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8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF TULARE**

11 LUCI GILLESPIE and ILEANA
12 SUASTEGUI, et al., on behalf of themselves
and all others similarly situated,

13 Plaintiffs,

14 v.

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16 PLUM HEALTHCARE GROUP, LLC, et al.;
and DOES 1-100, inclusive,

17 Defendants.
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Case No. VCU285376

**DECLARATION OF SCOTT L. GORDON
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

*Supplemental declaration filed pursuant to
Court's March 12, 2024 Minute Order*

Judge: Hon. Bret Hillman
Dept.: 2
Date: April 23, 2024
Time: 8:30 a.m.

Complaint Filed: December 17, 2020
Trial Date: None Set

1 I, Scott L. Gordon, declare as follows:

2 1. I submit this declaration in support of the Motion for Preliminary Approval of Class
3 and PAGA Action Settlement (“Motion”) filed by Plaintiffs Luci Gillespie, Ileana Suastegui, Trevor
4 Harding, Esther Corona, Joselito Guerrero, and Mildred Arriaga (“Plaintiffs”) on February 8, 2024. I
5 submit this declaration as a supplemental filing in support of the Motion pursuant to the Court’s March
6 12, 2024 Minute Order (the “Order”).

7 2. I am an attorney duly licensed to practice law in the State of California. I am a member
8 in good standing of the State Bar of California, I am admitted to the United States District Courts for
9 the Northern, Eastern, Central, and Southern Districts of California, and the Ninth Circuit Court of
10 Appeals.

11 3. I am an associate at Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK
12 specializes in class and representative action litigation in state and federal court. SWCK has
13 prosecuted the Actions together with co-counsel Lawyers for Justice, PC (“LFJPC”). I have served as
14 the lead attorney for SWCK in this litigation.

15 4. I am familiar with the file, the documents, and the history of the Actions. The following
16 statements are based on my personal knowledge and review of the files. If called to do so, I could and
17 would testify competently thereto.

18 **RELEVANT BACKGROUND**

19 5. Plaintiffs filed a true and correct copy of the fully executed Settlement Agreement
20 (“Settlement”) as Exhibit 1 to the Declaration of Carolyn H. Cottrell in support of the Motion. The
21 Settlement includes the Notice of Class Action Settlement and Final Approval Hearing (“Class
22 Notice”) and the Notice of Estimated Settlement Award (jointly, the “Class Notice Packet”), attached
23 to the Settlement as Exhibits B and C, respectively.

24 6. The Settlement fully resolves eight class and California Labor Code Private Attorneys
25 General Act (“PAGA”) actions (together, the “Actions”):

- 26 • The instant, above-captioned case
- 27 • *Luci Gillespie v. Flax Holdings, LLC d/b/a River Valley Care Center* (Sutter County
28 Superior Court, Case No. CVCS22-0001058)

- *Ileana Susategui v. Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. RG21092158)
- *Luci Gillespie v. Flax Holdings, LLC d/b/a River Valley Care Center* (Alameda County Superior Court, Case No. RG21093104)
- *Trevor Harding v. Plum Healthcare Group, LLC; Gladiolus Holdings, LLC d/b/a The Pines at Placerville Healthcare Center* (Alameda County Superior Court, Case No. RG21097877)
- *Esther Corona v. Jujube Holdings, LLC d/b/a Sunnyvale Post-Acute Center; Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. RG21111905)
- *Joselito Guerrero v. Douglas Fir Holdings, LLC d/b/a Huntington Valley Healthcare Center; Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. RG21111952)
- *Mildred Arriaga v. Olive Holdings, LLC d/b/a Aviara Healthcare Center; Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. 22CV006835)

7. With the Motion, Plaintiffs filed a Stipulation to File Consolidated Complaint for Settlement Purposes, in which the Parties agreed to consolidate the eight Actions for purposes of settlement and seeking court approval. The Court granted the stipulation on February 16, 2024.

8. The Order requires Plaintiffs to complete the following for the Court to grant preliminary approval: (1) increase the notice period for opt-outs and objections from 45 days to 60 days; (2) provide proof of submission of the Settlement to the Labor and Workforce Development Agency (“LWDA”); and (3) provide the Court with an estimate of the approximate lodestar for Plaintiffs’ counsel, including information as to the time spent on the Actions and the hourly rates for all attorneys, and a breakdown of out-of-pockets costs. Plaintiffs provide this information, in this sequence, with this declaration.

CLASS NOTICE PERIOD AND ACCOMPANYING AMENDMENT TO THE SETTLEMENT

9. The Settlement, as submitted to the Court on February 8, 2024, incorporated a 45-day notice period for Class Members to submit objections, opt-outs, and disputes regarding workweeks.

1 See Settlement Agreement, ¶¶ III.E.3.a-b, III.E.4.

2 10. Pursuant to the Order, the Parties executed an Amendment to Settlement Agreement
3 to increase the notice period for Class Members to submit objections, opt-outs, and disputes from 45
4 to 60 days. A true and correct copy of the fully executed Amendment to Settlement Agreement is
5 attached hereto as **Exhibit 1**.

6 11. The Amendment to Settlement Agreement includes a revised Class Notice that is
7 updated in Sections 4 and 6 to indicate that the notice period for Class Members to submit objections,
8 opt-outs, and disputes is 60 days. The Class Notice attached to the Amendment to Settlement
9 Agreement as Exhibit B replaces the original Exhibit B attached to the Settlement.

10 12. The Parties executed the Amendment to Settlement Agreement through their
11 respective counsel pursuant to the terms of the Settlement. See Settlement Agreement, ¶ III.K.3.

12 **PROOF OF SUBMISSION OF THE SETTLEMENT TO THE LWDA**

13 13. Plaintiffs submitted the proposed Settlement to the LWDA on February 8, 2024, just
14 before filing the Motion with the Court. With the LWDA submission, Plaintiffs included their
15 Memorandum of Points and Authorities in support of the Motion (“preliminary approval brief”) as
16 specified by the LWDA’s document submission instructions.

17 14. On behalf of Plaintiffs, I submitted the Settlement and preliminary approval brief in
18 each of the PAGA case files for the six Plaintiffs named in Plaintiffs’ Consolidated Class and PAGA
19 Complaint:

- 20 • Luci Gillespie - LWDA-CM-815343-20
- 21 • Ileana Suastegui - LWDA-CM-815342-20
- 22 • Trevor Harding - LWDA-CM-822863-21
- 23 • Joselito Guerrero - LWDA-CM-829958-21
- 24 • Esther Corona - LWDA-CM-829956-21
- 25 • Mildred Arriaga - LWDA-CM-850649-21

26 15. Plaintiffs did *not* attach proof of the LWDA submission to the Declaration of Carolyn
27 H. Cottrell in support of the Motion. Rather, Plaintiffs filed a separate Proof of Service of Proposed
28 Settlement Agreement on California Labor and Workforce Development Agency, in which I attested

1 to the LWDA submission and attached the submission confirmations. This Proof of Service was an
2 unremarkable document included among the numerous other filings in support of the Motion, making
3 it difficult for the Court to discern that Plaintiffs had completed the LWDA submission; I apologize
4 to the Court for the inconvenience.

5 16. I submitted the Amendment to Settlement Agreement and this declaration in each of
6 the PAGA case files (identified above) for each of the six Plaintiffs on March 29, 2023.

7 17. True and correct copies of the respective submission confirmations from the LWDA
8 are attached hereto as **Exhibit 4** (Luci Gillespie), **Exhibit 5** (Ileana Suastegui), **Exhibit 6** (Trevor
9 Harding), **Exhibit 7** (Esther Corona), **Exhibit 8** (Joselito Guerrero), and **Exhibit 9** (Mildred Arriaga).

10 18. Exhibits 4-9 each include (1) the confirmation email from the LWDA for the original
11 Settlement, (2) the submission details from the PAGA electronic filing system for the original
12 Settlement, (3) the confirmation email from the LWDA for the Amendment to Settlement Agreement,
13 and (4) the submission details from the PAGA electronic filing system for the Amendment to
14 Settlement Agreement.

15 **ESTIMATED LODESTAR FOR PLAINTIFFS' COUNSEL**

16 19. The total lodestar for Plaintiffs' counsel, for both SWCK and LFJPC, is approximately
17 \$2,169,833, based on 2,426.9 total hours. The total lodestar for Plaintiffs' counsel compares favorably
18 to the requested \$3,500,000 fee award.

19 20. SWCK's lodestar is approximately \$1,704,930, based on 2,040.3 hours, as described
20 *infra* and summarized in **Exhibit 2**.

21 21. I am informed that LFJPC's lodestar is approximately \$464,903, based on 386.6 hours,
22 as set forth in the Declaration of Joanna Ghosh filed herewith.

23 22. In this section, I provide a summary of the work performed on the Actions; a summary
24 of the time spent by SWCK on the Actions and the hourly rates for all timekeepers; information
25 regarding recent court approvals of SWCK's hourly rates; and a summary of the out-of-pocket costs
26 incurred by SWCK in litigating the Actions.

1 **Summary of Work Performed**

2 *The Instant Action*

3 23. Plaintiffs Luci Gillespie and Ileana Suastegui filed a broad putative class action
4 complaint in this Court on December 17, 2020, to challenge Plum's alleged non-compliant
5 employment practices and attendant violations of California law on a statewide basis. Plaintiffs'
6 counsel worked with Plaintiffs Gillespie and Suastegui to draft the class complaint.

7 24. Plum filed a Motion to Compel Arbitration and Stay Court Action, with respect to both
8 Plaintiffs, on March 26, 2021. Plaintiffs' counsel opposed the motion, but the Court granted Plum's
9 motion on May 11, 2021 and ordered this case stayed pending resolution of the arbitration
10 proceedings.

11 25. Plaintiffs' counsel then worked with Plaintiffs Gillespie and Suastegui to prepare their
12 arbitration demands and initiated the arbitration actions on July 19, 2021. As each arbitration
13 agreement required a different arbitral forum, Plaintiffs' counsel was required to litigate Plaintiff
14 Suastegui's arbitration in AAA and Plaintiff Gillespie's arbitration in JAMS.

15 26. Plaintiffs Gillespie and Suastegui filed a Motion to Vacate Order Compelling
16 Arbitration, pursuant to Code of Civil Procedure ("CCP") sections 1281.97, *et seq.*, in this Court on
17 April 27, 2022, premised on Plum's alleged failure to timely pay required arbitration fees that AAA
18 and JAMS billed in each arbitration proceeding. Plaintiffs' counsel prepared comprehensive briefing
19 and a detailed evidentiary showing that established the procedural history of the arbitration
20 proceedings, the billing, and Plum's failure to pay required arbitration fees, across the two different
21 arbitration bodies.

22 27. After Plum's opposition, Plaintiffs filed their reply on May 17, 2022. In the reply brief,
23 Plaintiffs' counsel took on the considerable evidence and legal arguments set forth by Defendants
24 with their opposition papers.

25 28. After full briefing and argument, the Court granted Plaintiffs' Motion to Vacate Order
26 Compelling Arbitration, as set forth in its Ruling on Motion to Set Aside Arbitration Order, dated
27 May 25, 2022.

28 29. Thereafter, litigation resumed in this Court on a putative class basis, with Defendants

represented by new counsel from Fisher & Phillips, LLP. Plaintiffs' counsel commenced litigation of class-wide discovery.

30. Plaintiffs Gillespie and Suastegui served formal requests for production of documents and special interrogatories on August 26, 2022. Plaintiffs' counsel crafted extensive, detailed discovery requests for this case, which sought, *inter alia*, a variety of timekeeping, payroll, and scheduling records for the putative class members; policy documents; documents relating to Plum's involvement in complaints, investigations, reviews, and audits of wage and hour issues for putative class members; contracts and agreements between Plum and the facility LLCs; and entity formation documents. Plaintiffs' requests were crafted to seek general information regarding the putative class members as well as documents and information that are probative of the joint employer claims of liability.

31. Plum's initial responses consisted only of objections, without supplemental responses, and counsel for the Parties embarked on voluminous meet and confer. After the persistent efforts of Plaintiffs' counsel, Plum began to substantively respond to Plaintiffs' discovery, including serving supplemental responses on February 13, 2023. At the time of mediation, Plaintiffs were preparing a motion to compel further RFP and interrogatory responses.

The Additional Actions

32. Plaintiffs' counsel also worked with all six Plaintiffs to file PAGA actions in Alameda County Superior Court.

33. Plaintiff Suastegui filed the first of the PAGA actions on March 18, 2021, alleging PAGA claims against Plum with respect to all of Plum’s current and former non-exempt employees in California. Plaintiff Gillespie filed the second PAGA action on March 25, 2021, alleging PAGA claims against Flax Holdings, LLC d/b/a River Valley Care Center (“Flax”) with respect to all of Flax’s current and former non-exempt employees. Plaintiff Harding filed the third PAGA action on May 5, 2021, alleging PAGA claims against Plum, Gladiolus Holdings, LLC d/b/a The Pines at Placerville Healthcare Center (“Gladiolus”) and Rosebud Holdings, LLC d/b/a Western Slope Health Center (“Rosebud”). Plaintiff Corona and Plaintiff Guerrero filed their PAGA actions on September 1, 2021. Plaintiff Arriaga filed the sixth and final PAGA action on February 10, 2022, alleging PAGA

1 claims against Plum and Olive Holdings, LLC d/b/a Aviara Healthcare Center (“Olive”).

2 34. The Parties also litigated extensive motion and discovery practice in the PAGA cases.

3 35. After initial discovery, Defendants filed motions to strike in each of the actions that
4 sought to challenge the PAGA claims on manageability and other grounds on November 8, 2021.
5 Defendants argued that the PAGA claims could not be manageably tried under *Wesson v. Staples the*
6 *Office Superstore, LLC* (2021) 68 Cal.App.5th 746—and that the alleged violations could not be tried
7 manageably across the Plum network and even as to single facilities.¹

8 36. Plaintiffs filed a motion to consolidate the PAGA cases on November 10, 2021. The
9 motion was supported by documentary evidence and a request for judicial notice.

10 37. At the urging of Judge Brad Seligman, the Parties stipulated to omnibus briefing for
11 the oppositions and replies to Defendants’ motions to strike and Plaintiffs’ motion to consolidate.

12 38. Plaintiffs filed their omnibus opposition to Defendants’ motions to strike on January
13 11, 2022. Plaintiffs’ opposition had a two-pronged overall theme. First, Plaintiffs argued that
14 Defendants’ motions were premature because Plaintiffs were entitled to discovery to develop
15 manageable theories of the litigation and an informed assessment of manageability. Second, Plaintiffs
16 articulated that their PAGA claims are amenable to common proof and efficient resolution by virtue
17 of Plum’s overarching, common control across its California facilities.

18 39. Plaintiffs’ counsel engaged in extensive research and analysis of the legal and factual
19 issues to defeat these crucial motions to strike, set forth in Plaintiffs’ 23-page opposition brief.

20 40. To substantiate their showing, Plaintiffs pointed to Plum’s own written policies, which
21 were implemented universally and created common employments conditions across the Facilities.
22 Plaintiffs also adduced statements of Plum’s former CEO, Cory Christensen, showing that Plum
23 operates a cohesive system with extensive involvement in the wages, hours, and working conditions
24 for facility employees. Plaintiffs argued that the PAGA claims are grounded in Plum’s central control
25 over staffing allocations, availability of relief workers, other operational policies, practices, and
26 procedures, and the overall work environment and facility operations. Plaintiffs maintained that,

27
28 ¹ On January 18, 2024, the Supreme Court of California barred striking PAGA claims on trial
manageability grounds alone, overturning *Wesson*, in *Estrada v. Royalty Carpet Mills, Inc.*, S274340.

1 together with the universal requirements of patient care and other operational realities that are ever
2 present in the skilled nursing setting, Plum sets in motion a series of Labor Code violations that may
3 be efficiently prosecuted and adjudicated on a representative basis.

4 41. After extensive briefing, the motions to strike and motion to consolidate were heard
5 by Judge Brad Seligman of the Alameda County Superior Court on February 4, 2022. Judge Seligman
6 denied Defendants' motions to strike, crediting Plaintiffs' arguments that they were entitled to develop
7 manageable theories of the litigation and an informed assessment of manageability following
8 discovery. Judge Seligman denied Plaintiffs' motion to consolidate without prejudice, ruling that the
9 motion should be reheard after the Parties build their cases through discovery.

10 42. At the February 4, 2022 hearing, Judge Seligman instructed the Parties to proceed with
11 discovery with a focus on first developing evidence to support the joint employer claims of liability.
12 Again, shortly after Defendants' loss on their motions to strike, Defendants replaced their prior
13 counsel from Procopio with their current counsel from Fisher & Phillips.

14 43. Plaintiffs propounded considerable discovery in the PAGA cases on April 8, 2022.
15 Plaintiffs' counsel crafted extensive, highly specific discovery requests, consisting of one set of "joint
16 employer" discovery requests on Plum, which featured 118 requests for production of documents and
17 52 special interrogatories that were intended to elicit responses that apply to the joint employer claims
18 across the PAGA actions. Plaintiffs' counsel also prepared further, individualized requests, which
19 featured approximately 60 RFPs and approximately 19 to 23 SROGs for each of the Plaintiffs that are
20 specific to their particular actions.

21 44. Defendants served objections (without substantive responses) to these requests in June
22 2022. The Parties engaged in extensive meet and confer in August and September 2022; Defendants'
23 counsel ultimately informed Plaintiffs' counsel that they intended to file motions to compel arbitration
24 on the basis of the United States Supreme Court's then-recent decision in *Viking River Cruises, Inc.*
25 *v. Moriana* (2022) 142 S.Ct. 1906, and maintained that formal discovery should be stayed across all
26 the actions.

27 45. Plaintiffs' counsel recognized that the Supreme Court's decision could potentially have
28 marked impacts on the nature and scope of these actions and were reasonable in prioritizing the

1 resolution of the *Viking River* motions.

2 46. Defendants moved to compel arbitration as to five of the six Plaintiffs—Plaintiffs
3 Susategui, Gillespie, Harding, Guerrero, and Arriaga—on November 1, 2022.

4 47. Plaintiffs filed oppositions to the *Viking River* motions to compel arbitration on
5 December 2, 2022. Again, Plaintiffs’ counsel drafted extensive briefing, supported by careful, detailed
6 research and analysis, to oppose these motions. Plaintiffs’ filed a lengthy opposition (also 23 pages)
7 to Defendants’ consolidated motion as to Plaintiffs Suastegui, Gillespie, and Harding, as well as
8 additional, individualized oppositions for Plaintiffs Guerrero and Arriaga.

9 48. After receiving Plaintiff Arriaga’s opposition brief, Defendants withdrew the *Arriaga*
10 motion on December 19, 2022.

11 49. After full briefing and argument, the Court denied Defendants’ remaining motions in
12 large part on January 13, 2023. The Court ruled that Defendants failed to prove that Plaintiff Guerrero
13 had agreed to arbitration, and also denied the motion in its entirety as to Plaintiff Gillespie. As to
14 Plaintiffs Suastegui and Harding, the motion was granted only as to the individual PAGA claims,
15 meaning that the cases could proceed in court as to the violations alleged for all employees beyond
16 Plaintiffs Suastegui and Harding.

17 50. Following the resolution of the *Viking River* motions, the Parties resumed discovery
18 practice. Plaintiffs’ counsel continued to engage in highly detailed written and telephonic meet and
19 confer. At the time of mediation, the Parties had tentatively agreed to an approach under which they
20 would prioritize the joint employer discovery as to the facilities where the Named Plaintiffs worked.

21 51. Turning to the narrow Sutter County class action, Plaintiff Gillespie originally filed
22 the case, seeking damages for the underlying wage and hour violations from Flax, on December 14,
23 2020. Flax filed a motion to compel arbitration on March 26, 2021. After this Court granted Plum’s
24 motion to compel arbitration, Plaintiff Gillespie and Flax stipulated to proceed in arbitration and
25 dismiss the case, which the Court signed on May 14, 2021.

26 52. Following Defendants’ failure to pay the required arbitration fees and this Court’s
27 vacating its order to compel arbitration, Plaintiffs’ counsel prepared a new class action complaint and
28 refiled Plaintiff Gillespie’s Sutter action on June 14, 2022. The refiled action names only Flax as the

1 Defendant.

2 53. Plaintiff Gillespie propounded initial discovery in the Sutter action on December 19,
3 2022, and the Parties were engaged in meet and confer at the time of mediation.

4 *Mediation and Settlement*

5 54. The Parties agreed to mediate with Jeffrey Krivis, one of the most highly respected
6 mediators of wage and hour actions in California, and booked the mediation session for March 30,
7 2023. After several months of meet and confer on the scope of mediation, and following the Alameda
8 County rulings on Defendants' motions to compel arbitration in the PAGA cases, Defendants agreed
9 to engage in a global mediation of all eight pending actions in approximately January 2023.

10 55. For the first mediation session, Plaintiffs' counsel prepared a mediation brief that
11 explained the Actions, the nature of Plaintiffs' claims, and Plum's operational structure. At the first
12 session, Plaintiffs' counsel worked with Mr. Krivis to build an understanding as to the cases, including
13 the claims and procedural history, the joint employer framework, Plum's operational background, and
14 Plum's anticipated defenses.

15 56. The Parties agreed, with the assistance of the mediator, to negotiate a class and PAGA
16 settlement on a statewide basis as to all of the Facilities allegedly at issue in California as alleged in
17 all Actions, pursuant to an agreed upon scope determined by prior settlements and arbitration
18 agreements. After Mr. Krivis secured confirmation of Defendants' willingness to entertain a "Plum-
19 wide" settlement, he then worked with the Parties to develop a concrete framework for the production
20 of data necessary to negotiate a statewide settlement at the second session on May 16, 2023.

21 57. Defendants produced mediation discovery that provided the number of Class
22 Members, Aggrieved Employees, workweeks and pay periods, along with average hourly rate of pay
23 and numerous other data points across the 37 Facilities at issue. Defendants also produced a 5%
24 sampling of timekeeping and payroll records for each of the Facilities and numerous other documents.

25 58. Plaintiffs' counsel developed estimated violation rates for off-the-clock time, meal and
26 rest break violations, and unreimbursed expenses, which accounted for job type and time period.

27 59. Applying the estimated violation rates to input data provided by Defendants, Plaintiffs'
28 counsel created a damages analysis under which potential settlement amounts could be compared to

1 the total estimated exposure.

2 60. The Parties participated in the second mediation with Mr. Krivis on May 16, 2023.
3 During the mediation, each side, represented by its respective counsel, evaluated the potential
4 exposure and the risks of an adverse result in litigation, and agreed to settle all claims in the Actions
5 for the employees at the Facilities that did not execute arbitration agreements and did not release
6 claims in a prior settlement.

7 61. After the May 16, 2023 mediation, the Parties and their counsel signed a Term Sheet
8 that contained the broad terms of the Settlement. Plaintiffs' counsel prepared the Term Sheet.

9 62. Plaintiffs' counsel then worked diligently to draft the Settlement Agreement on an
10 expeditious basis. Plaintiffs' counsel provided the first draft of the long-form settlement agreement to
11 Defendants' counsel on June 7, 2023. Plaintiffs' counsel also drafted the Class Notice.

12 63. After a multi-month drafting process, which involved numerous rounds of edits for the
13 long-form agreement and separate rounds of edits for the Class Notice and other ancillary documents,
14 the Parties fully executed the Settlement Agreement on February 2, 2024.

15 64. Plaintiffs' counsel also drafted the Consolidated Class and PAGA Complaint and the
16 accompanying stipulation that was approved by the Court on February 16, 2024.

17 **SWCK's Lodestar**

18 65. As discussed above, Plaintiffs' counsel spent significant time and resources reaching
19 this Settlement. I have reviewed my firm's billing records in this case, and a true and correct summary
20 SWCK's billing is attached hereto as **Exhibit 2**. The hourly rates are the usual and customary rates
21 for each individual in all of our cases.

22 66. Due to the amount of privileged information contained in SWCK's actual hourly
23 billing records, those detailed records are not attached here but can easily be provided for this Court's
24 *in camera* review should the Court wish to review them.

25 67. SWCK's hourly rates for the partners, attorneys, and professional staff are the same as
26 would be charged in non-contingent matters and/or which have been accepted and approved in other
27 recent class and collective action wage and hour litigation by federal and state courts around the
28 country.

1 68. The hourly rates for this litigation team were recently found to be reasonable for
2 purposes of a lodestar crosscheck in *Lopez v. Eurofins Scientific, Inc., et al.* (Northern District of
3 California, Case No. 3:21-cv-08652-LB; ECF 90, February 15, 2024). The Court approved SWCK’s
4 request for a one-third fee award, noting “the excellent results obtained, the substantial risk borne by
5 Class Counsel in litigating this matter, the high degree of skill and quality of work performed” and
6 that “the fee award is further supported by a lodestar crosscheck, whereby it finds that SWCK’s hourly
7 rates are reasonable, that the estimated hours expended are reasonable, and that the multiplier is
8 reasonable in light of the above.”

9 69. The hourly rates for this litigation team were also found to be reasonable for purposes
10 of a lodestar crosscheck in *Rodriguez, et al. v. Tri-Wire Engineering Solutions, Inc., et al.* (District of
11 Massachusetts, Case No. 1:21-cv-10752-PBS; ECF 139, December 5, 2023), where the Court held
12 that “[SWCK]’s hourly rates are within the prevailing range of hourly rates charged by attorneys
13 providing similar services in class action, wage-and-hour cases. The declarations submitted in support
14 of the motion demonstrate that the attorneys representing the class have the experience and
15 qualifications necessary to represent the Class.”

16 70. The hourly rates for this litigation team were again found to be reasonable in *Beissel*
17 *v. Western Flyer Express, LLC* (Western District of Oklahoma, Case No. 5:21-cv-00903-R; ECF 98,
18 November 3, 2023) (order reported at 2023 U.S. Dist. LEXIS 197749 and 2023 WL 7288735), where
19 the Court held that “the fee award is further supported by a lodestar crosscheck, whereby it finds that
20 the hourly rates of Schneider Wallace Cottrell Konecky LLP ... are reasonable, and that the estimated
21 hours expended are reasonable.”

22 71. Similarly, in *Wright, et al. v. Frontier Management LLC, et al.* (Eastern District of
23 California, Case No. 2:19-cv-01767-JAM-CKD; ECF 103, March 13, 2023), the court found that
24 “[SWCK]’s hourly rates are within the prevailing range of hourly rates charged by attorneys providing
25 similar services in class action, wage-and-hour cases in California, as shown by the Declaration of
26 Carolyn H. Cottrell.”

27 72. All of the work described above, for which SWCK’s billing is summarized in Exhibit
28 2, was reasonable and necessary to the prosecution and settlement of the Actions. Plaintiffs’ counsel

1 conducted an extensive factual investigation and engaged in significant motion and discovery practice
2 during the prosecution of the Actions. Through this comprehensive evaluation of the facts and law,
3 Class Counsel was able to settle the Actions for a substantial sum and further, meaningful equitable
4 relief.

5 73. The Settlement reached with Defendants, as a result of two separate mediations,
6 involves complex provisions that are specific to wage and hour litigation. The Settlement and the
7 result achieved are a reflection of Plaintiffs' counsel's skill and experience. The Settlement provides
8 Class Members with substantial benefits without having to wait for years of drawn-out litigation.

9 74. Again, the total lodestar for Plaintiffs' counsel, for both SWCK and LFJPC, is
10 approximately \$2,169,833, based on 2,426.9 total hours. This amount would only increase with
11 preparation and attendance at the preliminary and final approval hearings, further communications
12 with Class Members during the notice process, and Settlement administration and oversight.

13 75. The requested attorneys' fees reflect a reasonable multiplier of 1.61 when compared to
14 the total lodestar amount. See, e.g., *Wershba v. Apple Comput., Inc.* (2001) 91 Cal.App.4th 224, 255
15 ("Multipliers can range from 2 to 4 or even higher."); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290
16 F.3d 1043, 1047 (multipliers "ranging from one to four are frequently awarded ... when the lodestar
17 method is applied"; affirming fees where the cross-check multiplier is 3.65); *Kim v. Space Pencil, Inc.*
18 (N.D. Cal. Nov. 28, 2012) 2012 U.S. Dist. LEXIS 169922, 2012 WL 5948951, at *20-21 (the
19 "customary range" for multipliers in class action lawsuits includes multipliers up to 4 times class
20 counsel's lodestar).

21 76. Based upon the foregoing reasons, Plaintiffs' counsel respectfully submits that the
22 Court should preliminarily approve the requested fees.

23 **Plaintiffs' Counsel's Costs**

24 77. This litigation required SWCK and LFJPC to advance costs. As of March 29, 2024,
25 Plaintiffs' counsel expended \$51,981.98 in costs to prosecute these Actions. A true and correct
26 breakdown of the costs is attached hereto as **Exhibit 3**.

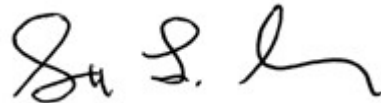
27 78. The expenses incurred pertaining to these Actions are reflected in the books and
28 records of SWCK. SWCK maintained a joint litigation fund to pay expenses in the Actions, which

1 was funded by both SWCK and LFJPC, for which SWCK maintained further books and records.
2 These books and records are prepared from invoices, expense vouchers and check records and are an
3 accurate record of the expenses incurred. All of these expenses were reasonable, necessary for the
4 successful prosecution of the Actions, and are customarily billed to fee-paying clients.

5 79. Plaintiffs' counsel total cost amount would only increase with preparing and filing the
6 final approval papers, paying for court reporters for further hearings, and filing the additional
7 documents (such as administrator declarations and the proposed amended judgment) necessary to
8 bring the settlement administration process to a conclusion.

9 80. Plaintiffs' counsel reported, in the preliminary approval brief, that their costs where
10 "currently estimated at \$50,000." See preliminary approval brief, 3:2-3, 14:7, 28:28. Plaintiffs'
11 counsel respectfully requests that the Court preliminarily approve costs not to exceed \$55,000.

12
13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed on March 29, 2024, at Emeryville, California.

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Scott L. Gordon