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11 Attorneys for Plaintiff(s),
12 DEJA NAIR, and all others similarly situated

13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15

16 DEJA NAIR, on behalf of herself, all others
17 similarly situated, the general public, and as an
18 “aggrieved employee” on behalf of other
19 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 MEDLINE INDUSTRIES, INC., an Illinois
23 corporation; MEDLINE INDUSTRIES
24 HOLDINGS, L.P., a Delaware limited
25 partnership; MEDLINE INDUSTRIES, LP, an
26 Illinois limited partnership; and DOES 1–50,
inclusive,

27 *Defendant(s).*
28

Case No. 2:22-CV-00331-DAD-JDP

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

Action filed: 12/22/2021
Hearing Date: 05/18/2026
Hearing Time: 1:30 p.m.
Hearing Court: 4, 15th floor, The
Honorable Dale A.
Drozd



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1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF DEJA NAIR’S**
2 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Deja Nair (“Plaintiff”) in her lawsuit against Defendants Medline
6 Industries, Inc., Medline Industries, LP, and Medline Industries Holdings, L.P. (collectively
7 “Defendants”). Plaintiff and Defendants are collectively referred to as the “Parties.”

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

10 3. The Class Action and PAGA Settlement Agreement and Class Notice (the
11 “Settlement” or “Settlement Agreement”) is attached hereto as **Exhibit 1**.

12 ***Factual and Procedural Background***

13 4. Defendants are or were healthcare manufacturers and distributors. Defendant
14 Medline Industries Inc. employed Plaintiff as a warehouse operator in California from about June
15 29, 2021 until July 31, 2021.

16 5. **LWDA Notice.** On October 29, 2021, Plaintiff notified Defendants and the
17 California Labor and Workforce Development Agency (“LWDA”), pursuant to the California
18 Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”),
19 of alleged Labor Code violations committed by Defendants. A true and correct copy of the letter
20 to the LWDA dated October 29, 2021 is attached hereto as **Exhibit 2**.

21 6. **Lawsuit.** On December 22, 2021, Plaintiff filed a Class Action Complaint in the
22 San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-0011669, against Defendants
23 on behalf of herself and others similarly situated, alleging causes of action on a class-wide basis
24 for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197,
25 and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to
26 Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Wage Statement Penalties (Lab.
27 Code §§ 226 and 226.2); (5) Waiting Time Penalties (Lab. Code §§ 201-203); and (6) Unfair
28 Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On January 10, 2022, Plaintiff filed her First



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Amended Complaint adding a claim under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). On February 17, 2022, Defendants filed an answer to Plaintiff’s First Amended Complaint. On or about February 18, 2022, Defendants removed the case to this Court. Defendants deny all of Plaintiff’s allegations and strongly contends that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff’s First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants’ Answer is attached hereto as **Exhibit 5**.

7. **Investigation.** After conducting formal written discovery and taking several depositions, including Defendants’ persons most knowledgeable, the Parties agreed to stay formal discovery and attend mediation. On April 1, 2025, Plaintiff requested that Defendants informally disclose further documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff’s claims. Plaintiff also requested a 25% randomly selected sample of Defendants’ time, payroll, ProTrack (electronic activity records), and other related records. Finally, Plaintiff requested Defendants’ written policies applicable to the claims at hand and asked Defendants identify any and all comparable claims against them. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced the requested sample records for 1,459 employees, Plaintiff’s entire personnel file, and copies of their relevant company written policies.

8. Defendants further disclosed the following comparable claims: against them: Frank Padilla v. Medline Industries, LP, No. 5:25-cv-02254 (E.D. Cal.), Sonia Arellano v. Medline Industries, LP, No. CIVSB2524854 (San Bernardino Cty. Sup. Ct.) and Nicole Fennoy v. Medline Industries, LP, Case No. STK-CVUWT-2024-0007060 (San Joaquin Cty. Sup. Ct.). Defendants report that the *Padilla* matter has been dismissed, the *Arrellano* matter is expected to settle individually, and the plaintiff in the *Fennoy* matter was compelled to arbitration.

9. **Plaintiff’s Data Analyst.** Plaintiff retained data analyst James Toney and



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1 economist Dr. Brian Kriegler and his team at EconOne to analyze the sample. Plaintiff also
2 employed the Raosoft¹³ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
3 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
4 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
5 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
6 of error of 43.3 percent was unacceptable. Using a margin of error of 5, a confidence level of
7 95%, and a population size of 5,892, the Raosoft Sample Size Calculator recommended a sample
8 of 361. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached
9 as **Exhibit 6** (Raosoft Sample Size Calculator results print-out). Thus, I believe that the sample
10 population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

11 10. **Mediation.** On July 14, 2025, following much of the foregoing formal and
12 informal discovery and exchange of information, the Parties participated in a mediation session
13 presided over by Mediator, the Honorable Ann I. Jones, an experienced class action mediator.
14 During the mediation, the Parties had a full day of productive negotiations. The Parties did not
15 reach a settlement at the mediation. However, they continued their settlement negotiated and
16 Defendants produced additional records. Ultimately, with the help of the mediator, the Parties
17 reached an agreement on a class-wide settlement by accepting the mediator's proposal. During
18 the mediation and negotiation sessions, each side, represented by her / their respective counsel,
19 recognized the risk of an adverse result in the Action and agreed to settle the Action and all other
20 matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

21 *Ascertainable and Numerous Class*

22 11. **Ascertainability.** A class is ascertainable when it may be readily identified

23
24 ¹³ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
25 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
26 programs for information gathering and analysis. The family of survey software supports data
27 collection and reporting for any form-based data. Support is for web-surveys and forms, email
28 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 without unreasonable expense or time by reference to official records. Here, Plaintiff maintains
2 that the above-defined Class is ascertainable because its members may be identified by reference
3 to Defendants' records and Defendants have agreed to share the relevant information from their
4 records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

5 12. **Numerosity.** The Settlement Class has sufficiently numerous members to render
6 joinder impractical. No set number is required as a matter of law to maintain a class action. The
7 California Supreme Court has upheld a class of as few as 10 individuals. Defendants estimated
8 that there were approximately 5,892 Class Members through February 21, 2025. Plaintiff
9 maintains that it would be impractical and economically inefficient to require each Settlement
10 Class Member to separately maintain an individual action or be joined as a named plaintiff in this
11 action. In light of these considerations, the Settlement Class' membership is sufficiently
12 numerous.

13 *Predominant Common Questions*

14 13. A question of law or fact is common to the members of a class if it may be resolved
15 through common proof. In this case, there are many predominant common questions. Plaintiff
16 asserts all class members were subject to the same or similar operations and employment policies,
17 practices, and procedures. The claims arise from Defendants' alleged policy-driven failures,
18 including alleged failure to pay wages, alleged failure to provide meal periods, alleged failure to
19 authorize and permit rest periods, alleged failure to issue proper wage statements, alleged failure
20 to timely pay wages, and related alleged labor law violations, all of which Plaintiff claims
21 constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common
22 questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned
23 to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed
24 to provide the class with all meal and rest periods in compliance with California law; (3) Whether
25 Defendants failed to pay the class one additional hour of pay on workdays they failed to provide
26 the class with one or more meal or rest periods in compliance with California law; (4) Whether
27 Defendants knowingly and intentionally failed to provide the class with accurate wage statements;
28 (5) Whether Defendants willfully failed to provide the class with timely final wages; and (6)



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Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class.

Typicality

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

Adequacy

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

16. Neither Plaintiff nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that she is an adequate class representative. Plaintiff alleges that she and the Class Members have strong and co-extensive interests in this 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 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated her 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 herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The declaration of Plaintiff Deja



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Nair on this subject will be filed concurrently with this declaration.

Background of Class Counsel

17. 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.

18. 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.

19. 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.

20. 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).

21. 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.

b. *Jorge Guzman v. Department of Justice*, United States District Court, Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special



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1 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
2 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
3 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent in
4 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
5 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
6 1999.

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

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

21 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
22 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
23 Agent, followed by an award of Attorneys' fees and costs.

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



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1 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
2 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
3 first and only case to be successfully prosecuted through trial under the Labor Code Private
4 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
5 aggrieved employees against someone other than an employer for civil penalties including unpaid
6 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
7 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
8 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

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

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

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

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

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

28 *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No.



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1 BC465017 (appointed Class Counsel and granted final approval by this Court of class action
2 settlement on behalf of merchandiser employees).

3 *Deckard v. MSL Community Management LLC*, Riverside County Superior Court,
4 Case No. RIC1204182 (appointed Class Counsel and granted final approval of class action
5 settlement on behalf of caregivers and medical technicians).

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

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

12 *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-
13 2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class action
14 settlement on behalf of medical devices employees).

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

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

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

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

27 *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-
28 CV-282679 (appointed Class Counsel and granted final approval of class action settlement on



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1 behalf of dairy and agricultural laborers).

2 *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No. BC442608
3 (appointed Class Counsel and granted final approval by this Court of class action settlement on
4 behalf of call center rigging employees). *Nardone v. Sequoia Beverage Company, LP*, Tulare
5 County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted final
6 approval of class action settlement by the court on behalf of hourly employees).

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

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

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

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

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

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

27 *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No.
28 BC421485 (granted class certification through contested motion and appointed Class Counsel in



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1 case on behalf of former security workers based on late final wage payments in violation of Labor
2 Code §§ 201–203).

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

7 *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior
8 Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class action
9 settlement on behalf of customer specialist employees).

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

13 *Class Action Treatment Is Superior*

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

23 *The Settlement is Presumptively Fair*

24 26. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
25 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
26 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
27 weaknesses of their respective cases and Defendants’ estimated potential exposure. Both defense
28 counsel and I are particularly experienced in employment law and wage and hour class actions.



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1 We are experienced and qualified to evaluate the class claims, the viability of the defenses, and
2 the risks and benefits of settlement versus trial on a fully informed basis. I have negotiated many
3 wage and hour class settlements, including many involving the same issues presented here and
4 believe that the Settlement is a fair and reasonable settlement in light of the complexities of the
5 case and uncertainties of class certification and litigation, and a fair result for the Class Members.
6 Moreover, nothing about the settlement indicates collusion, with “subtle signs” of collusion
7 absent: Plaintiff’s counsel do not stand to receive a disproportionate distribution of the settlement,
8 there is no clear sailing provision on attorneys’ fees, and there is no reversion of unawarded funds
9 to Defendants.

10 *Exposure & Risk Analysis*

11 27. Plaintiff prepared “damages” estimates in advance of the mediation and revised
12 the estimates after further discovery was completed after the mediation and before a Settlement
13 was reached. Before mediation, Plaintiff determined Defendants’ maximum possible exposure
14 for restitution and penalties to be approximately \$8,203,359.54 (consisting of \$661,650.54 in
15 unpaid wages, \$661,650.54 in liquidated damages, \$1,251,168.53 in missed meal period premium
16 wages, \$1,443,053.11 in missed rest break premium wages, \$549,777.50 for wage statement
17 penalties, \$1,046,174.33 for waiting time penalties, and \$2,589,885.00 for civil penalties under
18 PAGA. True and correct copies of the spreadsheets I prepared are collectively attached to this
19 declaration as **Exhibit 7**.

20 28. The estimates are in essence “home run” projections that omit data points that will
21 undoubtedly reduce the maximum possible damages award and do not factor in any of
22 Defendants’ defenses or the risks involved in litigating this Action. Plaintiff calculated the
23 damages based on the number of workweeks and pay periods provided by Defendants, Plaintiff’s
24 reports, and the sample data. *Id.* A settlement for approximately 13% of the potential recovery is
25 a proportion substantially in excess of recovery proportions sanctioned by existing case law.¹⁴

26
27 ¹⁴ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
28 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
Inc. 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the



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29. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for \$1,100,000.00 is fair and reasonable. However, based on the difficulties of proof, the Defendants' defenses, and the other attendant risks Plaintiff identifies below, Plaintiff estimates the likely awards at trial should Plaintiff prevail to be the following amounts:

- Unpaid wages and liquidated damages with interest in the amount of \$198,495.16;
- Meal period premium wages with interest in the amount of \$187,675.28;
- Rest period premium wages with interest in the amount of \$216,457.97;
- Statutory pay stub penalties in the amount of \$54,977.75;
- Waiting time penalties in the amount of \$104,617.43; and
- Civil penalties in the amount of \$258,988.50.

The total of these amounts is \$1,021,212.09. The Gross Settlement Amount of \$1,100,000.00 is close to this amount.

30. Risks Associated with the Arbitration Agreements. The arbitration agreements entered into between Defendants on the one hand, and the Class Members, on the other, present a significant risk to the success of Plaintiff's class action litigation. According to Defendants, the majority of the Class entered into arbitration agreements with Defendants. Although Plaintiff was successful in convincing this Court that the arbitration agreement she signed was not enforceable for her, it is possible that the Court could reach a different opinion with regards to other Class Members who were employed in positions other than the one assigned to Plaintiff and performed duties different from those performed by Plaintiff. This could significantly limit the class the Court could certify. As the 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. *Id.* As such, by continuing to trial on class-wide claims,

proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").



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

7 **31. Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff’s
8 recovery for unpaid wages would be extremely limited at best, largely because Defendants’
9 policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims
10 are difficult where a Defendants requires in its written policies that all work must take place while
11 clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must
12 have notice of off-the-clock work for it to be compensable). *Id.* Moreover, while Defendants
13 disputes that off-the-clock work occurred, they contend that any time spent off the clock was *de*
14 *minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835
15 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense
16 even if compensable (stating that “We do not decide whether there are circumstances where
17 compensable time is so minute or irregular that it is unreasonable to expect the time to be
18 recorded.”). Following *Troester*, Defendants contended that the *de minimis* doctrine may apply
19 here because the time spent off the clock were minute and insignificant. Accordingly, a large
20 award of penalties seems unlikely with respect to this claim.

21 **32.** As stated above Plaintiff anticipated that a comparison of the ProTrack records
22 with employee time punch records would show work taking place while employees were off the
23 clock. However, a closer review of the records by EconOne did not show what Plaintiff had
24 anticipated. The difficulty inherent in proving that off-the-clock work occurred poses a significant
25 hurdle to Plaintiff. Plaintiff would rely on declarations and witness statements to prove this claim.
26 Generally, a court will not certify a class unless it can determine an appropriate classwide
27 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
28 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given



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1 the lack of records indicating when such off-the-clock work may have taken place. Individualized
2 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
3 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
4 risk that the Court would consider this evidentiary showing insufficient as a classwide
5 methodology.

6 **33. Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
7 meal period claim. Plaintiff claimed that due to Defendants’ alleged deadlines and productivity
8 standards and the employees’ alleged workload, the employees had no choice but to delay or
9 forgo their meal and rest break altogether. Defendants utilize the ProTrack warehouse
10 management and labor management software. Plaintiff anticipated that a comparison of the
11 ProTrack records with employee time punch records would show work taking place while
12 employees were off the clock and that the employees had insufficient time for meal and rest
13 periods. However, a closer review of the records by EconOne did not show what Plaintiff had
14 anticipated. Defendants further contend that, to establish a violation for missed meal periods, a
15 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
16 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
17 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
18 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
19 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
20 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a
21 particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D.
22 Cal. 2010) 271 F.R.D. 629, 641. *Id.*

23 **34.** Defendants contend they did not impede or discourage Plaintiff, or any other
24 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
25 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
26 of their meal breaks each day on their time records. The time records that comprise the random
27 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
28 taken the majority of the time. Of the time records that show a late, short or no lunch,



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1 individualized evidence may be necessary to determine whether they occurred due to conduct of
2 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
3 the value of Plaintiff's meal period claim would be substantially reduced at trial.

4 **35. Risks Associated with the Rest Break Claims.** There are risks to Plaintiff's rest
5 period claim. Employers are not required to record rest periods and such periods are paid.
6 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
7 accordance with California law. Further, Defendants' written policies on meal and rest periods
8 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
9 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
10 period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial
11 has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys
12 to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
13 makes such claims risky from a trial management and due process perspective. *See Duran v. U.S.*
14 *Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist
15 to support class certification, it may be possible to manage individual issues through the use of
16 surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
17 *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

18 **36. Risks Associated with the Wage Statement and Waiting Time Penalty Claims.**
19 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA
20 penalties. Under Labor Code section 226, wage statements must include various information,
21 including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff's
22 wage statement and waiting time penalty claims have the same underlying risks as the above
23 claims, as they are derivative of them. On their face, the wage statements issued by Defendants
24 comply with the requirements of Labor Code section 226. Further, without proof of willful
25 behavior, Plaintiff will be unable to recover waiting time penalties.

26 **37. Risks Associated With the PAGA Claim.** As the Operative Complaint makes
27 clear, Plaintiff predicates her PAGA claim on the same Labor Code violations as her other
28 claims. As I state above in connection with Plaintiff's claims for statutory penalties with regard



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1 to proof Defendants’ intent, knowledge and willfulness, there are serious risks to proving
2 Defendants acted intentionally, knowingly, and willfully in violating the rights of Class Members
3 under the Labor Code. Plaintiff calculated the agreed-upon amount of civil penalties by
4 considering the risks outlined above and that the Settlement already provides substantial
5 payments for the Labor Code violations that the civil penalties claim is predicated on.

6 38. Regarding PAGA, a court has discretion to award a lesser amount than the
7 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
8 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants
9 have posed valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations.
10 Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
11 consider the maximum civil penalty available to be confiscatory.

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

24 40. I am aware of only two significant awards under the PAGA in a contested
25 proceeding, both issued by federal district courts.¹⁵ PAGA penalty awards are often small even

26
27 ¹⁵ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
28 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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1 for egregious, intentional violations of the Labor Code.¹⁶

2 41. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a
3 prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only
4 \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828.
5 Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal
6 affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the
7 Defendants' meal period violations. A similar result could occur here.

8 42. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right
9 to settle a putative class member's disputed wage claims individually, without the consent or
10 involvement of class counsel. *See Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009).

11
12 The plain language of PAGA provides that "a court may award a lesser amount than the
13 maximum civil penalty amount specified by this part if, *based on the facts and*
14 *circumstances of the particular case*, to do otherwise would result in an award that is
15 unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis
16 added). The relationship between the amount of total damages and the amount of
17 maximum PAGA penalties is certainly a "circumstance" of the case under the term's
18 ordinary meaning. The weight given to that circumstance is greater in this case because
19 Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
20 individual claims except for one. As a general matter, it would be excessively punitive
21 for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
22 the damages caused by that injury or set of injuries.

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

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

23 ¹⁶ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
24 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
25 correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 19**. The plaintiff
26 sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
27 Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
28 the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
20, 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 As discussed above, Defendants may launch a “pick off” settlement campaign to pursue
2 individual release agreements from the Class Members, thereby potentially narrowing the size of
3 the Settlement Class until it is no longer numerous enough for class certification. *Id.* Plaintiff,
4 then, may not have sufficient number of employees to represent. This led to a significant reduction
5 of claim value in settlement negotiations.

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

18 ***Allocation of the PAGA Payment***

19 44. The settlement of PAGA penalties in the sum of \$20,000.00, of which 75%
20 (\$15,000.00) will be paid to the LWDA and 25% (\$5,000.00) will be distributed to the Aggrieved
21 Employees as Individual PAGA Payments, is reasonable and appropriate under the
22 circumstances. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the
23 LWDA and to the Aggrieved Employees. The portion to be paid to the LWDA was not the result
24 of self-interest at the expense of other Aggrieved Employees.

25 ***Attorneys’ Fees and Costs***

26 45. I intend to request Class Counsel Attorneys’ Fees of \$366,666.66 (or one-third of
27 the GSA) and Class Counsel’s litigation costs incurred in prosecuting this Action, which I
28 currently estimate to be approximately \$44,931.48 and will be no more than \$50,000.00 at the



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conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these 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 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



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

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

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

Class Representative Service Payment

48. The Settlement provides that Plaintiff may seek a Class Representative Service



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1 Payment of \$20,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action
2 and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
3 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
4 retaining experienced counsel, providing them with information about her work history with
5 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
6 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
7 being actively involved in the settlement process to ensure a fair result for the Settlement Class
8 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
9 order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor
10 Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
11 Class shows that the proposed Class Representative Service Payment is fair, adequate, and
12 reasonable, and thus warrant preliminary approval. Plaintiff Deja Nair's declaration, filed
13 concurrently with mine, provides further information supporting her request for the Class
14 Representative Service Payment.

15 49. Plaintiff began her investigation and retention of attorneys to pursue the claims at
16 issue on approximately September 07, 2021. Awarding Plaintiff 1.82% of the GSA is entirely
17 reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In
18 this case, Plaintiff has devoted several hours of her time advancing the interests of the Class
19 Members and also expects to devote additional hours of her time with Class Counsel overseeing
20 the administration of the Settlement if the Court grants final approval of the Settlement. *See*
21 *generally* Declaration of Deja Nair. Plaintiff has done this by, among other things, retaining
22 experienced counsel, providing them with extensive information about her work history with
23 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
24 issue, assisting them in contacting absent Class Members to gather information, participating in
25 a full day of mediation, foregoing pursuit of her individual claims in favor of a fair class-wide
26 resolution, and being actively involved in the settlement process to ensure a fair result for the
27 Class Members as a whole.

28 50. As Class Representative, Plaintiff agreed to (1) consider the interests of the class



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1 just as she would consider her own interests and, in some cases, to put the interests of the class
2 before her own interests; (2) actively participate in the lawsuit, as necessary, by among other
3 things, answering interrogatories, producing documents to Defendants and giving deposition and
4 trial testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any
5 resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be
6 designed in the best interest of the class as a whole; (5) follow the progress of the lawsuit and
7 provide all relevant facts to Class Counsel; (6) champion many other people with similar claims
8 and injuries because of the importance of the case and that necessity that all Class Members
9 benefit from the lawsuit; and (7) fight for a resolution in which the individual recovery to each
10 Class Member, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of
11 these responsibilities in exchange for a proportionate share of funds made available for
12 distribution to the Class Members. *See generally* Declaration of Deja Nair. Plaintiff had no
13 guarantee of a Class Representative Service Payment. This justifies the Class Representative
14 Service Payment sought.

15 51. In taking the actions outlined above, Plaintiff has exposed herself to significant
16 risks, including the risk that she could have been ordered to pay Defendants' attorneys' fees and
17 costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that
18 she could, in the future, face a potentially hostile work environment and worsened career
19 prospects for suing a prior employer for wage and hour violations and serving as the Plaintiff in
20 a class action lawsuit. Additionally, Plaintiff has exposed herself to the risk that she could end up
21 receiving less than Defendants would have paid her at the beginning of the Action via a C.C.P. §
22 998 offer or other individual settlement offer to drop her class allegations. On many occasions,
23 California courts have ordered wage and hour plaintiffs and would be class representatives to pay
24 outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

25 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA
26 2nd Dist. March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be paid
27 by employee for employee's unsuccessful suit for unpaid bonuses). A true and correct copy of
28 the court's order is attached to this declaration as **Exhibit 8**.



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1 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist.
2 Nov. 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney’s fees and costs to
3 employer for unsuccessful suit for unpaid wages). A true and correct copy of the court’s order is
4 attached to this declaration as **Exhibit 9**.

5 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist.
6 Feb. 18, 2003) (court ordered the employee to pay \$20,269 in attorney’s fees and costs to the
7 employer for unsuccessful suit for unpaid wages and overtime). A true and correct copy of the
8 court’s order is attached to this declaration as **Exhibit 10**.

9 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL
10 4718721 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff’s counsel to pay \$21,180
11 in attorney’s fees and \$1,525.80 in costs to defense counsel for unpaid wages). A true and correct
12 copy of the court’s order is attached to this declaration as **Exhibit 11**.

13 Such costs awards are higher than the share of the Net Settlement Amount (“NSA”) that Plaintiff
14 stands to receive as a Participating Class Member. It is unfair in view of the substantial risk of an
15 adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for
16 taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage
17 earner. Even the lowest of the cost awards listed above would have devastating consequences for
18 Plaintiff in view of her modest earnings.

19 52. Plaintiff’s individual share of the Net Settlement Amount will be less than that of
20 some absent Participating Class Members. Under the Settlement, Participating Class Members
21 will receive a *pro rata* distribution of the Settlement proceeds proportionate to the period of time
22 he or she worked for Defendants during the Class Period, compared to the total of the total period
23 of time worked by all Participating Class Members during the Class Period, as reflected by
24 Defendants’ records. Because Plaintiff may have been employed for a shorter period during the
25 Class Period, some Class Members will have worked more Work Weeks than Plaintiff and, as a
26 result, receive larger shares in the recovery – *even though they did not actively participate in the*
27 *lawsuit*. While this is a risk that Plaintiff assumed when she brought her lawsuit, it is unfair to
28 limit Plaintiff’s Class Representative Service Payment to an amount not much greater than an



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absent Class Members' share of the recovery. To encourage employees like Plaintiff to don the helm of class champions (and thereby advance the important public policies behind class actions), the Court should award something substantial to Plaintiff for her readiness to receive less than absent Class Members while assuming all the risk and delay of payment.

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

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

55. Plaintiff faced the risk that she could face worsened career prospects for suing a former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit. *See generally* Declaration of Deja Nair. Because she filed a lawsuit in the California Superior Court, a public record now exists that Plaintiff sued her employer for Labor Code violations – a fact that won't be lost on prospective employers considering her for a job. Common sense dictates that an employer will think twice about hiring someone who sued her last employer. Legal experts have recognized this fact. Attached to this declaration as **Exhibit 12** is a true and correct copy of the article "Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)." Attached to this declaration as **Exhibit 13** is a true and correct copy of the article "What To Expect



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1 If You Sue Your Employer.” California even has laws to address this risk: Labor Code § 1102.5
2 prohibits retaliation against employees who speak up about Labor Code violations and Labor
3 Code § 98.6 prohibits discrimination against employees who bring Labor Code violations to the
4 attention of the Labor Commissioner. Thus, the risk to Plaintiff’s future employment shows that
5 the Class Representative Service Payment sought is fair, adequate, and reasonable, and warrants
6 final approval of the Court.

7 56. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
8 made this case possible for a number of reasons. First, Plaintiff challenged her employers on an
9 allegedly unlawful practice that resulted in what she and I believe to represent a fair, reasonable,
10 and adequate settlement for the entire Class. Plaintiff provided Class Counsel with detailed
11 descriptions of how Defendants’ business operates, the hours and scheduling of employees, and
12 the nature of the work Class Members performed. *See generally* Declaration of Deja Nair.

13 57. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
14 has given up the right to pursue individual claims and potentially recover substantially more in
15 unpaid wages, interest, waiting time penalties, pay stub penalties, and civil penalties that she will
16 release as part of the Settlement. Plaintiff did not seek an individual settlement for her claims at
17 all, instead choosing to prosecute the claims on behalf of the Class Members.

18 58. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
19 were significant risks (outlined above) to any award on behalf of the Class Members and still
20 Plaintiff achieved a settlement of \$1,100,000.00. This outstanding result calls for significant
21 awards to Plaintiff for making the result possible. If the Court is disinclined to award Plaintiff all
22 or part of the Class Representative Service Payment requested, Class Counsel request that the
23 Court allocate the difference to Plaintiff from Class Counsel’s requested attorney fee award.

24 ***Class Member and Aggrieved Employee Settlement Share Estimates***

25 59. Below, Plaintiff estimates Plaintiff’s anticipated Individual Class Payment.

26 60. **Individual Class Payments.** At \$19.93 per hour (the average Class Member’s
27 hourly wage), the average estimated Individual Class Payment to Participating Class Members is
28 the equivalent of over 5 hours of unpaid wages (the primary remedies sought) (\$104.10 / \$19.93



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= 5 hours). Thus, this is a result the Class can be proud of in view of the significant risks.

61. Plaintiff estimates that there are 321,648 Work Weeks for the Class Period. So, each Work Week has a value of approximately \$1.91 (\$613,333.34 Net Settlement Amount / 321,648 Work Weeks = \$1.91). Plaintiff had 5 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff Deja Nair will receive an Individual Class Payment of approximately \$9.53 as a Participating Class Member (5 Work Weeks x \$1.91 = \$9.53) while the average estimated Individual Class Payment to Participating Class Members will be approximately \$104.10 (\$613,333.34 Net Settlement Amount / 5,892 Class Members = \$104.10). Some Class Members – those who worked more Work Weeks 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 Work Weeks in the Class Period) will be approximately \$845.41. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be approximately \$1.91. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less.

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

63. **Individual PAGA Payments.** I estimate that the average Aggrieved Employee Individual PAGA Payment will be \$1.13. *Id.* Plaintiff's Individual PAGA Payment, her individual share of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each of the 4,411 Aggrieved Employees will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff estimates that there are 115,106 Aggrieved Employee paychecks for the PAGA



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1 Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of
2 approximately \$0.04 (25% of \$20,000.00 in PAGA Penalties / 115,106 Aggrieved Employee
3 paychecks = \$0.04). It is anticipated that Plaintiff Deja Nair will receive an Individual PAGA
4 Payment of approximately \$0.09 as an Aggrieved Employee (2 paychecks during the PAGA
5 Period x \$0.04 paycheck value = \$0.09) while the average estimated Individual PAGA Payment
6 to an Aggrieved Employee will be approximately \$1.13 (\$5,000.00, 25% of PAGA Penalties /
7 4,411 Aggrieved Employees during the PAGA Period = \$1.13 Individual PAGA Payment). Some
8 Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive
9 more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee
10 (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately \$6.41.
11 The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who
12 qualify for only one paycheck in the PAGA Period) will be approximately \$0.04.

13 *The Notice Packet*

14 64. The Settlement requires distribution of the Notice by First Class U.S. mail only.
15 Settlement, ¶ 8.4.2. Although there are current employee Class Members, it is uncertain whether
16 Defendants' records of their contact information include email addresses and Class Members,
17 who perform all of their work away from a desk, are not in a position to check their emails. As
18 such, notice by mail alone is fair, adequate, and reasonable. The Class Notice (attached as Exhibit
19 A to the Settlement) provides Class Members with all pertinent information that they need to fully
20 evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and
21 concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement
22 Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not
23 to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will
24 be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be
25 resolved; and (9) the estimated settlement shares for each Class Member. Additionally, the Notice
26 will include the number of eligible Work Weeks a Class Member had during the Class Period.
27 Accordingly, the Notice should be approved because it describes the Settlement with sufficient
28 clarity and specificity to explain to Class Members what this action is about, their rights under



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1 the Settlement, and how to exercise those rights. As such, the Parties' proposed Notice fully
2 complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to
3 make informed responses to the proposed settlement.

4 *Administrator Duties*

5 65. The duties of the Settlement Administrator are spelled out in the Settlement and in
6 the bid provided by ILYM Group, Inc. a true and correct copy of which is attached hereto as
7 **Exhibit 14.**

8 *Administration Costs*

9 66. With regard to the settlement administration costs provision, it is reasonable.
10 Before agreeing to ILYM Group, Inc. the Parties sought and reviewed bids from other reputable
11 third-party administrators: (A) ILYM Group, Inc. = \$27,950.00; (B) Phoenix Class Action
12 Administration Solutions = \$30,000.00; (C) Apex = \$35,990.00; and (D) Simpluris = \$48,837.00.
13 A true and correct copy of the bid from Phoenix Class Action Administration Solutions is attached
14 hereto as **Exhibit 15.** A true and correct copy of the bid from Apex is attached hereto as **Exhibit**
15 **16.** A true and correct copy of the bid from Simpluris is attached hereto as **Exhibit 17.** The bid
16 provided by ILYM Group, Inc. was the lowest. Thus, the settlement administration costs
17 provision should be given preliminary approval.

18 *Notice of Settlement to the LWDA*

19 67. Pursuant to Labor Code § 2699(l)(2), Plaintiff has provided notice of this
20 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
21 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 18.**

22 I declare under the penalty of perjury of the laws of the United States of America that the
23 foregoing is true and correct.

24 Executed on Monday, April 13, 2026 at New York, New York.

25 /s/ David Spivak
26 DAVID SPIVAK,
27 Declarant
28



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