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Attorneys for Anthony Morris, on behalf of himself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTHONY MORRIS, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY, an Indiana
Corporation; LINCOLN NATIONAL
CORPORATION, an Indiana Corporation;
and DOES 1 Through 10, Inclusive,

Defendants.

Case No. 22STCV20426

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Lawrence P. Riff

Department SS7

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF MARTA MANUS IN
SUPPORT OF MOTION FOR ORDER
GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE AND
SETTING OF FINAL FAIRNESS HEARING
DATE**

Date: August 9, 2023

Time: 10:00 a.m.

Dept: SS 7

Judge: Lawrence P. Riff

Complaint filed: June 22, 2022

Trial date: Not set

1 I, Marta Manus, declare as follows:

2 1. I am an associate with the law firm of Cohelan Khoury & Singer, co-counsel of
3 record for Plaintiff and the Settlement Class. I submit this Declaration in Support of Plaintiff's
4 Motion for Order Granting Preliminary Approval of Class Action Settlement, Conditional
5 Certification, Approval of Class Notice, and Setting of Final Fairness Hearing Date. The
6 following facts are within my personal knowledge and if called to testify I could and would
7 competently testify to them.

8 2. I am a 2008 California Western School of Law graduate and was admitted to the
9 California State Bar in December 2008. I am admitted to practice in all state courts in California
10 and in the all federal courts in California. Since my admission to the California State Bar, I have
11 been litigating employment class actions.

12 3. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a
13 Partnership of Professional Law Corporations, in 1981 and within a few years began to focus on
14 class actions. Cohelan & Khoury became Cohelan Khoury & Singer in 2009. Our firm represents
15 plaintiffs in class and representative action litigation, including wage and hour, labor and
16 employment, antitrust, consumer protection, construction defect and other public interest class
17 and representative actions.

18 4. Partners Isam C. Khoury and Diana M. Khoury have been selected by their peers
19 based on ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern
20 California Super Lawyers Magazine for the years 2012 through the present. Michael D. Singer,
21 Managing Partner, was named to the Daily Journal 2012, 2013, and 2018 list of Top California
22 Labor and Employment Attorneys and selected to the Southern California Super Lawyers in
23 2010, 2012-2019. Mr. Singer was admitted as a fellow to the College of Labor and Employment
24 Attorneys in 2020. Many attorneys in our firm are AV – Preeminent rated by Martindale-
25 Hubbell.

26 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
27 provide the Mandatory Continuing Legal Education activity entitled "Litigating California Class
28 Actions" and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.

Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated annually), part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing author on the CEB publication California Wage and Hour Law: Compliance and Litigation (2010-2022 updated annually), in which he wrote the opening chapter overview on California Wage and Hour laws, including the public policy underpinnings for those laws, and the Private Attorneys General Act (PAGA) Claim chapter. He is also a contributing author to the CEB Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr. Singer has served as a columnist for the California State Bar, Litigation Section on wage and hour litigation and has contributed articles on wage and hour and class action issues through the years to numerous California publications. Prior to COVID, he typically lectured several times per year for continuing education courses on wage and hour and class action issues at events in San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer has served as wage and hour amicus co-chair and liaison for the California Employment Lawyers Association, drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and employment law since 2000, handling well over 300 wage and hour class and PAGA actions and several individual labor cases. He has litigated several types of employment actions, including complex ERISA employee welfare benefit plan cases, as well as wage and hour class actions before Federal and State Courts in California. In 2014, Mr. Singer, along with former Partner J. Jason Hill, tried a wage and hour class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck drivers.

6. As a part of our overall firm philosophy lawyers perform community service and pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of San Diego. Partner Jeff Geraci is a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr.

Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits on the Board as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana M. Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of San Diego, Consumer Attorneys of California, and American Association for Justice serving and chairing various committees through the years for these organizations. For six years from 2010 through 2015, Ms. Khoury served on the Board of Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association providing access to justice to the underserved and impoverished in the San Diego County region. Our firm's recent pro bono victories include a settlement which prohibits the City of San Diego from targeting homeless people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number of available shelter beds in San Diego.

7. Cohelan Khoury & Singer has been certified Class Counsel in the following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers*

1 *of California, Inc.*, Sacramento County Superior Court Case No. 2007-30000003; *Grana, et al.*
2 *v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS L.A.S.C.* Case No.
3 BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo Superior Case No. CIV530955;
4 *Wilcox v Albertsons*, San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al.*
5 *v. Freedom Communications, Inc. d/b/a The Orange County Register*, Orange County Superior
6 Court Case No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District
7 Court, Southern District of California Case No. 10CV0672 (FLSA Conditional Certification);
8 *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No.
9 B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County
10 Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First
11 Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los
12 Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta*
13 *Sales and Marketing Company*, United States District Court, Central District of California Case
14 No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San*
15 *Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady*
16 *Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-
17 00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court
18 Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court
19 Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior
20 Court Case No. 37-2008-00083992; *STEROID HORMONE PRODUCT CASES*, Los Angeles
21 County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et*
22 *al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange
23 County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*,
24 Orange County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries,*
25 *Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590;
26 *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676;
27 *Vazquez v. Kraft Heinz Foods Company*, United States District Court, Southern District of
28 California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court,

1 Southern District of California Case No. 10CV0634; and *Weigele v. FedEx Ground Package*
2 *System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330,
3 among others, as well as being appointed Class Counsel in connection with well over 200 class
4 action settlements.

5 8. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
6 actively commenced, prosecuted and concluded numerous state and federal class and
7 representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the
8 resolution of over 200 such cases, including the following, which have received court approval:

9 (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County
10 Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A.,*
11 *Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj*
12 *v. Conair Corporation*, United States District Court, Southern District of California, Case No.
13 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court,
14 Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO*
15 *Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M.
16 Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No.
17 CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los
18 Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway*
19 *Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517,
20 Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court,
21 Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County
22 Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of*
23 *Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l)
24 *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court,
25 Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m)
26 *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958,
27 Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et*
28 *al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM,

Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

9. Plaintiff seeks preliminary approval of a pre-certification wage and hour class and Private Attorneys General Act ("PAGA") Settlement of \$500,000 on behalf of the approximately 231-member Class employed in California by Defendants The Lincoln National Life Insurance Company and Lincoln National Corporation ("Defendants") as exempt and non-exempt

employees, at any time during the period from June 22, 2018 through May 17, 2023 (the “Class Period”). The proposed Settlement is memorialized in the Class Action and PAGA Settlement Agreement and Release of Claims (“Settlement Agreement” or “SA”), attached hereto as **Exhibit 1.**

10. Plaintiff contends that during the Class Period, Defendants failed to: pay the putative Class wages for all time worked or subject to Defendants’ control; to pay correctly-calculated overtime wages and sick pay; to provide compliant meal periods and rest periods or pay premium wages in lieu of non-compliant breaks; provide accurate itemized wage statements showing the correct employer name, rates of pay, and total hours worked; and timely pay all final wages owed. Plaintiff also contends Defendants failed to reimburse business expenses, including home office expenses such as high-speed internet, wi-fi, cell phone, office supplies, desk, and work chair expenses, for members of the Class who worked from home pursuant to Defendants’ policy or practice requiring them to do so.

11. Defendant Lincoln National Corporation (“LNC”) is an Indiana Corporation headquartered in Radnor, Pennsylvania. LNC, through its subsidiaries, operates multiple insurance and retirement businesses in the United States, including in California. Defendant Lincoln National Life Insurance Company (“LNCIC”) is an Indiana Corporation headquartered in Fort Wayne, Indiana with operations in California. LNLIC is a subsidiary of LNC. Lincoln National Life Insurance Co. is the entity listed as the employer on Plaintiff’s wage statements.

12. Plaintiff Anthony Morris worked for LNL from approximately February 19, 2019 through February 2022. From February 19, 2019 through July 5, 2020, Plaintiff worked in the exempt salaried position of “Specialist, Field Operations Sales.” Beginning July 6, 2020, Plaintiff worked in the non-exempt salaried position of “Sr. Administrator, GP Sales Support” until February 4, 2022.

13. The proposed Class consists of two classes of employees. Class I includes all exempt and non-exempt employees in California who were required to work from home during the Class Period. Class II is limited to non-exempt employees in California during the Class Period.

1 14. There are approximately 231 Class Members who worked 27,662 Workweeks
2 during the Class Period.

3 15. Of the 231 Class Members, 231 are members of Class I (who worked 27,662
4 workweeks) and approximately 69 are also members of Class II (who worked 4,176 workweeks).

5 16. A subgroup of the Class, Aggrieved Employees, were employed some time
6 during the April 29, 2021 through May 17, 2023 ("PAGA Period"). There are approximately
7 179 Aggrieved Employees that worked 5,124 PAGA Pay Periods through the date of mediation.

8 17. On June 22, 2022, Plaintiff filed a class action complaint in the Los Angeles
9 County Superior Court alleging Defendants' failed to (1) reimburse business expenses (Labor
10 Code §§ 2800, 2802, 2804); (2) pay minimum, regular, and overtime wages (Labor Code §§ 510,
11 1194; applicable IWC Wage Order, §§ 3, 4); (3) provide meal periods (Labor Code §§ 226.7,
12 512; applicable IWC Wage Order, § 11); (4) provide rest periods (Labor Code § 226.7;
13 applicable IWC Wage Order, § 12); (5) provide accurate itemized wage statements (Labor Code
14 § 226); (6) provide sick pay (Labor Code § 246); and (7) timely pay wages due upon separation
15 of employment (Labor Code §§ 201, 202, 203). Based on these allegations, Plaintiff alleged
16 unfair business practices in violation of the Unfair Competition Law (Bus. & Prof. Code §§
17 17200-17208). On July 27, 2022, Plaintiff filed a First Amended Complaint ("FAC") also
18 seeking PAGA civil penalties pursuant to Labor Code sections 2699, *et seq.*, based on Plaintiff's
19 causes of action.

20 18. Plaintiff served notice on the Labor and Workforce Development Agency
21 ("LWDA") and on Defendants on April 29, 2022. Through the present, the LWDA has not
22 communicated any intention to investigate the charges alleged. Attached hereto as **Exhibit 2** is
23 a true and correct copy of the April 29, 2022 notice.

24 19. Due to a stay on the pleadings, Defendants did not respond to the FAC. At the
25 initial status conference held September 9, 2022, upon being advised of the Parties' agreement
26 to mediate, the Court continued the stay on the pleadings until the post-mediation status
27 conference.

28 ///

1 20. In early September 2022, the Parties agreed to mediate and scheduled mediation
2 with Lou Marlin, Esq. for February 16, 2023. On February 16, 2023, the Parties attended
3 mediation with Lou Marlin, Esq., an experienced and respected wage and hour mediator. The
4 Parties engaged in a day of serious, informed and lengthy arms'-length negotiations, which
5 resulted in a settlement in principle and a memorandum of understanding.

6 21. The Parties continued their arms'-length, negotiations by phone and email to
7 create the detailed written Settlement Agreement before the Court for approval. Counsel
8 aggressively pursued their respective positions at all times.

9 22. On March 8, 2023, Plaintiff filed a Second Amended Complaint ("SAC") to
10 allege the factual allegations, claims, and legal theories at issue discussed during mediation,
11 including alleged remote expense issues not expressly referenced in the operative complaint.

12 23. The Parties stipulated to allow Plaintiff to file the SAC, and that Defendants'
13 answer would be due 30 days after service of the SAC. Defendants answered the SAC on April
14 7, 2023.

15 24. To prepare for mediation, Plaintiff requested, and Defendants produced key data
16 for the period from that included: (1) total number of Class Members; (2) number of formerly
17 employed Class Members; (3) number of Class Member Pay Periods; (4) number of Class
18 Member Work Weeks; and (5) average hourly rate of pay; and for the PAGA Penalties: (1) total
19 number of aggrieved employees ("Aggrieved Employees"); (2) number of formerly employed
20 Aggrieved Employees; (3) number of PAGA Period Pay Periods; (4) number of PAGA Pay
21 Periods. In addition, Defendants produced excel spreadsheet data containing a 20% random
22 sample of Class Member time and payroll records and exemplar wage statements (through Pay
23 Period ending June 19, 2022). Defendants further produced excel spreadsheet data containing
24 reimbursement details, and stipend details.

25 25. After receipt of the data and information, I retained the services of a damages'
26 consultant to review the information and data to assess violation rates for short, late, or missed
27 meal periods, unpaid or underpaid expense reimbursements for expenses, the incidence of
28 underpaid overtime wages due to off-the-clock work and failure to use the Class Members'

1 regular rate of pay, the incidence of underpaid sick Pay due to failure to use the Class Members'
2 regular rate of pay, and derivative claims for wage statements penalties, waiting time penalties,
3 PAGA civil penalties, and to extrapolate the damages to the Class.

4 26. The Parties have agreed the Action may be settled for the Gross Settlement
5 Amount of \$500,000 ("GSA") which, subject to Court approval, includes: (a) attorneys' fees of
6 \$166,650 (one-third of the GSA) to compensate Class Counsel for work performed and
7 remaining to be performed in securing final Court approval; (b) Class Counsel's litigation
8 expenses of up to \$12,000; (c) a Service Payment to Plaintiff Anthony Morris of \$7,500 in
9 consideration of his initiation and prosecution of the action, service as Class Representative,
10 work performed, and risks undertaken for the payment of costs in the event the case was
11 unsuccessful, and benefits conferred on absent Class Members; (d) PAGA Payment of \$25,000
12 of which \$18,750 (75% of \$25,000) will be paid to the LWDA, and \$6,250 (25% of \$25,000)
13 will be distributed to PAGA Members); and (e) Administration expenses to CPT Group of up to
14 \$9,000. In addition to the GSA, Defendants will pay the Employer Tax Obligations.

15 27. Based on anticipated Court-approved deductions for attorneys' fees, litigation
16 costs, Service Payment, PAGA Payment, and administration expenses, the Net Settlement
17 Amount estimated at \$279,850 will be distributed to Participating Class Members based on
18 number of Class Period Workweeks worked at any time during Class Period without the need to
19 return a claim form.

20 28. With an estimated 27,662 Workweeks worked during the Class Period, a
21 Participating Class Member will receive an estimated \$10.12 for each Workweek worked during
22 the Class Period. No part of the GSA may revert to Defendants under any circumstances.

23 29. Following preliminary approval, CPT will mail the approved Notice of Class
24 Action Settlement ("Class Notice") to each Class Member. The Notice advises the Class: (1) of
25 the right to participate in the Settlement and to receive an Individual Settlement Payment without
26 a claim form; (2) how to object or opt out of the Settlement; (3) how to dispute the information
27 on which Individual Settlement Payments are calculated; (4) of the Released Claims; and (5) of
28 the date, time and place to appear for the Final Approval hearing.

1 30. CPT will endeavor to locate Class Members to allow participation in the
2 Settlement and receipt of settlement checks, by means which include a National Change of
3 Address database search prior to the initial mailing of the Class Notice, and thereafter, skip
4 tracing undelivered Class Notices.

5 31. All checks not cashed by the 180th day, will be cancelled, and sums represented
6 by the uncashed checks will be sent to the California Controller, Unclaimed Property Division
7 for further handling on behalf of Class Members whose checks were voided.

8 32. In exchange for a Settlement Payment, all Class Members who have not timely
9 requested exclusion will release the “Released Claims” arising from the claims alleged in the
10 operative complaint.

11 33. Plaintiff’s Counsel have significant experience litigating wage and hour
12 employment class actions. This allowed Counsel to evaluate settlement of the Class claims
13 compared to the risks of further litigation, including trial, appeals and collection.

14 34. Defense counsel with Ogletree, Deakins, Nash, Smoak & Stewart, P.C. are also
15 highly skilled and sophisticated lawyers, with extensive class action experience. They defended
16 their clients vigorously and aggressively through all phases of the case, including mediation and
17 subsequent negotiations.

18 35. I believe the Settlement achieved in this Action is fair and reasonable and in the
19 best interest of the Class in light of the monetary recovery by the Class, complexities and
20 difficulties of this litigation, the state of the law, the potential the case may not have been
21 certified, an adverse summary judgment or decertification ruling, the lengthy process of
22 establishing specific damages, and various possible delays and uncertainty regarding the
23 outcome of appeals. Each of these factors was carefully considered before reaching agreement.

24 36. I relied on similar types of data and documents as in *Kullar* and *Munoz*, including
25 time, pay, and employment records. My consultant and I reviewed and analyzed time and pay
26 records to assess liability and to calculate Class-wide damages before attending mediation.

27 37. Based on the damage assessments made for each claim as discussed below, and
28 the realistic ranges of recovery, the \$500,000 Gross Settlement Amount is fair and reasonable

1 given that it represents approximately 48% of the \$1,044,123.00 estimated damages on the
2 primary claims alleged (exclusive of PAGA Penalties).

3 38. Plaintiff contended that until at least January 2023, Defendants uniformly paid
4 wages based on scheduled shift time as opposed to actual hours worked resulting in a failure to
5 pay for all hours worked as required by California law. Plaintiff's expert conservatively
6 estimated three (3) minutes of unpaid time per shift for a maximum exposure of \$40,430.00.
7 Defendant disputed Plaintiff's theory, and contended that Plaintiff and the putative class were
8 able to record all hours worked.

9 39. Plaintiff also contended that Defendants paid non-discretionary bonuses in the
10 same pay periods that overtime wages were earned, but that Defendants did not factor these non-
11 discretionary bonuses into Class Members' regular rates of pay for the purpose of calculating
12 and paying their overtime wages. Rather, Defendants paid overtime wages at exactly 1-1/2 times
13 the Class Members' base hourly rates of pay, regardless of whether they received a bonus in the
14 same pay period; thus, underpaying overtime wages during these pay periods. Plaintiff's
15 damages' consultant used Class Member pay records to calculate and extrapolate to the Class,
16 the amount of underpaid overtime wages at \$2,053.00. Defendants contend that there was no
17 requirement to adjust the regular rate for certain discretionary bonuses or bonuses calculated as
18 a percentage of total earnings (29 C.F.R. §§ 778.210, 778.211(a)), all overtime worked was
19 properly paid, that no evidence exists of a policy or practice of underpaying overtime, and further
20 that this claim is not amenable to class treatment.

21 40. California employers may calculate sick pay wages in the same manner as
22 overtime wages, using the "regular rate," or "look back" 90 days, dividing the employee's "total
23 wages, not including overtime premium pay, by total hours worked in full pay periods of the
24 prior 90 days." Labor Code § 246(l)(1)(2). Defendants used the "regular rate" option.

25 41. Plaintiff contended that Defendants failed to calculate the correct regular rate of
26 pay in accordance with Labor Code section 246 for purposes of calculating and paying sick
27 pay/PTO by failing to included various additional compensation paid such as non-discretionary
28 bonuses, sales incentives, and annual plan bonuses in the calculation to determine the correct

1 regular rate of pay. Plaintiff's consultant calculated the amount of underpaid sick pay/PTO
2 Defendants would have paid if all potentially includible additional amounts of compensation
3 were added to calculate the regular rate, and if total compensation were divided only by regular
4 hours, rather than all hours worked, then subtracted the amount actually paid, to determine
5 exposure.

6 42. Plaintiff determined Defendants' maximum exposure for underpaid sick pay/PTO
7 wages was \$251,624. Defendants strongly argued, some pay codes included were for
8 discretionary bonuses, or other amounts not required to be included in the regular rate of pay.
9 See 29 C.F.R. §§ 778.210, 778.211(a). Defendants also argued that there is no private right of
10 action to recover sick pay/PTO wages, and no obligation to pay PTO at the regular rate of pay.
11 *Rudolph v. Herc Rentals, Inc.* (C.D. Cal. Aug. 21, 2021) 2021 WL 5994514, at *3. Therefore,
12 Plaintiff believed the realistic exposure was 50% of the maximum exposure, or no more than
13 \$125,812.

14 43. Plaintiff contended that due to the demands to meet daily quotas, employees
15 frequently had to forego meal periods or were interrupted during meal periods. There were no
16 records of any meal premiums paid, and therefore Plaintiff's expert conservatively estimated
17 two missed meal periods per workweek, yielding an exposure of \$229,024.00. Defendants assert
18 their meal break policies and practices were compliant with California law, and that they did not
19 prevent employees from taking off-duty meal periods. Defendants further contended that this
20 claim is not amenable to class treatment. Plaintiff estimated probability of success at certification
21 at 75%, resulting in a discounted realistic exposure of **\$57,256.00**.

22 44. Plaintiff contended that due to the demands to meet daily quotas, employees
23 frequently had to forego rest periods or were interrupted during rest periods. There were no
24 records of any rest periods premiums paid, and therefore Plaintiff's expert conservatively
25 estimated two missed rest periods per workweek, yielding an exposure of \$229,024.00.
26 Defendants contend their policies and practices were compliant with California law, and further
27 that this claim is not amenable to class treatment. Plaintiff estimated probability of success at
28 certification at 75%, resulting in a discounted realistic exposure of **\$57,256.00**.

1 45. An employer must reimburse an employee's reasonable business-related
2 expenses. Labor Code § 2802. Plaintiff alleges Defendants failed to adequately reimburse Class
3 I Members for business-related expenses, including home office expenses such as high-speed
4 internet, wi-fi, cell phone, office supplies, desk, and work chair expenses.

5 46. In approximately March 2020, in light of the COVID-19 pandemic, Defendants
6 shut down their offices for approximately a year including the Glendale, California office at
7 which Plaintiff worked, requiring Plaintiff and Class I members to work from home. At some
8 point after the COVID-19 pandemic, Defendants permanently closed its Glendale office.
9 Plaintiff worked from home beginning in March 2020 through the end of his employment in
10 February 2022. Defendants' written policy requires employees to have an internet connection of
11 at least 10Mbps download/1Mbps upload. Plaintiff contends he was required to upgrade his
12 internet speed to meet this requirement and incurred an additional monthly charge for doing so.

13 47. Plaintiff contended that Defendants failed to reimburse employees who worked
14 from home reasonably incurred business expenses incurred in the discharge of their duties for
15 Defendants, including expenses such as high-speed internet, office supplies, cell phone usage,
16 and office furniture. Defendants contended that their expense reimbursement policies were
17 compliant with California law, and that they reimbursed employees in different ways, including
18 reimbursing some employees based on expenses submitted and others for business expenses by
19 paying a \$40 per month stipend. Defendants further contended that this claim is not amenable to
20 class certification. Defendants provided a spreadsheet which showed reimbursement stipends
21 paid to 21 employees beginning in March 2020, as well as other expenses paid based on receipts
22 submitted. Plaintiff's expert calculated the unpaid business expenses using \$40 per month
23 beginning in March 2020 for the additional employees which Plaintiff alleged were not paid a
24 reimbursement stipend, which resulting in a total of allegedly unpaid business expenses of
25 \$147,720.00. Given the risks involved in certifying such a claim, Plaintiff estimated probability
26 of certification at 50%, resulting in a discounted realistic exposure of **\$73,860.00**.

27 48. Plaintiff multiplied 1,045, the number of pay periods worked by the 62 employees
28 in Class II in the applicable one-year statute of limitations using the initial violation rate of \$50

1 and subsequent violation rate of \$100 provided by Labor Code § 226(e), yielding a maximum
2 exposure of \$101,400. Assuming Plaintiff prevailed on the underlying claims, Plaintiff estimated
3 probability of certification at 50%, resulting in a discounted realistic exposure of **\$50,700.00**.

4 49. If an employer willfully fails to timely pay all wages to separate employees, the
5 wages continue at the same rate for up to 30 days. Former employees are entitled to waiting time
6 penalties. The statute of limitations is three years. Labor Code § 203(b). A failure to pay wages
7 is “willful” when an employer intentionally fails to pay wages to an employee when those wages
8 are due. However, a good faith dispute that any wages are due will preclude imposition of waiting
9 time penalties under Section 203. Final wages must be paid to an involuntarily terminated
10 employee at the time of termination, or within 72 hours to an employee voluntarily terminating.
11 Labor Code §§ 201-202. For the 29 formerly employed Class Members in Class II (in the period
12 three years from filing), penalties of \$168,660.00 (8 hours/day x \$24.23 (average hourly rate) x
13 30 days x 29 former EEs) were calculated.

14 50. Plaintiff’s claim for unpaid wages supports this derivative claim. To recover
15 waiting time penalties, Plaintiff must prove wages owed were willfully not paid. Subject to
16 Defendants’ “good faith” defense, a Court could find Defendants had a good faith belief they
17 were paying all wages due which would preclude imposition of waiting time penalties under
18 Section 203. *Hill v. Walmart Inc.* (N.D. Cal. January 14, 2021) 2021 U.S. Dist. LEXIS 20950,
19 *17. Plaintiff’s realistic exposure was discounted by 50% for purposes of Settlement, reducing
20 the realistic exposure to **\$84,330.00**.

21 51. Of the 179 allegedly aggrieved employees, approximately 62 non-exempt Class
22 II Class Members worked a total of 1,114 Pay Periods during the PAGA Period. For the 1,114
23 PAGA Pay Periods worked by non-exempt Class Members in the PAGA Period, and using the
24 initial violation rates, maximum PAGA penalties were assessed for eight alleged violations of
25 the Labor Code including for: (1) alleged failure to pay all wages, PAGA penalties of \$111,400
26 (1,114 Pay Periods x \$100) (2) failure to pay accurate overtime wages, PAGA penalties
27 calculated for 72 Pay Periods impacted by underpaid overtime, penalties equal to \$7,200 (72 x
28 \$100); (3) failure to provide meal periods, PAGA penalties of \$111,400 (1,114 Pay Periods x

1 \$100); (4) failure to provide rest periods, PAGA penalties of \$111,400 (1,114 Pay Periods x
2 \$100); (5) failure to pay waiting time penalties, PAGA penalties of \$2,200 for 22 former
3 employees in PAGA Period; (6) failure to pay all sick pay wages for 32 employees impacted by
4 underpaid sick pay, PAGA penalties of \$17,800; (7) failure to maintain accurate records, PAGA
5 penalties of \$31,000; and (8) failure to provide accurate itemized wage statements, PAGA
6 penalties of \$111,400.

7 52. Using initial violation rates for 4,658 Pay Periods of the 5,124 PAGA Pay Periods
8 in which Class Members (which includes Class I (exempt) and Class II (non-exempt)) were
9 allegedly not reimbursed for business expenses, Plaintiff's expert calculated PAGA penalties at
10 \$465,800 (\$100 x 4,658). Thus, the total PAGA penalties equal \$969,600.

11 53. Defendants can easily identify Class Members through their records. The Class
12 is numerous with 231 members. Joinder of these individuals would be impracticable and a Class-
13 wide proceeding is preferable and superior.

14 54. A community of interest exists where (1) legal or factual questions common to
15 the Class predominate over questions affecting individual Class Members; (2) claims of the Class
16 Representatives are typical of the claims or defenses of the Class; and (3) the Class
17 Representatives are able to adequately and fairly protect the interests of the class. The proposed
18 Class satisfies these three factors. First, Class Members were subject to the same alleged policies
19 which Plaintiff has alleged caused damages to him and the Class, including whether they were
20 paid for all time under Defendants' control, properly paid overtime and sick wages by including
21 non-discretionary bonuses when calculating their regular rate of pay, and whether they are owed
22 premiums for missed, short or late meal periods or rest breaks, and whether Defendants properly
23 reimbursed business-related expenses. Where the same alleged policies form the basis for the
24 claims of all Class Members, a plaintiff's claims are common for settlement purposes.

25 55. Plaintiff's claims are typical of the claims of Class Members. Plaintiff and all
26 Class Members assert the same legal theories and the same types of damages. He can adequately
27 protect the interests of the Class.

28 ///

1 56. Plaintiff's counsel has no conflicts of interest, has vigorously prosecuted this
2 action on behalf of Plaintiff and the Class, and has significant experience litigating employment
3 wage and hour class actions. Plaintiff and the Class have co-extensive claims, the terms of the
4 Settlement apply to all Class Members equally, and no conflict exists between them.

5 57. I am not aware of any other pending matter or action asserting claims that will be
6 extinguished or adversely affected by the Settlement.

7 58. On the same date this motion and its exhibits are filed with the Court, they will
8 be served upon Defendant and provided to the Labor and Workforce Development Agency
9 ("LWDA") via the LWDA's website, [www.dir.ca.gov/Private-Attorneys-General-Act/Private-](http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act)
10 [Attorneys-General-Act](http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act), using the appropriate intake form. Attached as **Exhibit 3** is a true and
11 correct copy of the LWDA confirmation of Receipt.

12 I declare under the penalty of perjury under the laws of the State of California the
13 foregoing is true and correct and this declaration is executed May 31, 2023, in San Diego,
14 California.



15
16 Marta Manus