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7
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9 FRANCISCO RODRIGUEZ, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF IMPERIAL**

12 **(UNLIMITED JURISDICTION)**

13 FRANCISCO RODRIGUEZ, on behalf of
14 himself and all others similarly situated, the
15 general public, and as an “aggrieved employee”
16 on behalf of other “aggrieved employees”
17 under the Labor Code Private Attorneys
General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 JETT HARVEST, INC., a California
21 corporation; JOSE ANTONIO LOPEZ, an
22 individual; PRIME AG SERVICES INC., a
23 California corporation; and DOES 1–50,
inclusive,

24 *Defendant(s).*

Case No. ECU002119

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
FRANCISCO RODRIGUEZ’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: January 29, 2025
Hearing Time: 8:30 a.m.
Hearing Dept.: 9, The Honorable L.
Brooks Anderholt

Action filed: October 21, 2021
Trial Date: Not Set



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**DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF FRANCISCO
RODRIGUEZ'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Francisco Rodriguez ("Plaintiff") in his lawsuit against Defendants Jett Harvest, Inc., Jose Antonio Lopez, and Prime Ag Services Inc. ("Defendants"). Plaintiff and Defendants are collectively referred to as the "Parties."

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

3. The Settlement Agreement (the "Settlement") is attached hereto as **Exhibit 1**. The "Settlement Class" or "Class" means all non-exempt hourly employees who are employed or have been employed by Defendants Jett Harvest, Inc. and/or Prime Ag Services, Inc. in the State of California during the Class Period. Settlement, ¶ I.5. "Class Period" means the period from October 21, 2017 through July 6, 2023. Settlement, ¶ I.12. The "Aggrieved Employees" are all persons within the State of California who are or were employed by Defendants Jett Harvest, Inc. and/or Prime Ag Services, Inc. as non-exempt employees in the State of California during the PAGA Period. Settlement, ¶ I. 4. The "PAGA Period" begins August 30, 2020 and ends July 6, 2023. *Id.*, ¶ I.29. The Settlement is written, signed by all necessary Parties, and attached to this declaration as stated above.

The Release Provisions

4. **Released Persons.** Under the Settlement, the release to be given by the Participating Class Members (other than the Class Representative) is limited to Defendants named in the Operative Complaint, together with their officers, directors, employees, and agents. The released persons consist of: Defendants Jett Harvest, Inc., Prime Ag Services, Inc., Jose Antonio Lopez, Sr., Jose Antonio Lopez, Jr., and all persons, agents, servants, representatives, officers, directors, stockholders, employees, associations, joint ventures, corporations, parent corporations, subsidiaries, affiliates, partners, members, predecessors and successors in interest, insurers, re-insurers, and assigns, and all other legal entities with whom Defendants have been, are now, or may hereafter be affiliated with. Settlement, ¶ I. 37.

5. **Released Claims.** Under the Settlement, the release to be given by the Participating Class Members (other than the Class Representative) is limited to the claim stated in the Operative



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Complaint, and those based solely upon the facts alleged in the Operative Complaint.

6. **Release Period.** Under the Settlement, the release to be given by the Participating Class Members (other than the Class Representative) is limited to liability that arose during the Class Period. See above.

7. **PAGA Release.** Under the Settlement, Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. The PAGA Release states as follows regarding: All Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and PAGA Notice that occurred during the PAGA Period. Settlement, ¶ V. 3

No Reversion

8. The Settlement does not provide that any portion of the consideration paid or deposited by the Defendants may revert to the Defendants.

Taxes

9. The Settlement provides that Defendants will separately pay the employer's share of any applicable payroll taxes. The Settlement provides as follows with regard to the tax treatment of settlement shares: Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims ("Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on IRS Form W-2. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for interest and penalties ("Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Form 1099. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payments. Settlement, ¶ III.2d(i).

Factual and Procedural Background

10. **Plaintiff's Employment with Defendants.** Defendants own, operate, and/or provide labor for agricultural services. Defendants employed Plaintiff as a loader, cutter, and



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1 laborer in California from about 2011 until June 3, 2021.

2 11. **LWDA Notice.** On August 30, 2021, Plaintiff notified Defendants and the
3 California Labor and Workforce Development Agency (“LWDA”), pursuant to the California
4 Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”),
5 of alleged Labor Code violations committed by Defendants. A true and correct copy of the letter
6 to the LWDA dated August 30, 2021 is attached hereto as **Exhibit 2**.

7 12. **Lawsuit.** On October 21, 2021, Plaintiff filed a Class Action Complaint in the
8 Imperial County Superior Court, Case No. ECU002119, against Defendants on behalf of himself
9 and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to
10 Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates
11 of Pay (Lab. Code §§ 221, 226.2, 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks
12 (Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512,
13 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties
14 (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair
15 Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On November 16, 2021, Plaintiff filed his
16 First Amended Complaint adding a claim under the Labor Code Private Attorneys General Act
17 of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On January 3, 2022, Defendant Prime Ag
18 Services Inc. filed an answer to Plaintiff’s First Amended Complaint. On January 21, 2022,
19 Defendants Jett Harvest, Inc. and Jose Antonio Lopez filed an answer to Plaintiff’s First Amended
20 Complaint. Defendants deny all of Plaintiff’s allegations and strongly contend that their wage and
21 hour policies, practices, and procedures are fully compliant with all applicable laws. A true and
22 correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff’s
23 First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendant
24 Prime Ag Services Inc.’s Answer is attached hereto as **Exhibit 5**. A true and correct copy of
25 Defendant Jett Harvest, Inc.’s and Defendant Jose Antonio Lopez’s Answer is attached hereto as
26 **Exhibit 6**.

27 13. **Investigation.** On April 14, 2022, Plaintiff requested that Defendants informally
28 disclose documents and data to enable Plaintiff to prepare for settlement discussions, including
the number of putative class members and aggrieved employees and the number of paychecks
and workweeks for the various limitations periods applicable to Plaintiff’s claims. Plaintiff also
requested a reasonable, randomly selected sample of Defendants’ time, payroll, and expense



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1 records, and related personnel records. *Id.* Finally, Plaintiff requested Defendants’ written policies
2 applicable to the claims at hand and asked Defendants to identify any and all comparable claims
3 against them.

4 14. The Parties thereafter engaged in an informal, voluntary exchange of information
5 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
6 produced Plaintiff’s entire personnel file (including policies and agreements he signed and
7 acknowledged) and copies of their relevant company written policies.

8 15. **Sampling.** Defendants contend that they employed 10,876 putative class members
9 during the period of January 06, 2019 to May 31, 2023. Defendants produced the records of 5.59%
10 of the putative class members for the period of January 06, 2019 to May 31, 2023. There were
11 records for 608 employees in the sample. Defendants chose the sample. The sample was randomly
12 selected, according to Defendants. The sample consisted of time, payroll, and related records.

13 16. **Plaintiff’s Data Analyst.** Plaintiff retained Sridhar Srinivasan, a data analyst, to
14 analyze the sample. Plaintiff also employed the Raosoft⁶ Sample Size calculator
15 (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically
16 reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014)
17 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable
18 whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using
19 a margin of error of 32%, a confidence level of 95%, and a population size of 10,876, the Raosoft
20 Sample Size Calculator recommended a sample of 10. A true and correct copy of the results from
21 the Raosoft Sample Size Calculator are attached as **Exhibit 7** (Raosoft Sample Size Calculator
22 results print-out). Thus, the sample population that Plaintiff’s data analyst evaluated is statistically
23 reliable. *Id.*

24 17. **Mediation.** On July 6, 2023, following much of the foregoing informal discovery
25 and exchange of information, the Parties participated in a mediation session presided over by

26 ⁶ Raosoft advertises, “Raosoft, Inc. produces EZSurvey for the
27 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
28 programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution.” The Raosoft webpage
advertises that is it “database web survey software for gathering information.”
<http://www.raosoft.com/>. It also advertises, “The parameters of the sample size calculation are
something that you choose.” <http://www.raosoft.com/suggestreading.html>.



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1 Mediator Marc Feder, an experienced class action mediator. During the mediation, the Parties had
2 a full day of productive negotiations. Though the case did not settle at mediation, the Parties
3 reached an agreement on a class-wide settlement several months later. During the mediation
4 sessions and over the months that followed, each side, represented by his/their respective counsel,
5 recognized the risk of an adverse result in the Action and, after the mediation, agreed to settle the
6 Action and all other matters covered by this Settlement pursuant to the terms and conditions of
7 this Settlement.

8 18. **Defendants' Financial Condition.** During the negotiations, it became clear that
9 Defendants had insufficient resources to cover the full extent of liability. As part of the settlement
10 negotiations, Defendants disclosed their bank statements from 2018 to 2023, credit card
11 statements from 2019 to 2023, and tax returns from 2018 to 2021. Defendant Jett Harvest, Inc.
12 also disclosed its credit line statements from 2019 to 2023, financial statements from January of
13 2022 through June of 2023, profit and loss statements from 2018 to 2021, and balance sheets from
14 December of 2022 and June of 2023. Defendant Prime Ag Services Inc. also disclosed its financial
15 statements from January of 2022 through June of 2023, profit and loss statements from 2019 to
16 2021, and balance sheets from December of 2022 and June of 2023. I reviewed the financial
17 records with the aid of an accountant. The information provided was sufficient to demonstrate the
18 financial condition of the Defendants and that they will unlikely be able to afford payment of a
19 larger amount than the Settlement amount. Based on such records, Plaintiff, on his own behalf
20 and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the
21 Settlement.

22 *Similar Actions*

23 19. **Relevant Litigation and Claims.** I am not aware of any class, representative,
24 or other collective action in any other court, in this, or any other jurisdiction, that asserts
25 claims similar to those asserted in this action, on behalf of the class or group of individuals,
26 some or all of whom would also be members of the class to find in this action. I have made
27 a reasonable inquiry of the other members of my law firm and my counsel to determine
28 whether they are aware of any such similar actions. Based on these inquiries, I am aware of
no such similar actions. The Defendants disclosed that there have not been any comparable
claims against them.

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Uncashed Checks

20. **Unclaimed Property Fund.** The Settlement provides for the disposition of uncashed checks as follows: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b). Settlement, ¶ IV.3.c. In my view, sending funds represented by uncashed checks to the Unclaimed Property Fund instead of a *cy pres* recipient is the best way to insure that the Class Members and Aggrieved Employees actually receive their portions of the Settlement.

Ascertainable and Numerous Class

21. **Ascertainability.** A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

22. **Numerosity.** The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendants estimates that there are approximately 10,876 Class Members for the Class Period of October 21, 2017 through July 6, 2023. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class's membership is sufficiently numerous. Additionally, there are approximately 8,261 Aggrieved Employees for the PAGA Period of August 30, 2020 to July 6, 2023.

Predominant Common Questions

23. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged policy-driven, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise



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1 to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1)
2 Whether Defendants failed to pay all wages earned to class members for all hours worked at the
3 correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest
4 periods in compliance with California law; (3) Whether Defendants failed to pay the class one
5 additional hour of pay on workdays they failed to provide the class with one or more meal or rest
6 periods in compliance with California law; (4) Whether Defendants failed to indemnify the class
7 for all necessary business expenditures incurred during the discharge of their duties; (5) Whether
8 Defendants knowingly and intentionally failed to provide the class with accurate wage statements;
9 (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7)
10 Whether Defendants engaged in unfair competition within the meaning of Business and
Professions Code section 17200, *et seq.*, with respect to the class.

11 *Typicality*

12 24. Plaintiff contends that his claims are typical for the purposes of certifying the
13 Settlement Class. Plaintiff asserts that he, like absent Class Members, was subject to the same
14 relevant policies and procedures governing his compensation, hours of work, and meal and rest
15 periods. Because Plaintiff contends that he was subject to the same general course of conduct as
16 absent Class Members, resolving the common questions as they apply to Plaintiff will determine
17 Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could
18 potentially be subject to the same primary affirmative defenses as those of absent Class Members.
Accordingly, Plaintiff's claims are typical of the Class.

19 *Adequacy*

20 25. The adequacy requirement is met where the plaintiff is represented by counsel
21 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
22 the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
23 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
24 ability to represent the class.

25 26. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
26 with the absent Settlement Class Members. Plaintiff contends that he is an adequate class
27 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
28 litigation because they all worked for Defendants during the relevant time period, allegedly
suffered the same alleged injuries from the same alleged course of conduct, and there is no



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evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as Class Representative.

Background of Class Counsel

27. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from Southwestern University School of Law.

28. In December of 1995, the Supreme Court for the State of California admitted me as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February 2013, I became admitted to the New York State Bar.

29. My law practice has always focused on representation of private and public employees with claims of unpaid wages, wrongful termination, harassment, family and medical leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites, FightWrongfulTermination.com, provides a further description of my practice.

30. I have tried many cases before California and federal courts, government agencies and neutral arbitrators. I am a member of the California Employment Lawyers Association ("CELA").

31. Since I started practicing law, I have tried many cases before courts, arbitrators and government agencies. Some of my cases are:

a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court, Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and discipline. The jury awarded compensatory damages. Court subsequently awarded additional back pay and gave Plaintiffs a retroactive promotion. *See* "Lawsuit Puts Customs Service on Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego Union-Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias And Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.



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1 b. *Jorge Guzman v. Department of Justice*, United States District Court,
2 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
3 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
4 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
5 liable. Case settled shortly before the damages phase. *See* “U.S. to Pay \$400,000 to INS Agent in
6 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
7 Latino, including falsified charges” by Patrick J. McDonnell, Los Angeles Times, January 21,
8 1999.

9 c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the
10 Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims
11 and wrongful termination claims against employer in a month-long jury trial. The jury awarded
12 compensatory and punitive damages. *See* “Activist Says Criticism of Rail Plan Cost His Job” by
13 Dan Weikel, Los Angeles Times, September 28, 2000; “Punitive Damages Awarded to Fired
14 Social Worker” by Dan Weikel, Los Angeles Times, June 10, 2000; “A Whistleblower’s
15 Revenge” by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

16 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
17 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
18 Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney
19 escrow officer who subsequently absconded with the money. The jury awarded compensatory
20 damages. The Judgment with interest is now far in excess of that amount. Soon after this case was
21 litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono Legal
22 Services.

23 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
24 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
25 Agent, followed by an award of Attorneys’ fees and costs.

26 f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
27 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
28 wrongful termination against his former employer. The Neutral Arbitrator awarded compensatory
and liquidated damages. The claims for damages, attorney’s fees and costs were resolved shortly
thereafter by means of a confidential settlement.

 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.



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1 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
2 first and only case to be successfully prosecuted through trial under the Labor Code Private
3 Attorney Generals Act of 2004, Labor Code §§ 2698, *et seq.* on behalf of plaintiffs and other
4 aggrieved employees against someone other than an employer for civil penalties including unpaid
5 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
6 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
7 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

8 32. Since 2007, I have prosecuted several traditional wage & hour class actions as the
9 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
10 *v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
11 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
12 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
13 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
14 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
15 an hourly rate of \$525.00 for my services.

16 33. In my representation of employees, I have prosecuted several lawsuits on behalf
17 of employees with claims of rest and meal period and overtime violations or other wage claims.

18 34. I have been involved in the prosecution of numerous wage and hour class actions
19 at various stages of litigation. A small sampling of the wage and hour class action cases in which
20 I have recently been counsel of records is as follows:

21 a. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
22 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
23 settlement on behalf of assistant fitness manager employees).

24 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
25 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
26 court on behalf of nonexempt employees).

27 c. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case
28 No. BC465017 (appointed Class Counsel and granted final approval by this Court of class action
settlement on behalf of merchandiser employees).

d. *Deckard v. MSL Community Management LLC*, Riverside County Superior
Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of class action



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1 settlement on behalf of caregivers and medical technicians).

2 e. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior
3 Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final
4 approval of class action settlement on behalf of boutique manager and assistant manager
5 employees).

6 f. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
7 (appointed Class Counsel and granted final approval by this Court of class action settlement on
8 behalf of personal trainer employees).

9 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
10 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
11 action settlement on behalf of medical devices employees).

12 h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
13 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
14 behalf of hourly employees).

15 i. *La Fleur v. Medical Management International, Inc.*, United States District
16 Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel
17 and granted final approval of class action settlement on behalf of practice managers).

18 j. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
19 Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action
20 settlement on behalf of non-exempt hourly employees excluding truck drivers).

21 k. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,
22 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
23 settlement on behalf of security guard employees).

24 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
25 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
26 on behalf of dairy and agricultural laborers).

27 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
28 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
settlement on behalf of call concert rigging employees).

n. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior
Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class action



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1 settlement by the court on behalf of hourly employees).

2 o. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
3 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
4 (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
customer account executives).

5 p. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
6 BC511072 (appointed Class Counsel and granted final approval of class action settlement on
7 behalf of bobtail truck drivers).

8 q. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
9 BC431249 (granted class certification through contested motion and appointed Class Counsel in
10 case on behalf of former pharmacy employees based on late final wage payments in violation of
11 Labor Code §§ 201–203).

12 r. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
13 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final
14 approval of class action settlement by the court on behalf of auditor employees).

15 s. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
16 Class Counsel and granted final approval by this Court of class action settlement involving alleged
misclassification of sales employees and unpaid vacation pay).

17 t. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
18 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
19 settlement on behalf of service account manager employees).

20 u. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
21 No. BC421485 (granted class certification through contested motion and appointed Class Counsel
22 in case on behalf of former security workers based on late final wage payments in violation of
23 Labor Code §§ 201–203).

24 v. *Vang v. Burlington Coat Factory Corporation*, United States District Court
25 Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel and
26 granted final approval of class action settlement by the court on behalf of assistant store manager
employees).

27 w. *Volney-Parris v. Southern California Edison Company*, Los Angeles
28 Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class



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1 action settlement on behalf of customer specialist employees).

2 x. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior
3 Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class
4 action settlement on behalf of hourly employees).

5 ***Class Action Treatment Is Superior***

6 35. A class action is also superior to other means of adjudicating the issues in this
7 action. The predominance of common legal and factual questions shows that this Court could
8 fairly adjudicate the claims of Class Members through a single class action. In view of the
9 *theoretical* alternatives that proposed class members could potentially utilize—representative
10 PAGA action (where there is less relief available), individual civil lawsuits or wage claims
11 through the Division of Labor Standards Enforcement (where there would be relatively little
12 money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
13 superior to all of them. Thus, this consideration supports conditional class action treatment for
14 purposes of this Settlement only.

15 ***The Settlement Is Presumptively Fair***

16 36. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
17 from thorough, arms' length, negotiations between experienced counsel with the assistance of a
18 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
19 weaknesses of their respective cases and Defendants' estimated exposure. Both defense counsel
20 and I are particularly experienced in employment law and wage and hour class actions. We are
21 experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks
22 and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and
23 hour class settlements, including many involving the same issues presented here. Counsel on both
24 sides share the view that the Settlement is a fair and reasonable settlement in light of the
25 complexities of the case and uncertainties of class certification and litigation, and a fair result for
26 the Class Members.

27 ***Exposure & Risk Analysis***

28 37. Plaintiff prepared "damages" estimates in advance of the mediation. Plaintiff
determined Defendants' maximum possible exposure for restitution and penalties to be
approximately \$558,483,240.19 (consisting of \$7,229,813.65 in unpaid wages, \$7,229,813.65 in
liquidated damages, \$876,341.05 in missed meal period premium wages, \$875,201.80 in missed



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1 rest break premium wages, \$12,513.60 in unreimbursed expenses, \$24,592,750.00 for wage
2 statement penalties, \$35,049,156.45 for waiting time penalties, and \$512,617,650.00 for civil
3 penalties under PAGA). True and correct copies of the spreadsheets I prepared for mediation of
4 this Action are collectively attached to this declaration as **Exhibit 8**.

5 38. The estimates are in essence “home run” projections that omit data points that will
6 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
7 involved in litigating this Action. Plaintiff calculated the damages based on the number of
8 workweeks and pay periods provided by Defendants, Plaintiff’s reports, and the sample data. *Id.*
9 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign
10 and pursue individual release agreements from the Class Members. Defendants have already
11 obtained signed arbitration agreements in the wake of Plaintiff’s lawsuit would likely seek
12 releases from current employees as a next step. Defendants also represented that they had
13 interviewed Defendants’ current employees regarding Plaintiff’s claims who would provide
14 declarations, under penalty of perjury, that were favorable to Defendants with respect to the
15 relevant factual issues at issue in Plaintiff’s action. Plaintiff’s Counsel applied discounts to the
16 maximum possible exposure to account for all other risks discussed below. While it is difficult to
17 assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say
18 that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is
19 substantial and alone justifies a significant discount because Defendants would likely by trial have
20 gathered releases from the majority of the Class Members. *See Exhibit 8*.

21 39. My initial estimates do not realistically account for the risks outlined below or the
22 risk that a class will not be certified. Therefore, I believe a class settlement for \$360,000.00 is fair
23 and reasonable.

24 40. **Risks Associated with the Arbitration Agreements.** The arbitration agreements
25 entered into between Defendants on the one hand, and the Class Members, on the other, present
26 a significant risk to the success of Plaintiff’s class action litigation. According to Defendants,
27 many members of the Class entered into arbitration agreements with Defendants. As the
28 arbitration agreements in question restrict potential litigants from bringing class actions against
Defendants, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in
Court. Thus, there is a significant risk the Court could determine that those Class Members who
have not entered into arbitration agreements with Defendants do not constitute a sufficiently



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1 numerous class to justify class action treatment. As such, by continuing to trial on class-wide
2 claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration
3 agreement. Moreover, the arbitration agreements would pose danger to any class certification
4 motion brought by Plaintiff. Because different defenses would apply to some Class Members and
5 not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court
6 could determine that Plaintiff’s claims present too many individualized inquiries to justify class
7 certification.

8 **41. Risks Associated with Defendants’ Financial Condition.** As stated above,
9 Defendants’ financial condition was the key factor in reaching this Settlement. Due to
10 Defendants’ financial condition, even if Plaintiff prevailed on all claims at trial, he may never
11 recover the damages due to the risk of insolvency. A very large class action judgment would
12 almost certainly put the company out of business and/or would interfere with the company’s
13 ability to carry out its contractual obligations.

14 **42. Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff’s
15 recovery for unpaid wages would be extremely limited at best, largely because Defendants’
16 written policies throughout the relevant time period prohibited off-the-clock work. The Parties
17 dispute whether commutes to the worksite that Defendants provided were mandatory and
18 therefore compensable. Off-the-clock claims are difficult where a defendant requires in its written
19 policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital*
20 (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be
21 compensable). *Id.* In their written employment policies, Defendants mandate that employees must
22 record all time worked accurately on their time records. Moreover, while Defendants dispute that
23 off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The
24 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
25 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
26 compensable. (Stating that “We do not decide whether there are circumstances where
27 compensable time is so minute or irregular that it is unreasonable to expect the time to be
28 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
because the time spent off the clock was minute and insignificant. Accordingly, a large award of
penalties seems unlikely with respect to this claim.

43. The difficulty inherent in proving that off-the-clock work occurred poses a



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1 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
2 this claim. Generally, a court will not certify a class unless it can determine an appropriate class-
3 wide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
4 Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially
5 given the lack of records indicating when such off-the-clock work may have taken place.
6 Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine
7 if an individual in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there
8 is a significant risk that the Court would consider this evidentiary showing insufficient as a class-
9 wide methodology.

10 44. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
11 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
12 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
13 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
14 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
15 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
16 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
17 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a
18 particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D.
19 Cal. 2010) 271 F.R.D. 629, 641. *Id.*

20 45. Defendants contends they did not impede or discourage Plaintiff, or any other
21 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
22 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
23 of their meal breaks each day on their time records. The time records that comprise the random
24 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
25 taken the vast majority of the time. Of the time records that show a late, short or no lunch,
26 individualized evidence may be necessary to determine whether they occurred due to conduct of
27 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
28 the value of Plaintiff’s meal period claim would be substantially reduced at trial.

46. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
period claim. Employers are not required to record rest periods and such periods are paid.
Defendants contends they provided non-exempt employees the opportunity to take rest periods in



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1 accordance with California law. Further, Defendants’ written policies on meal and rest periods
2 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
3 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
4 period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial
5 has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys
6 to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
7 makes such claims risky from a trial management and due process perspective. *See Duran v. U.S.*
8 *Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist
9 to support class certification, it may be possible to manage individual issues through the use of
10 surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
Comcast Corporation v. Behrend (2013) 133 S.Ct. 1426.

11 47. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
12 Court may consider Plaintiff’s claims as to Defendants’ alleged failure to indemnify for business
13 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that
14 Defendants required Plaintiff and the Class Members to use their personal items including
15 farming tools and gear and failed to indemnify them for these business expenses. Defendants
16 presented evidence that they have supplied their employees with tools, equipment, and other
17 supplies and had an expense reimbursement policy. As such, there is a risk that the Court may
consider Plaintiff’s claims to be individual in nature and unfit for class-wide resolution.

18 48. **Risks Associated with the Pay Stub Claims.** Plaintiff also asserts claims for
19 wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code
20 section 226, wage statements must include various information, including the applicable rates of
21 pay, corresponding hours worked, and gross pay. Here, Plaintiff’s wage statement claim has the
22 same underlying risks as the above claims, as it is derivative of them. On their face, the wage
statements issued by Defendants comply with the requirements of Labor Code section 226.

23 49. **Risks Associated with the Waiting Time Penalties Claims.** Without proof
24 willful behavior, Plaintiff will be unable to recover these penalties.

25 50. **Risks Associated With the PAGA Claim.** As the Operative Complaint makes
26 clear, Plaintiff predicates his PAGA claim on the same Labor Code violations as his other
27 claims. Plaintiff’s “damages” spreadsheet, Exhibit 8, states the length of the relevant time period
28 for the PAGA claim and the number of employees allegedly employed during that time period.



1 Plaintiff's "damages" spreadsheet, Exhibit 8, also states the total amount of civil penalties for
2 which the Defendants are potentially liable if all allegations are proven. As I state above in
3 connection with Plaintiff's claims for statutory penalties with regard to proof Defendants' intent,
4 knowledge, and willfulness, there are serious risks to proving Defendants acted intentionally,
5 knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff
6 calculated the agreed-upon amount of civil penalties by considering the risks outlined above and
7 that the Settlement already provides substantial payments for the Labor Code violations that the
8 civil penalties claim is predicated on.

9 51. Regarding PAGA, a court has discretion to award a lesser amount than the
10 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
11 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants
12 have posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations.
13 Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
14 consider the maximum civil penalty available to be confiscatory.

15 52. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
16 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
17 counsel estimated a maximum possible exposure of approximately \$512,617,650.00 in civil
18 penalties. This estimate did not take into account any of the risks discussed above and assumed a
19 violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for
20 the same pay period for the same alleged violations of different Labor Code provisions and
21 derivative violations. Although two federal district court decisions held that "stacking" PAGA
22 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
23 of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding
24 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
25 Labor Code provisions. This may be because the PAGA does not provide for what many
26 employers characterize as claim splitting and not merely stacking.

27 53. I am aware of only two significant awards under the PAGA in a contested
28 proceeding, both issued by federal district courts.⁷ PAGA penalty awards are often small even for

⁷ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,



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egregious, intentional violations of the Labor Code.⁸

54. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar result could occur here.

55. **Risks Associated With A Pick Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue

The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part 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." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., fn. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately \$102 million in damages, primarily based on the Defendant's failures to comply with the requirements of California Labor Code section 226.

⁸ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 9**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 10**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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1 individual release agreements from the Class Members, thereby potentially narrowing the size of
2 the Settlement Class – 10,876 members – until it is no longer numerous enough for class
3 certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This
4 led to a significant reduction of claim value in settlement negotiations.

5 56. While the evidence gathered through Plaintiff’s discovery supports the merits of
6 the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
7 presents significant risks that support a downward departure from Defendants’ estimated liability
8 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
9 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
10 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
11 adequate, and reasonable compromise amount for these claims and warrants preliminary
12 approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
13 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
14 *Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant’s
15 financial stability “strongly supports the reasonableness of the settlement”); *See Laguna v.*
16 *Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

17 ***Allocation of the PAGA Payment***

18 57. The settlement of PAGA penalties in the sum of \$36,000, of which 75% (\$27,000)
19 will be paid to the LWDA and 25% (\$9,000) will be distributed to the Aggrieved Employees, is
20 reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount
21 for PAGA Penalties to be paid to the LWDA and to the Aggrieved Employees. The portion to be
22 paid to the LWDA was not the result of self-interest at the expense of other Aggrieved Employees.

23 ***Attorneys’ Fees and Costs***

24 58. I intend to request Class Counsel Attorneys’ Fees of \$120,000.00 (one-third of the
25 GSA) and Class Counsel’s litigation costs incurred in prosecuting this Action, which I currently
26 estimate to be approximately \$13,544.76 and will be no more than \$17,500.00 at the conclusion
27 of matters related to the Settlement. In view of my efforts and risks in pursuing this case these
28 amounts are well within the range of reasonableness and thus warrant this Court’s preliminary
approval. In addition, based on my experience in wage and hour class action matters, fee awards
of approximately one-third of the settlement fund are routinely approved as reasonable. I have
been awarded attorneys’ fees equaling approximately one-third of the fund in several recent wage



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and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.



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1 BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case
2 No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San
3 Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

4 59. The amount of fees and costs requested are commensurate with (1) the risk Class
5 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case,
6 (3) the skill and determination Class Counsel have shown, (4) the results Class Counsel achieved,
7 (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel
8 turned down to devote time to this matter. Class Counsel also interviewed and obtained
9 information from putative class members, met and conferred with Defendants' counsel on
10 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
11 by Defendants and obtained through other sources, researched applicable law, and estimated
12 "damages" for purposes of settlement discussions, among other tasks.

13 60. Class Counsel have borne all the risks and costs of litigation and will receive no
14 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour
15 class action litigation and used that experience to obtain a fair result for the Class. Considering
16 the amount of the attorney fees requested, the work performed, and the risks incurred, the
17 requested fees and costs are reasonable and should be awarded.

18 61. Plaintiff has agreed in writing to authorize 75% of the Class Counsel Fees Payment
19 to be issued to The Spivak Law Firm and 25% of the Class Counsel Fees Payment to be issued to
20 United Employees Law Group, PC. Also, Plaintiff has agreed in writing to authorize The Spivak
21 Law Firm and United Employees Law Group, PC to receive reimbursement of their respective
22 litigation expenses upon successful resolution of this action. A true and correct copy of the fully
23 executed retainer agreement is attached hereto as **Exhibit 11**.

24 *Class Representative Service Payment*

25 62. The Settlement provides that Plaintiff may seek a Class Representative Service
26 Payment of up to \$10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this
27 Action and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many
28 hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other
things, retaining experienced counsel, providing them with information about his work history
with Defendants and Defendants' policies and practices with respect to the wage and hour claims
at issue, assisting counsel in identifying witnesses, participating in mediation, and being actively



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1 involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In
2 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
3 Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§
4 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class
5 shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable,
6 and thus warrants preliminary approval.

6 63. Plaintiff began his investigation and retention of attorneys to pursue the claims at
7 issue on approximately May 13, 2021. Awarding Plaintiff 2.78% of the GSA is entirely
8 reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In
9 this case, Plaintiff has devoted several hours of his time advancing the interests of the Class
10 Members and also expects to devote additional hours of his time with Class Counsel overseeing
11 the administration of the Settlement if the Court grants final approval of the Settlement. Plaintiff
12 has done this by, among other things, retaining experienced counsel, providing them with
13 extensive information about his work history with Defendants and Defendants' policies and
14 practices with respect to the wage and hour claims at issue, assisting them in contacting absent
15 Class Members to gather information, participating in a full day of mediation, foregoing pursuit
16 of his individual claims in favor of a fair class-wide resolution, and being actively involved in the
17 settlement process to ensure a fair result for the Class Members as a whole.

17 64. As Class Representative, Plaintiff agreed to (1) consider the interests of the class
18 just as he would consider his own interests and, in some cases, to put the interests of the class
19 before his own interests; (2) actively participate in the lawsuit, as necessary, by among other
20 things, answering interrogatories, producing documents to Defendants and giving deposition and
21 trial testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any
22 resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be
23 designed in the best interest of the class as a whole; (5) follow the progress of the lawsuit and
24 provide all relevant facts to Class Counsel; (6) champion many other people with similar claims
25 and injuries because of the importance of the case and the necessity that all Class Members benefit
26 from the lawsuit; and (7) fight for a resolution in which the individual recovery to each Class
27 Member, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of these
28 responsibilities in exchange for a proportionate share of funds made available for distribution to
the Class Members. Plaintiff had no guarantee of a Class Representative Service Payment. This



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justifies the Class Representative Service Payment sought.

65. In taking the actions outlined above, Plaintiff has exposed himself to significant risks, including the risk that he could have been ordered to pay Defendants' attorneys' fees and costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that he could, in the future, face a potentially hostile work environment and worsened career prospects for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up receiving less than Defendants would have paid him at the beginning of the Action via a C.C.P. § 998 offer or other individual settlement offer to drop his class allegations. On many occasions, California courts have ordered wage and hour plaintiffs and would be class representatives to pay outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist. March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be paid by employee for employee's unsuccessful suit for unpaid bonuses). A true and correct copy of the court's order is attached to this declaration as **Exhibit 12**.
- b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov. 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and costs to employer for unsuccessful suit for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 13**.
- c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb. 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs to the employer for unsuccessful suit for unpaid wages and overtime). A true and correct copy of the court's order is attached to this declaration as **Exhibit 14**.
- d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 15**.

Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff stands to receive as a Participating Class Member. It is unfair in view of the substantial risk of an adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for



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1 taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage
2 earner. Even the lowest of the cost awards listed above would have devastating consequences for
3 Plaintiff in view of his modest earnings.

4 66. As I explain further below, Plaintiff's individual share of the Net Settlement
5 Amount will be less than that of some absent Participating Class Members. Under the Settlement,
6 Participating Class Members will receive a *pro rata* distribution of the Settlement proceeds
7 proportionate to the period of time he or she worked for Defendants during the Class Period,
8 compared to total period of time worked by all Participating Class Members during the Class
9 Period, as reflected by Defendants' records. Because Plaintiff may have been employed for a
10 shorter period during the Class Period, some Class Members will have earned more Class
11 Paychecks than Plaintiff and, as a result, receive larger shares in the recovery – *even though they*
12 *did not actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when he
13 brought his lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an
14 amount not much greater than an absent Class Members' share of the recovery. To encourage
15 employees like Plaintiff to don the helm of class champions (and thereby advance the important
16 public policies behind class actions), the Court should award something substantial to Plaintiff
17 for his readiness to receive less than absent Class Members while assuming all the risk and delay
18 of payment.

19 67. The average putative class member in this case would be unlikely to pursue
20 individually the claims Plaintiff brought against Defendants because such claims would be too
21 small to justify the cost and the risk. A putative class member will be unlikely to find an attorney
22 who is willing to pursue an individual's claims because the claims are too small to justify the
23 hundreds of hours of legal work necessary to prove each claim. Only the class action vehicle,
24 which allows for the aggregation of hundreds of risky small dollar value claims, makes such
25 claims advantageous for an attorney to pursue on a contingency basis and there can be no class
26 action without a class member assuming the great fiduciary responsibilities of a class
27 representative. This Court should allow the Class Representative Service Payment requested
28 because to do otherwise would discourage employees (and attorneys) from bringing class actions
in the first place.

68. If would-be class action plaintiffs are not adequately incentivized to advance the
public policy behind class actions in court in light of the time and risk it will entail, it is unlikely



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1 that they will bring class action lawsuits in the first place. Once employers realize that such
2 lawsuits are unlikely, they will have no incentive to comply with wage and hour laws.

3 69. Plaintiff faced the risk that he could face worsened career prospects for suing a
4 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
5 Because he filed a lawsuit in the California Superior Court, a public record now exists that
6 Plaintiff sued his employer for Labor Code violations – a fact that won’t be lost on prospective
7 employers considering him for a job. Common sense dictates that an employer will think twice
8 about hiring someone who sued his last employer. Legal experts have recognized this fact.
9 Attached to this declaration as **Exhibit 16** is a true and correct copy of the article “Employees:
10 Better Think Twice Before Suing Your Employer (Four Reasons Why).” Attached to this
11 declaration as **Exhibit 17** is a true and correct copy of the article “What To Expect If You Sue
12 Your Employer.” California even has laws to address this risk: Labor Code § 1102.5 prohibits
13 retaliation against employees who speak up about Labor Code violations and Labor Code § 98.6
14 prohibits discrimination against employees who bring Labor Code violations to the attention of
15 the Labor Commissioner. Thus, the risk to Plaintiff’s future employment shows that the Class
16 Representative Service Payment sought is fair, adequate, and reasonable, and warrants final
17 approval of the Court.

18 70. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
19 made this case possible for a number of reasons. First, Plaintiff challenged his employers on an
20 unlawful practice that led to Defendants paying a large percentage of the unpaid wages in question
21 plus interest to the remainder of their employees – in spite of Defendants’ financial limitations.
22 Plaintiff provided Class Counsel with detailed descriptions of how Defendants’ business operates,
23 the hours and scheduling of employees, and the nature of the work Class Members performed.

24 71. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
25 has given up the right to pursue individual claims and recover substantially more in unpaid wages,
26 interest, waiting time penalties, pay stub penalties, and civil penalties that he will release as part
27 of the Settlement. Plaintiff did not seek an individual settlement for his claims at all, instead
28 choosing to prosecute the claims on behalf of the Class Members.

72. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
Class Members and still Plaintiff achieved a settlement of \$360,000.00. This outstanding result



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calls for significant awards to Plaintiff for making the result possible.

Class Member and Aggrieved Employee Settlement Share Estimates

73. Above, Plaintiff estimates Plaintiff's anticipated Individual Class Payment.

74. **Individual Class Payments.** At \$10.50 per hour (the average Class Member's hourly wage), the average estimated Individual Class Payment to Participating Class Members is the equivalent of 0.98 hours of unpaid wages (the primary remedies sought) ($\$10.25 / \$10.50 = 0.98$ hours). Thus, this is a result the Class can be proud of in view of the significant risks.

75. Plaintiff estimates that there are 329,204 Class Paychecks for the Class Period. So, each Class Paycheck has a value of approximately \$0.34 ($\$111,500.00$ Net Settlement Amount / 329,204 Class Paychecks = \$0.34). Plaintiff had 1,321 Class Paychecks during the Class Period. Based on this, it is anticipated that Plaintiff Francisco Rodriguez will receive an Individual Class Payment of approximately \$449.14 as a Participating Class Member (1,321 Class Paychecks x \$0.34 = \$449.14) while the average estimated Individual Class Payment to Participating Class Members will be approximately \$10.25 ($\$111,500.00$ Net Settlement Amount / 10,876 Class Members = \$10.25). Some Class Members – those who earned more Class Paychecks during the Class Period – will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Class Paychecks in the Class Period) will be approximately \$705.84. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Class Paycheck in the Class Period) will be approximately \$0.34. Some Class Members – those who earned more Class Paychecks during the Class Period – will receive more, and some less.

76. The Individual Class Payment will be paid to each Class Member based on his or her eligible Class Paychecks compared to the total Class Paychecks. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

77. **Individual PAGA Payments.** I estimate that the average Aggrieved Employee Individual PAGA Payment will be \$1.09. *Id.* Plaintiff's Individual PAGA Payment, his individual share of 25% of the \$36,000.00 PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he



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1 or she had with Defendants during the PAGA Period, compared to the total of all paychecks of
2 all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff
3 estimates that there are 250,058 PAGA Paychecks for the PAGA Period. So, each PAGA
4 Paycheck from the PAGA Period has a value of approximately \$0.04 (25% of \$36,000.00 in
5 PAGA Penalties / 250,058 PAGA paychecks = \$0.04). It is anticipated that Plaintiff Francisco
6 Rodriguez will receive an Individual PAGA Payment of approximately \$11.08 as an Aggrieved
7 Employee (277 PAGA Paychecks during the PAGA Period x \$0.04 paycheck value = \$11.08)
8 while the average estimated Individual PAGA Payment to an Aggrieved Employee will be
9 approximately \$1.09 (\$9,000.00, 25% \$36,000.00 in PAGA Penalties / 8,261 Aggrieved
10 Employees during the PAGA Period = \$1.09 Individual PAGA Payment). Some Aggrieved
11 Employees – those who had more PAGA Paychecks during the PAGA Period – will receive more,
12 and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee (i.e.,
13 to those who qualify for all paychecks in the PAGA Period) will be approximately \$37.43. The
14 lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify
15 for only one paycheck in the PAGA Period) will be approximately \$0.04.

Proposed Preliminary Approval Order

16 78. Plaintiff files a proposed Preliminary Approval Order with this declaration. The
17 proposed Preliminary Approval Order includes the Class Notice in English with Spanish
18 translation. Based on my investigation, the Class Members all understand English, Spanish, or
19 both. The Class Notice does not include any other forms. The Settlement Agreement is not attached
20 to the proposed Preliminary Approval Order. I have carefully reviewed both the terms and the
21 terminology of the proposed Preliminary Approval Order and accompanying Class Notice to
22 confirm that the various documents are internally consistent, consistent with each other, and
23 consistent with the Settlement Agreement.

24 79. **Identity of Administrator.** The proposed Preliminary Approval Order states
25 the name of the Administrator, and describes the nature of the services that the Administrator
26 will be required to perform, either directly or by reference to the Settlement Agreement.

27 80. Neither the proposed Preliminary Approval Order, the Class Notice, nor the
28 Objection form requires an objecting party to, either personally or through counsel, appear at
the hearing on the motion for final approval for that party's objection to be considered.
Neither the proposed Preliminary Approval Order, the Class Notice, nor the Objection form



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1 requires an objecting party to, either personally or through counsel, file or serve, or state in
2 the objection, a notice of intention to appear at the hearing on the motion for final approval.

3 81. **Final Approval Hearing Date.** The proposed Preliminary Approval Order
4 provides a proposed date for the Final Approval Hearing. The proposed Preliminary
5 Approval Order requires the Administrator to give notice to any objecting party of any
6 continuance of the hearing of the motion for final approval.

7 82. **No Injunction against Filing Claims.** Neither the proposed Preliminary
8 Approval Order nor the Class Notice purports to enjoin the Class Members from filing any
9 actions or administrative claims or proceedings pending the final hearing on the Settlement or
10 for any other period.

11 83. **No Claim Form.** The Settlement does not require a claim form.

The Class Notice

12 84. The Settlement requires distribution of the Notice by First Class U.S. mail only.
13 Settlement, ¶ VII.4.d. Although there are current employee Class Members, it is uncertain
14 whether Defendants' records of their contact information include email addresses, and Class
15 Members, who perform all of their work away from a desk, are not in a position to check their
16 emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice provides Class
17 Members with all pertinent information that they need to fully evaluate their options and exercise
18 their rights under the Settlement. Specifically, it clearly and concisely explains, among other
19 things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class
20 Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement;
21 (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments
22 to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated
23 settlement shares for each Class Member. Additionally, the Notice will include the number of
24 eligible Class Paychecks a Class Member had during the Class Period. Accordingly, the Notice
25 should be approved because it describes the Settlement with sufficient clarity and specificity to
26 explain to Class Members what this action is about, their rights under the Settlement, and how to
27 exercise those rights. As such, the Parties' proposed Notice fully complies with California Rules
28 of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the
proposed settlement.

85. The Settlement does not require Class Members to submit claims to



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1 participate.

2 86. The Class Notice is drafted in a manner that is likely to be readily understood
3 by the members of the Class. The Class Notice does not contain any Latin terms, legal terms
4 of art, or unfamiliar symbols or abbreviations.

5 87. As stated above, the Class Notice includes an estimate of the likely recovery
6 by the individual Class Member.

7 88. The Class Notice states that the Court has determined only that there is
8 sufficient evidence to suggest that the proposed settlement might be fair, adequate, and
9 reasonable, and that any final determination of those issues will be made at the final hearing.

10 89. The Class Notice advises the Class Members of where they can find the
11 Settlement Agreement, by describing the full title and filing date either of the settlement
12 agreement and this declaration to which the Settlement Agreement is attached. The Class
13 Notice also states the address of the courthouse to which the case is assigned, and the address
14 of the Court's website at which the case file can be viewed on-line.

15 90. The Class Notice describes the releases by Plaintiff and the Class Members.

16 91. The lawsuit includes a claim for civil penalties under PAGA. The Class Notice
17 defines PAGA. It states that Class Members may not opt out of the PAGA provisions of the
18 Settlement. However, it does not bar them from objecting to the PAGA portions of the
19 Settlement. The Class Notice also describes the terms of the settlement of the PAGA claim,
20 including who is an Aggrieved Employee. The Class Notice provides an estimate of the
21 individual Aggrieved Employee's share of 25% of the \$36,000.00 PAGA Penalties and
22 advises Aggrieved Employees that the payments will be reported on a Form 1099.

23 92. The Objection form instructs the objecting Class Member that the objection
24 must be delivered to the Administrator. The Objection form states the name and address of
25 the Administrator. It also states the date by which the objection must be mailed or otherwise
26 delivered.

27 93. The information required to be provided by an objecting Class Member on the
28 Objection form does not exceed the minimum information necessary to (i) identify the
29 objector as a person entitled to object to the Settlement, (ii) describe the nature of and basis
30 for the objection, and (iii) contact the objector to clarify any uncertainties.

94. The Election Not To Participate form (i) instructs the Class Member seeking
exclusion that the exclusion form must be mailed or delivered to the Administrator, (ii) states



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1 the name and address of the Administrator, and (iii) states the date by which the exclusion
2 form must be mailed or otherwise delivered.

3 95. The information required to be provided by a Class Member on the Election
4 Not To Participate form does not exceed the minimum information necessary to (i) identify
5 the person as a Class Member and (ii) contact the person to clarify any uncertainties.

6 96. The Election Not To Participate form indicates that exclusion from the Class
7 Settlement will not result in exclusion from the PAGA portion of the Settlement.

8 *Administrator Duties*

9 97. The duties of the Settlement Administrator are spelled out in the Settlement and in
10 the bid provided by ILYM Group, Inc., a true and correct copy of which is attached hereto as
11 **Exhibit 18**.

12 *Administration Costs*

13 98. With regard to the settlement administration costs provision (Settlement § III.2.c),
14 it is reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from
15 ILYM Group, Inc. and other reputable third-party administrators: (A) CPT Group = \$55,000.00;
16 (B) ILYM Group, Inc. = \$47,750.00; and (C) Phoenix = \$55,000.00. A true and correct copy of
17 the bid from CPT Group is attached hereto as **Exhibit 19**. A true and correct copy of the bid from
18 Phoenix is attached hereto as **Exhibit 20**. The bid provided by ILYM Group, Inc. was the lowest.
19 Thus, the settlement administration costs provision should be given preliminary approval.

20 *PAGA Provisions of the Settlement*

21 99. The memorandum of points and authorities that accompanies this declaration
22 explains the terms of the provisions of the Settlement that apply to PAGA and civil penalties.

23 100. The Settlement provides that 25% of the \$36,000.00 PAGA Penalties shall be
24 distributed among all Aggrieved Employees, even those who opt out of the Class Settlement. See
25 Settlement, ¶ III.2.e.

26 101. The Settlement releases only those claims described in the notice sent by the
27 plaintiff to the LWDA, and only to the extent that they are alleged in the complaint. The
28 Settlement as follows with regard to the release of the PAGA claim: Release by Aggrieved
Employees. All Participating and Non-Participating Class Members, who are Aggrieved
Employees, are deemed to release, on behalf of themselves and their former and present
representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released



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1 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
2 alleged, based on the facts stated in the Operative Complaint and PAGA Notice that occurred
3 during the PAGA Period. Settlement, ¶ V.3.

4 102. The PAGA Release is limited to the Defendants named in the Operative
5 Complaint, together with all persons, agents, servants, representatives, officers, directors,
6 stockholders, employees, associations, joint ventures, corporations, parent corporations,
7 subsidiaries, affiliates, partners, members, predecessors and successors in interest, insurers,
8 re-insurers, and assigns, and all other legal entities with whom Defendants have been, are
9 now, or may hereafter be affiliated with. *See* Settlement, ¶ 1.37 (“Released Parties”).

10 ***Notice of Settlement to the LWDA***

11 103. Pursuant to Labor Code § 2699(l)(2), Plaintiff has provided notice of this
12 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
13 Plaintiff’s submission with the LWDA and a confirmation email is attached hereto as **Exhibit 21**.

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

16 Executed on Friday, December 20, 2024 at New York, New York.

17 

18

DAVID SPIVAK,
19 Declarant



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