contractors); *Javine v.*
17 *San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District
18 Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding
19 (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo*
20 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
21 California, Honorable Judge John F. Walter presiding (certifying a rest period violation class and
22 conditionally certifying a FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case
23 No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable
24 Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA overtime wage
25 class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
26 District Court, Eastern District of California, Honorable Judge Jennifer L. Thurston presiding
27 (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical*
28 *Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of

1 Orange, Honorable Judge William Claster presiding (certifying unpaid overtime wage class and
2 waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-
3 00775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Glenda
4 Sanders presiding (certifying five separate classes for claims for unpaid wages, unreimbursed
5 expenses, failure to authorize and permit rest periods, and derivative claims); *Ontiveros v. Safelite*
6 *Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central
7 District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for
8 rest period violations, wage statement violations, meal period violations, and overtime and
9 double-time violations); *Staublein v. Wells Fargo Bank, National Association*, Case No.
10 CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn presiding (certifying a
11 wage statement class); and *Danica N. Keich, et al. v. U.S. Healthworks, Inc., et al.*, Case No. 37-
12 2017-00015343-CU-OE-CTL, San Diego County Superior Court, Honorable Eddie C. Sturgeon,
13 presiding (certifying classes for rest period violations, meal period violations, on-call pay
14 violations, wage statement violations, and waiting time violations).

15 6. In 2018-2022, Thomson Reuters and Los Angeles Magazine recognized me as a
16 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.
17 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the
18 age of forty in Southern California each year.

19 7. As counsel for Plaintiff, I have been intimately involved in all aspects of this
20 litigation from its inception and believe that the proposed Settlement is a fair and reasonable result
21 for the Class Members.

22 8. Defendant operates a manufacturing business that designs and manufactures
23 custom elastic parts, components, and systems for the aerospace industry. Plaintiff worked for
24 Defendant as a non-exempt “Lay-Up Technician” from approximately May 2019 until
25 approximately January 2021 when Plaintiff was apparently terminated. Like all Settlement Class
26 Members, Plaintiff was subject to Defendant’s wage and hour policies and practices.

27 9. On March 25, 2020, Plaintiff filed the initial Complaint in this action, alleging
28 Defendant failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii)

1 provide all meal periods; (iv) authorize and permit all rest periods; (v) issue accurate and itemized
2 wage statements; and (vi) comply with California’s Unfair Competition laws. On June 15, 2020,
3 after exhausting her administrative requirements, Plaintiff filed her First Amended Complaint
4 (“FAC”), adding a cause of action for civil penalties under PAGA, premised on the underlying
5 Labor Code violations.

6 10. On November 15, 2021, the Court issued an Order granting Plaintiff leave to file
7 the operative Second Amended Complaint (“SAC”) to include a cause of action for Defendant’s
8 failure to pay all final wages owed upon employees’ separation from employment. Accordingly,
9 on December 2, 2021, Plaintiff filed the operative SAC, alleging Defendant: (i) failed to pay all
10 minimum wages owed; (ii) failed to pay all overtime wages owed; (iii) failed to provide all meal
11 periods; (iv) failed to authorize and permit all rest periods; (v) failed to issue accurate and itemized
12 wage statements; (vi) failed to comply with California’s Unfair Competition laws; (vii) is liable
13 for civil penalties under PAGA; and (viii) failed to pay all final wages upon separation.

14 11. In connection with mediation, Defendant produced timekeeping and payroll
15 records for approximately 15% of the putative class members, as well as additional key data points
16 and all relevant written policy documents in effect during the relevant time period. Plaintiff
17 retained an expert with a Ph.D. in economics to analyze the produced data and create a class-wide
18 exposure model for all claims at issue.

19 12. On January 28, 2021, the Parties attended mediation with Marc Feder, Esq., an
20 experienced and well-respected wage and hour class action mediator. During mediation, the
21 Parties exchanged divergent views on Defendant’s liability and exposure valuations, debated their
22 legal positions, and shared their arguments regarding the likelihood of certification of Plaintiff’s
23 claims. As a result of a mediator’s proposal from Mr. Feder, the Parties were able to reach a
24 classwide agreement. During the months that followed, the Parties negotiated and formalized the
25 remaining terms of the Settlement and executed the Settlement Agreement now before the Court
26 for preliminary approval.

27 13. Attached hereto as **Exhibit A** is a true and correct copy of the Parties’ Stipulation
28 of Settlement. Attached hereto as **Exhibit B** are true and correct copies of the Notice of Class

1 Action Settlement (“Class Notice”) and Notice of Settlement Award (collectively, “Notice
2 Packet”).

3 14. Plaintiff alleges that throughout the Class Period, Defendant implemented unfair
4 rounding policies and practices that consistently favored Defendant, resulting in underpaid wages.
5 Specifically, Plaintiff alleges that Defendant required its employees to be at their assigned
6 workstation when the annunciator bell announced the start of their shift. In order to comply with
7 this policy, Plaintiff and other non-exempt employees regularly clocked in several minutes prior
8 to the start of their shift to, among other things, don their work boots and walk the two plus
9 minutes from the time-clock to their work stations. However, due to Defendant’s written rounding
10 policy and practice, which only rounded employee time punches at the beginning of their shift
11 (i.e., when employee’s hours are most likely to be rounded against them), Plaintiff and other non-
12 exempt employees were not paid for these hours worked.

13 15. Defendant contends it utilizes a neutral timekeeping system that, on balance,
14 results in employees being paid for all hours actually worked. Defendant maintains its rounding
15 practice is even-handed and results in employees being paid for all hours worked and that just
16 because an employee is clocked in does not mean the employee is performing work. Defendant
17 further asserts the amount of unpaid time per shift is *de minimis* and thus non-compensable.
18 Defendant also contends this claim was not certifiable, since its rounding policy is facially neutral
19 and some employees were overpaid due to rounding, and individualized inquiries would be
20 necessary as to whether employees were in fact underpaid or overpaid for each workday in
21 question (including whether they were actually working when they were clocked in), resulting in
22 an unmanageable series of mini-trials.

23 16. Plaintiff also alleges that Defendant failed to provide Plaintiff and other non-
24 exempt employees with timely first meal periods of at least 30 minutes. Plaintiff also alleges she
25 and other non-exempt employees were not provided second meal periods on shifts over 10.0
26 hours.

27 17. Defendant argues it has always maintained legally-compliant meal period policies
28 and that under Brinker it is only required to “provide” the opportunity to take meal periods, not

1 “ensure” meal periods are taken. Defendant also further argues that employees begin and end
2 work when an annunciator bells rings to signal to the employees when they need to start and stop
3 working, therefore no employee begins working until the end of the scheduled 30-minute meal
4 period. Defendant further argues that non-exempt employees voluntarily signed a second meal
5 period waiver, as they are entitled to do under Labor Code § 512. Lastly, Defendant argues this
6 claim would not be suited for class certification because individualized inquiries would be needed
7 to determine whether individual employees did not take a compliant meal period on each
8 individual shift, why they did not take a compliant meal period, and (for second meals) whether
9 they waived the meal period.

10 18. Plaintiff further alleges that Defendant maintained a facially unlawful rest period
11 policy that failed to authorize and permit Plaintiff and other non-exempt employees to take all
12 duty-free 10-minute rest periods for every four hours worked, or major fraction thereof.
13 Specifically, Defendant’s employee handbook states, “[a]ll hourly (non-exempt) employees are
14 authorized and permitted to take a paid rest break for every 4 hours worked” and includes an
15 annunciator bell schedule that fails to reference and/or schedule third rest periods. Consistent with
16 this policy, Plaintiff alleges Defendant failed to authorize and permit a third rest period when
17 employees worked shifts in excess of 10 hours but less than 12 hours.

18 19. Defendant asserts it has always authorized and permitted all required rest periods.
19 As with meal periods, Defendant argues, it need not ensure rest periods are taken but need only
20 “authorize and permit” them, and it has always done so. Defendant also argues this claim is not
21 amenable to class treatment, as individualized inquiries would be required to determine whether
22 each employee cut short their rest periods on each individual shift, and why they did so. These
23 issues are especially present for rest periods, Defendant argues, as rest periods are not recorded.

24 20. Plaintiff also alleges that Defendant miscalculated the regular rate of pay by failing
25 to including non-discretionary quarterly bonuses in the regular rate of pay when calculating
26 overtime wages. Specifically, Plaintiff alleges that Defendant implemented a Quarterly Bonus
27 Program whereby its employees earn bonuses based on the overall profitability of the business,
28 but failed to include the value of these bonuses when calculating employees’ respective regular

1 rates of pay, thereby causing Plaintiff and other non-exempt employees to be underpaid for all
2 required overtime wages.

3 21. In response, Defendant asserts that all bonuses paid were wholly discretionary and
4 the company maintained ultimate authority over whether or not to pay a bonus at all in a given
5 quarter, meaning the bonuses could properly be excluded from the regular rate.

6 22. Plaintiff further alleges that Defendant required its employees to work seven
7 consecutive days in a workweek but failed to pay it employees at a rate of one and one-half times
8 their regular rate of pay for the first 8.0 hours worked on the seventh day, or at a rate of double
9 their regular rate of pay for all hours worked thereafter on the seventh day, in violation of
10 California law. Instead, Plaintiff alleges that Defendant treats seventh day overtime in the same
11 manner as it treats overtime earned in the first six days of the workweek and will only pay
12 overtime wages prior to the eighth hour worked on the seventh day of the workweek once the
13 employee surpasses 40.0 hours worked for the workweek as a whole.

14 23. In response, Defendant argues that it was exceedingly rare for an employee to work
15 seven consecutive days within the same workweek, and that even if Plaintiff was correct, this
16 claim would likely not meet the numerosity requirement for class certification.

17 24. As a result of Defendant's failures to pay all minimum wages, overtime wages,
18 and meal period and rest period premiums, Plaintiff asserts that Defendant also failed to issue
19 accurate and itemized wage statements and failed to timely pay all final wages at the time of
20 separation in violation of Labor Code §§ 203 and 226, respectively. Finally, Plaintiff seeks PAGA
21 civil penalties based on the above claims.

22 25. In response, Defendant argues that Plaintiff's underlying claims will fail and, as a
23 result, the wholly derivative wage statement, waiting time, and PAGA claims will also fail..
24 Defendant also maintains that Plaintiff cannot show that the wage statement violations were
25 "knowing and intentional," or that the putative class members "suffer[ed] injury" as a result of
26 the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement
27 penalties. Further, Defendant argues that the wage statements always accurately reflected hours
28 worked and amounts actually paid to employees, and thus Defendant could not be found liable

1 for wage statement penalties. Moreover, Defendant maintains that its good faith defenses to
2 Plaintiff's underlying claims would preclude the recovery of waiting time penalties, which are
3 only available for the "willful" failure to pay wages, and that this Court would exercise its
4 discretion to substantially reduce any PAGA penalties awarded. Defendant maintains that not all
5 former employees (if any) experienced an underpayment of wages, thus Plaintiff's exposure
6 analysis is overstated. Defendant contends that any alleged failure to pay rest period premiums
7 cannot support a derivative claim for wage statement or waiting time penalties.

8 26. If the Court preliminarily approves this settlement, Defendant will pay a Gross
9 Settlement Amount ("GSA") of \$600,000. Class Members can be easily identified using
10 Defendant's employment and payroll records. Defendant represents that the Settlement Class
11 consists of approximately 359 individuals, rendering it impracticable to bring all class members
12 before the Court. Based on the estimated Net Settlement Amount, average Individual Settlement
13 Shares are projected to be approximately \$922.42

14 27. At the time of seeking final settlement approval, Plaintiff will apply for an
15 enhancement payment in the amount of \$5,000.00 for her services to the Settlement Class and her
16 general release of all claims. Plaintiff's requested enhancement payment is intended to recognize
17 the significant time and effort that she expended on behalf of the Settlement Class, including
18 searching through voluminous employment records and providing all potentially relevant
19 documents to her attorneys, assisting her attorneys in identifying other employees of Defendant
20 who could serve as witnesses, discussing the case and proposed settlement with her attorneys on
21 multiple occasions, the significant risks Plaintiff undertook by serving as the named plaintiff, and
22 the fact that she agreed to a general release of all claims subject to a waiver of Civil Code § 1542.

23 28. My firm will also apply for an attorneys' fee award of up to one third of the GSA
24 (currently estimated at \$200,000.00), and up to \$25,000 in reimbursement for actual litigation
25 costs. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky,
26 expensive, and time-consuming litigation on a purely contingent fee basis. My firm has incurred
27 substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims,
28 conducting legal research and analysis, drafting and propounding multiple sets of formal written

1 discovery, reviewing class documents and data produced by Defendant, retaining an expert with
2 a Ph.D. in economics and extensively reviewing and evaluating the produced timekeeping and
3 payroll records to build a comprehensive damages model, preparing for and attending mediation,
4 negotiating and drafting the long-form Settlement Agreement, and Notice Packet documents,
5 preparing this motion for preliminary approval, and otherwise litigating the case. My firm will
6 also expend future attorney time attending the hearing on this Motion, overseeing the Notice
7 process, drafting the Final Approval Motion and supporting documents, attending the Final
8 Approval hearing, and completing other tasks, such as fielding questions from Settlement Class
9 Members.

10 29. Class Counsel carefully vetted the claims at issue, reviewed a representative
11 sampling of Settlement Class Member data and all relevant policy documents, and created a
12 comprehensive damages model for Defendant's liability. Although Plaintiff steadfastly maintains
13 that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and
14 uncertainty in proceeding with class certification and trial. Absent settlement, the Parties will be
15 required to expend substantial time and resources conducting extensive formal written and
16 deposition discovery. Moreover, Plaintiff has not yet filed for class certification, and thus, absent
17 settlement, the Parties would face the prospect of appeals in the wake of a disputed class
18 certification ruling and/or an adverse summary judgment ruling. Even if Plaintiff succeeded in
19 certifying one or more classes, the Parties would incur considerably more attorneys' fees and
20 costs through a possible decertification motion, trial, and possible appeal.

21 30. At the time of the proposed Settlement, Plaintiff had not filed her motion for class
22 certification. Had the Court certified any claims, Plaintiff anticipated that Defendant would seek
23 decertification. There was also a risk that Defendant would engage in a *Pick-up-Stix* campaign to
24 significantly reduce the size of the putative class for a fraction of what class members are
25 receiving through this Settlement. Therefore, absent the Settlement, there was a serious risk that
26 Plaintiff would be unable to move forward on a class-wide basis, or that a significantly smaller
27 class would exist than that which is currently before this Court for approval.
28

31. As explained above, Plaintiff alleges that Defendant rounded employee timekeeping entries to quarter-hour increments in a manner that consistently favored Defendant and that, as a result, employees' wages were underpaid. Based on Plaintiff's expert's analysis of Defendant's timekeeping records, Plaintiff estimates that Settlement Class members were underpaid by approximately 8,292 hours during the Class Period as a result of its rounding practice, when comparing on-the-clock time to paid time. The average overtime wage in California during the Class Period was approximately \$29.49. Thus, Plaintiff estimates Defendant's maximum exposure for this claim as: 8,292 unpaid hours x \$29.49 average overtime rate = \$244,531. But as noted above, Defendant maintains its rounding practice is even-handed and results in employees being paid for all hours worked, that just because an employee is clocked in does not mean that employee is performing work, that the amount of unpaid time per shift is *de minimis* and thus non-compensable, and that this claim would not be certified, since individualized inquiries would be necessary as to whether employees were in fact underpaid or overpaid for each workday in question (including whether they were actually working when they were clocked in), resulting in an unmanageable series of mini-trials. In light of these defenses, Plaintiff discounted the maximum exposure by 50% to account for the risk of non-certification, and an additional 50% for risk of losing on the merits, to arrive at an estimated exposure of approximately \$61,133.00.

32. Plaintiff alleges that Defendant routinely provided late and/or short meal periods to its non-exempt employees. Plaintiff further alleges that Defendant failed to provide second meal periods on shifts over 10.0 hours. Based on Plaintiff's expert's review and extrapolation of employee timekeeping data, Plaintiff calculated approximately 102,037 shifts that reflected at least one potential meal period violation (late, short, or missed meal period(s)). Further, the data produced by Defendant reflected an average hourly rate of approximately \$19.66 for Settlement Class members during the Class Period. Defendant, however, paid 431 meal period premiums for either late or missed meal periods. Plaintiff therefore estimated a maximum total exposure for this claim as: (102,037 shifts – 431 premiums) * \$19.66 regular hourly rate of pay = \$1,997,574. As aforementioned, Defendant presented several defenses to this claim, including that it has

1 always “provided” lawful meal periods and that under *Brinker* it need not “ensure” meal periods
2 are taken, that any missed, short, or late meal periods reflected in the time records are the result
3 of employee choice rather than Defendant’s policy or practice, that employees voluntarily choose
4 to waive their second meal periods, and that this claim is not amenable to class certification, given
5 the individual inquiries needed to assess *why* an employee did not take a compliant meal period,
6 and (for second meal periods) whether the second meal period was waived. Based on these
7 defenses, Plaintiff discounted the maximal amount by 60% for risk of non-certification, and by
8 an additional 55% for risk of losing on the merits or failure to recover the full amount sought, to
9 arrive at a realistic exposure of \$359,563.00.

10 33. As discussed above, Plaintiff alleges that Defendant failed to authorize and permit
11 its non-exempt employees to take a third rest period for shifts in excess of 10 hours but less than
12 12 hours. Based on Plaintiff’s expert’s review and extrapolation of the timekeeping data, there
13 were approximately 60,763 shifts of over 10 hours but less than 12 hours during the Class Period.
14 Thus, Plaintiff calculated Defendant’s maximum exposure for the third rest period claim as:
15 60,763 shifts * \$19.66 regular hourly rate of pay = \$1,194,601.00. But as noted above,
16 Defendant argues it has always authorized and permitted rest periods in accordance with
17 California law, including third rest periods on shifts over 10 hours, that any failure to take a third
18 rest period is a result of employee choice, and that this claim is not amenable to class certification
19 given the individual inquiries required to determine whether and why each employee missed a
20 third rest period on each of 60,763 shifts, particularly given that rest periods need not be recorded.
21 Plaintiff therefore discounted the potential maximum by 85% for risk of non-certification, and an
22 additional 55% for risk of losing on merits or failing to recover the full amount sought, to arrive
23 at a realistic exposure of \$80,636.00.

24 34. As discussed above, Plaintiff alleges that Defendant miscalculated the regular rate
25 of pay by failing to including non-discretionary quarterly bonuses in the regular rate of pay when
26 calculating overtime wages. Based on Plaintiff’s expert’s review and extrapolation of the
27 timekeeping data, Defendant failed to pay approximately \$101,931.00 in overtime wages, with
28 each class member being underpaid \$283.93. But as noted above, Defendant maintains that its

bonuses were always discretionary and therefore could properly be excluded from the regular rate. Plaintiff therefore discounted the potential maximum by 10% for risk of non-certification, and an additional 25% for risk of losing on merits or failing to recover the full amount sought, to arrive at a realistic exposure of \$68,803.00.

35. As discussed above, Plaintiff alleges that Defendant failed to pay its employees at a rate of one and one-half times their regular rate of pay for the first 8.0 hours worked on the seventh day, or at a rate of double their regular rate of pay for all hours worked thereafter on the seventh day, in violation of California law. Based on Plaintiff's expert's review and extrapolation of the timekeeping data, Defendant failed to pay approximately \$14,547.00 in overtime wages. But as noted above, Defendant argues that this occurrence was so exceedingly rare, that it would be denied class treatment for lack of numerosity. Plaintiff therefore discounted the potential maximum by 15% for risk of non-certification, to arrive at a realistic exposure of \$12,365.00.

36. Plaintiff's expert's analysis reflected that there were approximately 9,194 bi-weekly pay periods within the one-year liability window under Labor Code § 226. In calculating Defendant's exposure, Plaintiff calculated Defendant's maximum possible wage statement exposure as approximately \$907,850.00 ((231 initial violations * \$50 per pay period) + (8,963 subsequent pay periods * \$100 per pay period)). However, given Defendant's arguments that no violations occurred, that class members suffered no "injury," that any alleged violations were not "knowing and intentional," that a meal or rest period claim cannot support wage statement penalties, and that Plaintiff would not be able to show a penalty in every pay period, as well as the risks associated with Plaintiff's underlying claims, Plaintiff discounted the maximum exposure by 40% for risk of non-certification, and by an additional 75% for risk of being unsuccessful on the merits or failure to prove the violations were knowing and intentional and/or caused injury, for an estimated realistic exposure of \$136,178.00.

37. Based on data provided by Defendant, there are approximately 102 Settlement Class members who have separated their employment with Defendant since March 25, 2016. Using an estimated average waiting time penalty of \$4,718.00 (\$19.66 * 8 hours * 30 days), Plaintiff estimated Defendant's maximum potential waiting time penalty exposure as \$481,236.00

(102 * \$4,718.00). As noted above, however, Defendant asserts it has strong, good-faith defenses to Plaintiff's underlying claims, and thus, even if Plaintiff were able to recover on her underlying claims, she would not be able to recover derivative waiting time penalties. Defendant further contends Plaintiff's meal and rest period claims cannot support a claim for waiting time penalties, as multiple courts have held. Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and the merits, to her underlying claims. Defendant argues, not every former employee suffered every single alleged wrong, and therefore if Plaintiff only certified or prevailed on some but not all of her claims, the size of any potential waiting time claim would be reduced. Based on these defenses, Plaintiff discounted Defendant's maximum exposure by 40% for risk of non-certification and by an additional 75% for risk of being unsuccessful on the merits or failure to establish willfulness, to arrive at an estimated realistic exposure of \$72,185.00.

38. Plaintiff estimated a maximum PAGA exposure of \$919,400.00, based on 9,194 pay periods during the PAGA Period at the \$100 "initial" violation rate under Labor Code § 2699(f). However, these penalties derive from Plaintiff's underlying claims, each of which Defendant vigorously disputes. Defendant further argues Plaintiff would not be able to show a violation in *every* pay period, and thus her damages estimate is inflated. The PAGA also grants courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Defendant argues the Court would reduce penalties significantly given its good-faith defenses. Thus, Plaintiff discounted the maximum figure by 90% for risk of the Court reducing penalties, to arrive at an estimated exposure of \$91,940.00.

39. Using these estimated figures, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$882,803.00. The proposed settlement of \$600,000 therefore represents over 67.97% of Plaintiff's reasonably forecasted classwide recovery.

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40. Concurrently with the filing of this motion, Plaintiff provided notice of the proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers filed in support hereof, to the LWDA. Attached hereto as **Exhibit C** are true and correct copies of Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct. Executed on April 26, 2022, at El Segundo, California.

Fletcher W. Schmidt