

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
(858) 375-7385
Fax: (888) 422-5191

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

RICARDO ALEXANDER OCAMPO,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

NOR-CAL BEVERAGE CO, INC., a
California corporation with its principal place
of business in California, and DOES 1 to 100,
inclusive,

Defendant.

CASE NO. 30-2021-01226173-CU-OE-CXC
Complaint Filed: 10/13/2021

CLASS ACTION

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

Judge: Honorable Randall J. Sherman
Hearing Date: May 5, 2023
Time: 10:00 a.m.
Department: CX105

Reservation Number: 73940205

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,

1 (“PH,” “Co-Class Counsel” or “Plaintiff’s Counsel”), attorney of record for Plaintiff Ricardo Alexander
2 Ocampo (“Plaintiff”) and the proposed settlement class (the “Class”) in the above-captioned matter. I
3 have no knowledge of the existence of any conflicting interests between my firm and any of its attorneys,
4 and Plaintiff or any other Class Member, on the other.

5 3. After engaging in productive settlement discussions at a full-day mediation, Plaintiff and
6 Defendant Nor-Cal Beverage Co., Inc. (“Defendant”) entered into a Settlement Agreement in resolving
7 the claims of the putative class. The Settlement Agreement seeks to release and discharge Defendant
8 from the claims brought against it. In exchange, Defendant will pay the Gross Settlement Amount
9 (“GSA”) of \$390,000.00. This settlement, of \$390,000, is made in addition to payments made to the
10 class members in individual settlements totaling over \$1,360,000, for a combined total value of
11 \$1,750,000. The Net Settlement Amount available for Class Members is approximately \$160,000.00
12 (after deductions for attorneys’ fees, litigation costs, claims administration costs, the LWDA’s portion of
13 PAGA penalties, and Class Representative Enhancement Payment). A true and correct copy of the
14 Settlement Agreement is attached hereto as **Exhibit A**. The Notice of Class Action Settlement (“Class
15 Notice”) and Claim Form are attached as **Exhibits B to D** to the Settlement Agreement. As shown
16 further below, the settlement is fair and reasonable to the Class based on the strength of the claims and
17 Defendant’s potential defenses, as well other comparable settlements for on-duty meal and rest breaks
18 that have received the approval of federal courts in California.

19 **ATTORNEY EXPERIENCE**

20 4. I was admitted to the California Bar in 2003. I received my Bachelor of Arts degree in
21 Government from College of William & Mary in 1998 and my Juris Doctor degree from the University
22 of San Diego in 2003. From 2003 through 2006, I was the staff attorney for the Fair Housing Council of
23 San Diego, where I specialized in housing discrimination enforcement. In 2007, I joined the law firm of
24 Clark & Markham, LLP, where I specialized in consumer and wage and hour class actions, which has
25 comprised my practice of law ever since. In 2012, the law firm of Clark & Markham, LLP into the Clark
26 Law Firm and the Markham Law Firm. I stayed with the Clark Law Firm, and in 2015, the firm became
27 Clark & Treglio after I was made partner. By 2013, my work with the Clark Law Firm, Clark &
28

1 Markham, LLP, and Clark & Treglio resulted in nearly 5% of all recoveries made by the LWDA up to
2 that point.

3 5. In 2017, I joined Keegan & Baker, LLP, which was also a class action firm. Whereas my
4 work at Clark & Markham, LLP and the Clark Law Firm was primarily focused on wage and hour class
5 actions, my work at Keegan & Baker, LLP involved more consumer actions, including data breach class
6 actions, and actions brought under the Fair Credit Reporting Act.

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

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

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

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

22 **FACTUAL AND PROCEDURAL HISTORY**

23 10. The attorneys I supervise, and I, have performed substantial work and diligently
24 investigated and prosecuted this case to a successful conclusion. Our work, in conjunction with the
25 work of our co-counsel, resulted in the creation of a significant settlement fund for the benefit of the
26 Class. We avoided protracted litigation by conducting considerable investigation before filing suit
27 related to the released class claims, and efficiently communicated and exchanged information with
28 Defense counsel such that the parties could successfully settle the case after informal discovery and a

1 full-day mediation. Because of the risks involved in litigating the case, particularly the contested legal
2 and factual issues, Plaintiff's Counsel believe this settlement to be fair, reasonable, and adequate.

3 11. I took the lead role in litigating this case and was involved in the litigation strategy and
4 all facets of this litigation.

5 12. On July 20, 2021, Plaintiff submitted a notice letter to the LWDA alleging PAGA claims
6 based on Defendant's alleged violation of provisions of the California Labor Code. On October 13, 2021,
7 Plaintiff filed his Complaint against Defendant in Orange Superior Court asserting a PAGA cause of
8 action, on behalf of himself and "Aggrieved Employees," for violations of Labor Code sections 201-203,
9 204, 226(a), 226.2, 226.7, 510, 512, 551, 552, 1194, 1194.2, 1198, 17200 *et. seq.* and 2698 *et. seq.* and
10 IWC Wage Order No. 1. Specifically, the Complaint alleges, as to Plaintiff and other aggrieved
11 employees, that the Defendant (1) failed to pay all wages owed; (2) failed to pay all overtime wages
12 owed; (3) failed to provide employees meal periods and pay missed meal period premiums; (4) failed to
13 provide paid rest breaks and pay rest break premiums; (5) failed to provide accurate wage statements
14 within the four years prior to the filing of this Complaint; (6) failed to pay all wages owed in a timely
15 manner; (7) failed to pay all wages due to former employees based on the foregoing; (8) failed to provide
16 a day of rest; (9) violation of PAGA; and (9) unfair business practices based on the foregoing. Defendant
17 answered the Complaint.

18 13. At some point in first half of 2022, and leading up to the mediation, Defendant began a
19 process of contacting class members and settled with them individually, as allowed under *Chindarah v.*
20 *Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. According to the Defendant, of the 1,189 individuals in
21 the Class, 1,047 agreed to the settlement, and Defendant, in total, paid out \$1,320,000 to these class
22 members.

23 14. On August 10, 2022, the Parties attended an all-day mediation with the Hon. Judge
24 Andrew Guilford. During the mediation, the Parties reached an agreement to settle the case.

25 15. In the weeks that followed the Parties executed the long form Settlement Agreement now
26 before the Court for preliminary approval.

27 16. Pursuant to the long form Settlement Agreement, Plaintiff dismissed with prejudice
28 Defendant from the Action, and submitted a Stipulation and Proposed Order.

1 ***Plaintiff's Allegations and Estimated Damages***

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

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

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

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

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

24 c. \$27.87 per missed rest period * 7 missed meal period/week * 7,364 workweeks =
25 \$1,436,642.76

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

28 a. Labor Code § 512 requires employers to provide employees with thirty (30)

minute uninterrupted and duty free meal period within the first five hours of work. Moreover, an 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. $\$27.87 \text{ per missed rest period} * 7 \text{ missed meal period/week} * 7,364 \text{ workweeks} = \$1,436,642.76$

21. 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), Plaintiffs and the other current and former employees of Defendant is 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. Initial Violation: 705.14 wage statements * \$50 = \$35,257.00
- d. Subsequent Violations: 940.19 wage statements * \$100 = \$94,019.00
- e. Total Exposure: \$129,276.00

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

a. Under California Labor Code § 2699(f)(2) Defendants are subject to a civil penalty of \$100 for the initial violation of the aforementioned Labor Code violations, and \$200 for each subsequent pay period where the violation occurred for the last one year. Plaintiff calculated PAGA penalties using the \$100 initial violation figure.

b. Without stacking PAGA penalties, Defendant's PAGA exposure is:

Initial violations:

705.14 initial violations * \$100 per pay period = \$70,514.00

Subsequent violations:

940.19 violations * \$200 per pay period = \$188,038.00

Total exposure: \$258,552.00

23. Therefore, in an "everything goes right" scenario, Defendant's liability amounts to **\$3,261,113.52**. However, Defendant presented a number of compelling defenses, and denied and continues to deny generally the claims and contentions alleged in the Complaint. Therefore, Plaintiff has applied discounts accordingly on the maximum settlement value as calculated to come to Defendant's realistic exposure.

Wage Statement Defense

24. Defendant can rely on a recent California Court of Appeal case, *Maldonado, et al. v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1334-37, 2018 Cal.App. LEXIS 413, *46-52 (April 18, 2018) where the Court reversed their award for penalties for inaccurate wage statements because the Court found that inaccurate wage statements alone based on derivative Labor Code violations do not justify penalties; the plaintiff must establish injury from the inaccuracy and independent inaccuracies different from underpayments or derivative claims. Therefore, Plaintiff assessed a 90% discount on the maximum liability for PAGA penalties due to the discretionary nature of PAGA penalties.

1
2 **87% of the Putative Class Executed Valid and Enforceable Settlement Agreements**

3 25. Approximately 87% of the class or 1,029 putative class members (and 89% or 929 of the
4 allegedly aggrieved employees), executed valid and enforceable *Pick-Up Stix* settlements. Defendant
5 contends that release agreements comply with California law and therefore are likely to survive judicial
6 scrutiny. Defendant contends that release agreements comply with California law and therefore are
7 likely to survive judicial scrutiny. *First*, Defendant contends the agreements give notice of the pending
8 class action. *Kirby v. Kindred Healthcare Operating, LLC* (C.D. Cal. May 1, 2020) 2020 WL 4639493,
9 at *4 (invalidating releases where, among other issues, defendant’s description of the claims relied
10 almost “exclusively on terminology from statutory titles . . . (using, e.g., split shifts . . . reporting time
11 pay), terms with which putative class members are probably not familiar.”). *Second*, Defendant
12 contends that the releases include a brief statement of the claims in plain English. *Id.* (invalidating
13 releases where, among other issues, defendant used terms which a non-lawyer would not understand,
14 such as stating the class had not yet been “certified”). *Third*, Defendant contends that the agreements
15 explicitly state that the employee has a right to contact an attorney. *Cheverez v. Plains All Am. Pipeline,*
16 *LP* (C.D. Cal. Mar. 3, 2016) 2016 WL 861107, at *6 (invalidating releases where defendants failed to
17 advise class members to consult with an attorney or emphasize their right to do so). *Fourth*, Defendant
18 contends that the agreements were presented in a non-coercive manner and employees were free to sign
19 or reject the agreements. *Guifu Li v. A Perfect Day Franchise, Inc.* (N.D. Cal. 2010) 270 F.R.D. 509,
20 518 (invalidating opt-out forms when defendant employer presented the forms in mandatory one-on-one
21 meetings during work hours, failed to provide forms in workers’ primary language, and refused to give
22 workers copies to take home). *Finally*, Defendant contends *the* scope of the release is limited to the
23 claims at issue, does not include a covenant not to sue, and does not mislead employees regarding their
24 ability to pursue or participate in a PAGA claim. *See Slavkov v. Fast Water Heater Partners I, LP* (N.D.
25 Cal. Nov. 2, 2015) 2015 WL 6674575, at *6 (invalidating releases where neither the release nor cover
26 letter informed recipients that all claims asserted were subject to release and otherwise mislead
27 recipients that their acceptance of the consideration would prevent them from participating in the
28 litigation as witness).

1 26. While Plaintiff does not have any particular statement regarding the releases signed,
2 Plaintiff and Class Counsel were well aware of the issues surrounding these releases, and understood
3 that the exposure would have to be reduced by 89%.

4 ***Risk of Prevailing on the Merits***

5 27. For the remaining 160 class members and 120 aggrieved employees, Defendant
6 contended Plaintiff's theories of liability will fail on the merits, arguing that there was no off the clock
7 work, as Defendant contends its policies for time-keeping were legally compliant. Further, Defendant
8 contended that its meal and rest break policies adequately provided Plaintiff and the Class Members
9 with breaks, and that meal period premiums are paid when a meal period is missed.

10 28. While Plaintiff disputes these contentions, and believes the documentation received
11 supports Plaintiff's allegations, the fact that Defendant had facially legal policies indicates that Plaintiff
12 may have had difficulty on class certification and trial. There should be no question that these defenses
13 pose a real threat to any recovery for Plaintiff or the Class Members, and taking those defenses into
14 account, Class Counsel determined, based on the recommendation of Judge Guilford, that \$390,000 was
15 a fair and reasonable settlement amount.

16 ***Discounts on the PAGA Penalties***

17 29. Under Labor Code section 2699(e)(2) a court may award a lesser amount than the
18 maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular
19 case, to do otherwise would result in an award that is unjust, arbitrary, and oppressive or confiscatory.
20 Courts often exercise their discretion to reduce the amount of PAGA penalties to as little as \$5.00 per
21 pay period or 18% of the available PAGA penalties.¹ Additionally, the Labor Commissioner has
22 specifically stated as recently as last year that the main purpose for assessing PAGA penalties by the
23 Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain
24 compliance. Specifically, with regard to assessing the adequacy of settlements, the penalty amounts are
25 resigned to "promote PAGA's compliance and deterrence goals." Amicus Curiae Brief submitted by the
26

27 ¹ See e.g., *Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-
28 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%).

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

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

- a. Defendant's maximum liability for on-duty rest periods: \$1,436,642.76
- b. Defendant's maximum liability for on-duty meal periods: \$1,436,642.76
- c. Defendant's liability for inaccurate itemized wage statements: $\$129,276.00 * 80\%$ discount for *Maldonado* = \$103,420.80
- d. $\$1,436,642.76 + \$1,436,642.76 + \$103,420.80 = \$2,976,706.32$
- e. $\$2,679,035 * 50\%$ discount for class certification = \$1,488,353.16
- f. $\$1,488,353.16 * 50\%$ discount for possibility of losing on the merits = \$744,176.58
- g. $\$258,552.00$ PAGA penalties * 50% discount for discretionary nature = \$129,276.00
- h. Because PAGA penalties are not subject to the same risks and discounts as the other claims the \$129,276.00 is added on top of the realistic recovery of the other claims, $\$129,276.00 + \$744,168.58 = \mathbf{\$873,452.58}$ (without attorneys' fees)

31. Therefore, the Gross Settlement Amount obtained represents **44.65%** ($\$390,000.00 / \mathbf{\$873,452.58} = 44.65\%$) of Defendant's realistic exposure on Plaintiff's claims and reasonable compromise of the claims

FAIRNESS AND ADEQUACY OF THE PROPOSED SETTLEMENT

32. As described further below, I believe that the Settlement Amount is reasonable given the risk, expense, complexity, and likely duration of litigation. The Net Settlement Amount shall be divided up and paid to Class Members who submit claims based on the pro rata number of eligible workweeks that each Class Member worked during the Class Period² divided by the total number of eligible workweeks worked by all Class Members during the Class Period. The formula relies upon objective

² The "Class Period" is defined as the period from October 14, 2017 through the date the Court enters a preliminary approval order for this settlement.

evidence of each Class Member's employment history, which Class Members can easily review and confirm for themselves and challenge in the event they disagree with the pre-printed data. This information is readily available from Defendant's records, and the Claims Administrator can apply the formula in a fair and transparent manner.

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

34. Another factor supporting the reasonableness and adequacy of the overall settlement amount is that settlement payments will be made much sooner than could possibly have been the case if the case were litigated through the class certification stage, much less through trial, before it is resolved. The advantage to Class Members of avoiding delay in payment justifies accepting a lower percentage of the maximum realistically likely recovery through an early settlement.

35. Given my experience as a wage and hour litigator, and based on my own investigation and evaluation and consultation with my co-counsel, I believe the proposed Settlement addresses all of the allegations of violations of California state law by Defendant, and provides adequate monetary relief to Plaintiff and Class Members. The estimated 1,270 Class Members will enjoy substantial monetary relief and injunctive relief from the settlement. If the Court approves this settlement, the estimated average recovery for each Class Member will be approximately \$1,194.49 on a net basis.³ In my experience, this amount is substantial for class members in a class action involving on duty meal and rest breaks.

36. Whereas proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources, the settlement confers a benefit on Plaintiff and Class Members. If settlement were not achieved, continued litigation of the claims would take substantial time and possibly confer no benefit on Class Members. By contrast, the

³ Net Settlement Amount of \$1,517,000.00 / 1,270 Settlement Class Members = \$1,194.49, of which \$1,320,000 has already been paid.

1 settlement will yield a prompt, certain, and substantial recovery for Class Members, which also benefits
2 the parties and the Court. Counsel on both sides share the view that this is a fair and reasonable
3 settlement in light of the complexities of the case, Defendant's arbitration agreements with Class
4 Members, the state of the law, class certification and litigation. Given the risks inherent in litigation and
5 the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class
6 Members, and should be preliminarily approved.

7 **FAIRNESS OF THE PROPOSED CLASS REPRESENTATIVE ENHANCEMENT**

8 **PAYMENT**

9 37. The proposed Class Representative Enhancement Payment of \$10,000.00 to the Plaintiff
10 is fair and reasonable. Plaintiff was instrumental in prosecuting this lawsuit and were an important
11 source of information during the course of litigation this. Moreover, Plaintiff has no interests
12 antagonistic to the interests of the Class.

13 38. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case,
14 including providing factual background for the proposed mediation and the Class Complaint;
15 participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement
16 documents. Plaintiff were also available during the duration of the all-day mediation which
17 demonstrated their commitment to the Class. Plaintiff agreed to participate in this case with no
18 guarantee of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as
19 Class Representatives and exposed themselves to the risk of negative publicity by anyone who opposed
20 this case. Moreover, the requested \$10,000 Class Representative Enhancement Payment for the Plaintiff
21 fall within the range of incentive payments typically awarded to Class Representatives in similar class
22 actions.

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

28 40. I believe the requested Class Representative Enhancement Payment of \$10,000 for the

Plaintiff is reasonable and well within precedent for Preliminary and Final Approval.

ATTORNEYS' FEES AND COSTS

41. 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 plaintiff 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.

42. Under the terms of the Settlement Agreement, Class Counsel is requesting \$130,000.00 in attorneys' fees. 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 and our co-counsel have the financial resources and are prepared to devote whatever time and effort are required to zealously advocate on behalf of Plaintiff and the Class.

43. Class Counsel Litigation Expenses Payment of up to \$20,000.00 is also reasonable, as will be discussed again in detail in Plaintiff's Motion for Final Approval.

44. If the Court grants preliminary approval to the settlement here and authorizes the dissemination of the Class Notice, Plaintiff's Counsel will file a request attorneys' fees and costs with their motion for final approval that will be heard the same date as the final fairness hearing. Our firms will need to expend additional hours and will incur additional costs preparing and filing the motion for final approval and the motion for attorneys' fees and reimbursement of litigation costs, coordinating with the claims administrator, and answering calls and questions from Class Members.

CLAIMS ADMINISTRATOR

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

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

Executed on this January 30, 2023 in San Diego, California.

/s/ James M. Treglio

By: _____

James M. Treglio, Esq.