

POTTER HANDY LLP
Mark D. Potter (SBN 166317)
mark@potterhandy.com
James M. Treglio (SBN 228077)
jimt@potterhandy.com
100 Pine St., Ste 1250
San Francisco, CA 94111
Phone: (858) 375-7385
Fax: (888) 422-5191

Attorneys for Plaintiff and all Aggrieved Employees

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARVIN OSOY, individual, on behalf of the
State of California, as private attorney general,
and on behalf of all aggrieved employees,

Plaintiff,

v.

CALIBER HOLDINGS CORPORATION, a
Delaware corporation; and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. 21STCV12589
Complaint Filed: April 1, 2021

CLASS ACTION

**DECLARATION OF JAMES M.
TREGLIO IN SUPPORT OF
PLAINTIFF'S MOTION FOR ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Alison Mackenzie
Hearing Date: April 11, 2024
Time: 8:30 a.m.

DECLARATION OF JAMES M. TREGLIO

INTRODUCTION

1. I am an attorney at law duly authorized to practice law in the State of California. I am over 18 years of age. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. I am the lead attorney of the class action division for the law firm of Potter Handy, LLP, ("PH," "Co-Class Counsel" or "Plaintiffs' Counsel"), attorney of record, for Plaintiff Marvin Osoy ("Plaintiff") and the proposed settlement class (the "Settlement Class") in the above-captioned matter. I have no knowledge of the existence of any conflicting interests between my firm and any of its

1 attorneys and Plaintiff or any other Class Member, on the other.

2 3. After engaging in productive settlement discussions at a full-day mediation, Plaintiff and
3 Defendant Caliber Holdings LLC f/k/a Caliber Holdings Corporation (“Defendant”) entered into a Joint
4 Stipulation of Class Action, Collective Action, and PAGA Representative Action Settlement and
5 Release (the “Settlement Agreement”). The Settlement Agreement seeks to release and discharge
6 Defendant from the claims brought against it in the matter of *Marvin Osoy vs. Caliber Holdings*
7 *Corporation*. In exchange, Defendant will pay the Maximum Settlement Amount (“MSA”) of
8 \$610,000.00. The Net Settlement Amount available for Class Members is approximately \$301,666.67
9 (after deductions for attorneys’ fees, litigation costs, claims administration costs, the LWDA’s portion
10 of PAGA penalties, the FLSA Settlement Fund, and Plaintiff’s Service Enhancement award). A true and
11 correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**. The Notice of Class Action
12 Settlement (“Class Notice”) is attached as **Exhibit A** to the Settlement Agreement. As shown further
13 below, the settlement is fair and reasonable to the class based on the strength of the claims and
14 Defendant’s potential defenses, as well other comparable settlements for on-duty meal and rest breaks
15 that have received the approval of federal courts in California.

16 **ATTORNEY EXPERIENCE**

17 4. I was admitted to the California Bar in 2003. I received my Bachelor of Arts degree in
18 Government from College of William & Mary in 1998 and my Juris Doctor degree from the University
19 of San Diego in 2003. From 2003 through 2006, I was the staff attorney for the Fair Housing Council of
20 San Diego, where I specialized in housing discrimination enforcement. In 2007, I joined the law firm of
21 Clark & Markham, LLP, where I specialized in consumer and wage and hour class actions, which has
22 comprised my practice of law ever since. In 2012, the law firm of Clark & Markham, LLP into the Clark
23 Law Firm and the Markham Law Firm. I stayed with the Clark Law Firm, and in 2015, the firm became
24 Clark & Treglio after I was made partner. By 2013, my work with the Clark Law Firm, Clark &
25 Markham, LLP, and Clark & Treglio resulted in nearly 5% of all recoveries made by the LWDA up to
26 that point.

27 5. In 2017, I joined Keegan & Baker, LLP, which was also a class action firm. Whereas my
28 work at Clark & Markham, LLP and the Clark Law Firm was primarily focused on wage and hour class

1 actions, my work at Keegan & Baker, LLP involved more consumer actions, including data breach class
2 actions, and actions brought under the Fair Credit Reporting Act.

3 6. In 2018, I left Keegan & Baker, LLP and joined the Melmed Law Group, P.C. The
4 Melmed Law Group, P.C., is an employment law firm with a focus on class and PAGA representative
5 actions.

6 7. In 2019, I joined my current firm, Potter Handy, LLP, to become head of its new class
7 action division. In that capacity, I litigate both consumer and employment class actions throughout the
8 State of California.

9 8. Since 2007, I have specialized in complex wage and hour and consumer class action
10 litigation. I have been involved in every stage of class action litigation as both a lead counsel, the lead
11 and primary associate, and as co-counsel. A summary of my experience, including representative class
12 action litigation is attached hereto at Exhibit B.

13 9. In connection with these prior class actions, I have conducted discovery, argued motions,
14 drafted pleadings, drafted class notices, drafted appellate briefs, examined witnesses, represented class
15 members at settlement conferences and mediations, deposed defendants and third-party witnesses,
16 defended class representative depositions and participated in final disposition hearings. I have also tried
17 PAGA representative actions.

18 **FACTUAL AND PROCEDURAL HISTORY**

19 10. The attorneys I supervise, and I, have performed substantial work and diligently
20 investigated and prosecuted this case to a successful conclusion. Our work resulted in the creation of a
21 significant settlement fund for the benefit of the class. We avoided protracted litigation by conducting
22 considerable investigation before filing suit related to the released class claims, and efficiently
23 communicated and exchanged information with Defense counsel such that the parties could successfully
24 settle the case after informal discovery and a full-day mediation. Because of the risks involved in
25 litigating the case, particularly the contested legal and factual issues, Plaintiff's Counsel believe this
26 settlement to be fair, reasonable, and adequate.

27 11. I took the lead role in litigating this case, in discovery and resolving this case.

28 12. From Plaintiff's investigation and analysis of information gathered both before and after

1 initiating this claim, including information provided by the Defendant through informal discovery and
2 conversation with Plaintiff, Class Counsel learned the following information: Defendant Caliber
3 Holdings LLC f/k/a Caliber Holdings Corporation is a Delaware limited liability company based in
4 Lewisville, Texas that does business in the State of California. Caliber provides auto repair services
5 such as paintless dent repair, auto glass, and vehicle reassembly, car rentals, insurance, towing, and
6 warranty. Caliber employs individuals such as Plaintiff and the Class Members as Production
7 Managers, within the County of Los Angeles.

8 13. Plaintiff and all similarly situated employees are, and at all times pertinent hereto, have
9 been hired by Defendant to work in California.

10 14. In August 2015, Plaintiff was hired as a production manager at Caliber's Valencia,
11 California center where he worked until he was laid off in April 2020.

12 15. Defendant improperly classified Plaintiff and the Class Members as "exempt."
13 Consequently, Plaintiff and the Class were not paid overtime wages for hours worked in excess of eight
14 hours per day and/or forty hours per week. Although classified as exempt, the duties of Plaintiff and the
15 Class Members do not meet the requirements set forth in IWC Wage Order No. 4. For instance, Plaintiff
16 would usually spend only around two hours of his workday in the office to attend a production meeting
17 that his boss would run. The rest of Plaintiff's workday would then be spent going around the shop to
18 make sure things ran smoothly – he would go over paperwork with technicians and service advisors,
19 walk around to check cars that are done to ensure that they pass the company's quality standards before
20 they are released, help out in detailing as needed, and process all new cars that came in. Plaintiff's tasks
21 would sometimes even include taking out the shop and office trash. While Plaintiff supervised around
22 20 staff, he was not responsible for their schedule, discipline, hiring, training, and firing. Plaintiff had
23 no power to make his own decisions without a manager since all of his decisions needed his manager's
24 approval.

25 16. Throughout their employment, Plaintiff and the Class Members were systematically
26 misclassified by Defendant as "exempt" when in fact they were not. Thus, even if Plaintiff and the
27 Class Members regularly worked for 50 hours per week or in excess of 8 hours a day and 40 hours per
28 week, they did not receive overtime compensation. In addition, Plaintiff and the Class Members did not

1 receive meal and rest periods although they were entitled to them.

2 17. Plaintiff and the Class Members also had to use their personal mobile phones to make
3 business calls. However, Defendant did not reimburse these business expenses. While Plaintiff was laid
4 off on April 3, 2020, his final check was only paid by Caliber on April 6, 2020.

5 18. On January 21, 2021, Plaintiff filed his PAGA Notice with the Labor Workforce
6 Development Agency (“LWDA”), paid the \$75 filing fee, and sent notice to Defendant setting forth the
7 facts and theories of the violations supporting their allegations.

8 19. On April 1, 2021, Plaintiff filed his complaint before the Superior Court for the County
9 of Los Angeles. The First Amended Complaint alleges causes of action for (1) failure to pay Plaintiff
10 and his fellow employees in California for all hours worked; (2) failure to provide Plaintiff and his
11 fellow employees paid rest breaks and pay rest break premiums; (3) failure to provide Plaintiff and his
12 fellow employees meal periods and pay missed meal period premiums; (4) failure to reimburse Plaintiff
13 and his fellow employees business expenses incurred; (5) failure to pay all wages owed in a timely
14 manner; (6) failure to provide complete wage statements to Plaintiff and his fellow employees within
15 the four years prior to the filing of this Complaint; (7) failure to pay all wages due to former employees
16 based on the foregoing; (8) failure to pay overtime wages to Plaintiff and his fellow employees; (9)
17 PAGA violations based on the foregoing; and (10) violations of the Fair Labor Standards Acts
18 (“FLSA”) for failure to pay minimum and overtime wages.

19 20. On or about February 23, 2022, Plaintiff sent an informal discovery request to Defendant
20 by e-mail. Defendants subsequently produced, for purposes of mediation, information regarding
21 aggrieved employees and pay periods and document including: (1) Job description of Production
22 Managers.

23 21. On April 19, 2022, counsel for the Parties participated in a mediation with experienced
24 mediator Lisa Klerman, Esq. With Ms. Klerman’s assistance, the Parties negotiated a complete
25 settlement of Plaintiff’s claims.

26 22. The Parties were able to execute the long form Settlement Agreement now before the
27 Court for preliminary approval.

28 ***Plaintiffs’ Allegations and Estimated Damages***

1 23. In the Complaint, Plaintiff alleged Defendant was liable for class wide damages and
2 PAGA penalties as a result of Defendant's violations of the California Labor Code pertaining to wages,
3 overtime, minimum wage, off-the-clock work, meal periods, and rest periods.

4 24. Plaintiff's estimated damages are based on the following facts and figures discussed
5 below.

6 25. Based on the foregoing, Plaintiff estimated Defendant's maximum liability for on-duty
7 rest periods as follows:

8 a. Labor Code § 226.7 provides "an employer shall not require an employee to work during
9 a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC").
11 Under IWC Wage Order 4-2001 an employer must authorize and permit all employees to
12 take ten (10) minute duty free rest periods for every major fraction of four (4) hours
13 worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269
14 (concluding that "during rest periods employers must relieve employees of all duties and
15 relinquish control over how employees spend their time."). In *Augustus*, the court
16 expressly rejected the employer's assertion that it could provide an on-duty rest period to
17 employees who worked as security guards and further explained "that employers [must]
18 relinquish any control over how employees spend their break time, and relieve their
19 employees of all duties." *Id.* at 273.

20 b. California Labor Code Section 226.7 requires an employer to pay an additional hour of
21 compensation for each rest period the employer fails to provide in accordance with the
22 applicable Industrial Welfare Commission Wage Order.

23 c. \$37.50 per missed rest period * 5098 workweeks = \$191,175.

24 26. Based on the foregoing, Plaintiff estimated Defendant's maximum liability for on-duty
25 meal periods as follows:

26 a. Labor Code § 512 requires employers to provide employees with thirty (30) minute
27 uninterrupted and duty free meal period within the first five hours of work. Moreover, an
28 employee who works more than ten (10) hours per day is entitled to receive a second

thirty (30) minute uninterrupted and duty free meal period. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

b. California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide in accordance with the applicable statute or Industrial Welfare Commission Wage Order.

c. $\$37.50 \text{ per missed rest period} * 5098 \text{ workweeks} = \$191,175.$

27. Based on the foregoing, Plaintiff estimated Defendant's maximum liability for overtime as follows:

a. As noted above, the hourly rate of Plaintiff and the Class Members was \$37.50 per hour. Thus, for each workweek, there was a loss of approximately 1 hour, which should have been compensated at \$56.25 (1.5 times the hourly rate). As per the data provided by Defendant, there were 5,098 workweeks. As such, the exposure for unpaid time is $\$56.25 * 5,098 \text{ workweeks}$, or **\$286,762.5**.

28. Based on the foregoing, Plaintiff estimated Defendant's maximum liability for unreimbursed expenses as follows:

a. Plaintiff contends that each and every week he incurred \$10 in costs (cell phone charges) per workweek, which appears to be standard. For mediation purposes, Plaintiff estimates each Class Member incurred \$10 in cell phone expenses.

b. As such, Plaintiff calculates the exposure as follows: Phone: \$10 per workweek x 5,098 work weeks = \$50,980.

29. Based on the foregoing, Plaintiff estimated Defendant's maximum liability for waiting time penalties as follows:

a. As a result of Defendant's failure to pay the Class Members for meal/rest period premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is

discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; Mamika v. Barca, (1998) 68 Cal.App.4th 487, 492.

b. Defendant has failed to pay all the Class Members for rest period premiums, and meal period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

c. As noted above, there are approximately 57 Class Members. Therefore, the waiting time penalties, calculated at 30 days of pay at the regular rate, are calculated as follows:

d. $57 \text{ Class Members} \times \$37.50 \text{ hourly rate of pay} \times 8 \text{ hours a day} \times 30 \text{ days} = \$513,000.$

30. Based on the foregoing, Plaintiff estimated Defendant’s maximum liability for inaccurate itemized wage statements as follows:

a. Labor Code Section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing, showing among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

b. Pursuant to Labor Code Section 226(e), Plaintiff and the other current and former employees of Defendant are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and are entitled to an award of costs and reasonable attorneys’ fees.

c. $57 \text{ Class Members} \times \$4,000 \text{ per Class Member} = \$228,000.$

31. Based on the information provided by Defendant, Plaintiff estimated PAGA penalties under Labor Code § 2699 as follows:

1 a. Under California Labor Code § 2699(f)(2) Defendant is subject to a civil penalty of \$100
2 for the initial violation of the aforementioned Labor Code violations, and \$200 for each
3 subsequent pay period where the violation occurred for the last one year, however, since
4 Plaintiff sent his PAGA Notice after Defendant had changed its policies, Plaintiff
5 calculated PAGA penalties using the \$100 initial violation figure.

6 b. Without stacking PAGA penalties, Defendant's PAGA exposure is:
7 2,050 pay periods * \$100 per pay period = \$205,000.

8 32. Therefore, in an "everything goes right" scenario, Defendant's liability amounts to \$
9 1,522,017.5. However, Defendant presented a number of compelling defenses, and denied and continues
10 to deny generally the claims and contentions alleged in the Complaint. Therefore, Plaintiff has applied
11 discounts accordingly on the maximum settlement value as calculated to come to Defendant's realistic
12 exposure.

13 ***Wage Statement Defense***

14 33. Defendant can rely on a recent California Court of Appeal case, *Maldonado, et al. v.*
15 *Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1334-37, 2018 Cal.App. LEXIS 413, *46-52 (April 18,
16 2018) where the Court reversed their award for penalties for inaccurate wage statements because the
17 Court found that inaccurate wage statements alone based on derivative Labor Code violations do not
18 justify penalties; the plaintiff must establish injury from the inaccuracy and independent inaccuracies
19 different from underpayments or derivative claims. Therefore, Plaintiff assessed an 80% discount on his
20 claims for inaccurate wage statements. Thus $\$228,000 * 20\% = \$45,600$ remaining.

21 ***Risk of Prevailing on the Merits***

22 34. Even if Plaintiff successfully obtained certification, it was not a foregone conclusion that
23 Plaintiff would prevail on the merits and decertification also remained a possibility. In another recent
24 case involving claims where punch data somewhat unusually existed for the rest periods at issue—which
25 does not exist here—a federal jury found in favor of the defendant against 37,208 employees on a claim
26 for failure to provide lawful rest periods despite the fact that the defendant's policy was facially invalid
27 because it "only provides one ten minute break for employees working between six and seven hours."
28 *See In re Taco Bell Wage & Hour Actions* No. 1:07-cv-01314-SAB) 2016 U.S. Dist. LEXIS 32690, at

*4-5 (E.D. Cal. Mar. 14, 2016); *In re Taco Bell Wage & Hour Actions*, No. 1:07cv1314 LJO DLB, 2012 U.S. Dist. LEXIS 168219, at *12 (E.D. Cal. Nov. 26, 2012). Therefore, Plaintiff assessed a 25% discount on the risk of losing on the merits. Defendant could argue, for instance, that on-premises breaks were not necessarily on-duty breaks.

Discounts on the PAGA Penalties

35. Under Labor Code section 2699(e)(2) a court may award a lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, and oppressive or confiscatory. Courts often exercise their discretion to reduce the amount of PAGA penalties to as little as \$5.00 per pay period or 18% of the available PAGA penalties.¹ Additionally, the Labor Commissioner has specifically stated as recently as last year that the main purpose for assessing PAGA penalties by the Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain compliance. Specifically, with regard to assessing the adequacy of settlements, the penalty amounts are resigned to "promote PAGA's compliance and deterrence goals." Amicus Curiae Brief submitted by the State Labor Commissioner, *Price v. Uber Technologies*, June 16, 2017. Therefore, Plaintiff assessed a 50% discount on the maximum liability for PAGA penalties due to the discretionary nature of PAGA penalties.

Defendant's Realistic, Risk-Adjusted Exposure

36. Therefore, considering Defendant's maximum damages as calculated and applying the discounts, Defendant's realistic exposure is as follows:

- a. Defendants' maximum liability for on-duty rest and meal periods: \$286,762.50
- b. Defendants' maximum liability for unpaid overtime: \$286,762.5
- c. Defendants' maximum liability for unreimbursed expenses: \$50,980
- d. Defendants' maximum liability for waiting time penalties: \$513,000
- e. Defendants' liability for inaccurate itemized wage statements: \$228,000* 80% discount for

¹ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) holding that the plaintiff was only entitled to collect the reduced penalty amount of \$5.00 for each pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

1 *Maldonado* = \$45,600

2 f. $\$286,762.50 + \$286,762.5 + \$50,980 + \$513,000 + \$45,600 = \$1,183,105$

3 g. $\$205,000$ PAGA penalties * 50% discount for discretionary nature = \$102,500

4 h. Because PAGA penalties are not subject to the same risks and discounts as the other claims the
5 \$102,500 is added on top of the realistic recovery of the other claims, $\$1,183,105 + \$102,500 =$
6 **\$1,285,605** (without attorneys' fees)

7 37. Therefore, the Maximum Settlement Amount obtained represents **42.4%** ($\$545,612 /$
8 $\$1,285,605 = 42.4\%$) of Defendant's realistic exposure on Plaintiff's claims and reasonable compromise
9 of the claims.

10 **FAIRNESS AND ADEQUACY OF THE PROPOSED SETTLEMENT**

11 38. As described further below, I believe that the Settlement Amount is reasonable given the
12 risk, expense, complexity, and likely duration of litigation. The Net Settlement Amount shall be divided
13 up and paid to Settlement Class Members who submit claims based on the pro rata number of eligible
14 workweeks that each Settlement Class Member worked during the Class Period² divided by the total
15 number of eligible workweeks worked by all Class Members during the Class Period. The formula
16 relies upon objective evidence of each Class Member's employment history, which Class Members can
17 easily review and confirm for themselves and challenge in the event they disagree with the pre-printed
18 data. This information is readily available from Defendant's records, and the Settlement Administrator
19 can apply the formula in a fair and transparent manner.

20 39. The Settlement is fair and reasonable, and was negotiated at arm's length between
21 counsel. Counsel for both parties were thoroughly familiar with the complex legal and factual questions
22 at issue in this litigation. The Settlement is a product of intensive negotiations, supported by
23 investigation and direct exchanges of information through formal and informal discovery, and during
24 the course of settlement negotiations, including a full-day mediation.

25 40. Another factor supporting the reasonableness and adequacy of the overall settlement
26 amount is that settlement payments will be made much sooner than could possibly have been the case if
27

28 ² The "Class Period" is defined as the period from April 1, 2017 through the date the Court enters a preliminary approval order for this settlement.

1 the case were litigated through the class certification stage, much less through trial, before it is resolved.
2 The advantage to Class Members of avoiding delay in payment justifies accepting a lower percentage of
3 the maximum realistically likely recovery through an early settlement.

4 41. Given my experience as a wage and hour litigator, and based on my own investigation
5 and evaluation, I believe the proposed Settlement addresses all of the allegations of violations of
6 California state law by Defendant, and provides adequate monetary relief to Plaintiff and Class
7 Members. The estimated 57 Class Members will enjoy substantial monetary relief from the settlement.
8 If the Court approves this settlement, the estimated average recovery for each Class Member will be
9 approximately \$5,292 on a net basis.³ In my experience, this amount is substantial for class members in
10 a class action involving on duty meal and rest breaks.

11 42. Whereas proceeding with litigation would impose significant risk of no recovery as well
12 as ongoing, substantial additional expenditures of time and resources, the settlement confers a benefit
13 on Plaintiff and Class Members. If settlement were not achieved, continued litigation of the claims
14 would take substantial time and possibly confer no benefit on Class Members. By contrast, the
15 settlement will yield a prompt, certain, and substantial recovery for Class Members, which also benefits
16 the parties and the Court. Counsel on both sides share the view that this is a fair and reasonable
17 settlement in light of the complexities of the case, given the risks inherent in litigation and the defenses
18 asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class Members, and
19 should be preliminarily approved.

20 **FAIRNESS OF THE PROPOSED SERVICE ENHANCEMENT AWARD**

21 43. The proposed Service Enhancement Award of \$10,000.00 to the Plaintiff is fair and
22 reasonable. Plaintiff was instrumental in prosecuting this lawsuit and was an important source of
23 information during the course of this litigation. Moreover, Plaintiff has no interests antagonistic to the
24 interests of the Class.

25 44. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case,
26 including providing factual background for the proposed mediation and the Class Complaint;
27 participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement
28

³ Net Settlement Amount of \$301,666 / 57 Settlement Class Members = \$5,292.

documents. Plaintiff was also available during the duration of the all-day mediation which demonstrated his commitment to the Class. Plaintiff agreed to participate in this case with no guarantee of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as Class Representative and exposed himself to the risk of negative publicity by anyone who opposed this case. Moreover, the requested \$10,000.00 Service Enhancement Award for the Plaintiff falls within the range of incentive payments typically awarded to Class Representative in similar class actions.

45. The Settlement Class would have received no benefit had it not been for the contribution of Plaintiff. Moreover, Plaintiff faced and accepted the significant risk in bringing this litigation—namely, that had he lost, Plaintiff could have been ordered to pay Defendant’s costs. In contrast to the more limited class release, Plaintiff also agreed to more robust general releases of all his claims.

46. I believe the requested Service Enhancement Award of \$10,000.00 for the Plaintiff is reasonable and well within precedent for Preliminary and Final Approval.

ATTORNEYS’ FEES AND COSTS

47. Through my practice, I have gained significant experience regarding the obligations and burdens of representing a class. This knowledge has allowed me and my firm, Potter Handy LLP, to successfully represent plaintiffs in many class actions in the past years. As noted, numerous state and federal courts in California have found that my firm is competent and capable of representing large classes similar to the one here at issue.

48. Under the terms of the Settlement Agreement, Class Counsel is requesting \$203,333.33 in attorneys’ fees. This amount is equal to one third of the MSA agreed upon by the parties as the Maximum Settlement Amount. This fee amount is fair, reasonable and consistent with awards obtained in similar class action cases preliminary approved by courts in California. Moreover, if it becomes necessary to litigate this matter further, my firm has the financial resources and is prepared to devote whatever time and effort is required to zealously advocate on behalf of Plaintiff and the class. Significantly, the Retainer Agreement in this case provides fees up to 1/3 of the amount obtained.

49. Class Counsel litigation costs payment of up to \$15,000.00 is also reasonable, as will be discussed again in detail in Plaintiff’s Motion for Final Approval.

50. If the Court grants preliminary approval to the settlement here and authorizes the

1 dissemination of the Class Notice, Plaintiff's Counsel will file a request attorneys' fees and costs with
2 his motion for final approval that will be heard the same date as the Final Approval Hearing. Our firm
3 will need to expend additional hours and will incur additional costs preparing and filing the motion for
4 final approval and the motion for attorneys' fees and reimbursement of litigation costs, coordinating
5 with the Settlement Administrator, and answering calls and questions from Class Members.

6 **CLAIMS ADMINISTRATOR**

7 51. The Settlement Agreement states that Phoenix will be responsible for administration of
8 the Settlement and related matters, and that is appointed by the Court to administer the Settlement.
9 Phoenix has extensive experience in the claims administration of wage and hour class actions like this
10 one, having administered many class action settlements, and Class counsel has retained them for the
11 claims administration of other cases.

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

14 Executed on this in San Diego, California.

15
16 /s/ James M. Treglio

17 By: _____

18 James M. Treglio, Esq.