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10 JOEL GUTIERREZ ALARCON, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF RIVERSIDE**

13 **(UNLIMITED JURISDICTION)**

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

19 *Plaintiff(s),*

20 vs.

21 FAIRWAY LANDSCAPE & IRRIGATION,
22 INC., a California corporation; and DOES 1–50,
23 inclusive,

24 *Defendant(s).*

Case No. CVRI2204068

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF JOEL
GUTIERREZ ALARCON’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: April 3, 2025

Hearing Time: 8:30 a.m.

Hearing Dept.: 1, The Honorable Harold
W. Hopp

Action filed: September 22, 2022

Trial Date: Not Set



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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF JOEL**
2 **GUTIERREZ ALARCON'S MOTION FOR PRELIMINARY APPROVAL OF CLASS**
3 **ACTION SETTLEMENT**

4 I, DAVID SPIVAK, declare as follows:

5 1. I am an attorney duly licensed to practice law in the State of California and am an
6 attorney of record for Plaintiff Joel Gutierrez Alarcon ("Plaintiff") in his lawsuit against
7 Defendant Fairway Landscape & Irrigation, Inc. ("Defendant"). Plaintiff and Defendant are
8 collectively referred to as the "Parties."

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

11 3. The Class Action and PAGA Settlement Agreement and Class Notice (the
12 "Settlement") is attached hereto as **Exhibit 1**. The Settlement Class consists of "Class" means all
13 current or former hourly paid or non-exempt employees of Defendant employed by Defendant in
14 California at any time during the Class Period. It shall be an opt-out class. Settlement, ¶ 1.4. The
15 "Class Period" means the period from September 28, 2021 through October 11, 2024. *Id.* The
16 "Aggrieved Employees" are non-exempt, hourly-paid The "PAGA Period" begins September 19,
17 2021 and ends October 11, 2024. *Id.*

18 4. The Settlement is written, signed by all necessary Parties, and attached to this
19 declaration as stated above. See **Exhibit 1**, generally.

20 5. Plaintiff has not filed a Notice of Settlement of Entire Case (Judicial Council form
21 CM-200).

22 ***The Release Provisions***

23 6. Under the Settlement, the release to be given by the Participating Class Members
24 (other than the Class representative) is limited to Defendant named in the Operative Complaint,
25 together with its officers, directors, employees, and agents. The release reads as follows: Release
26 by Participating Class Members: Plaintiff and all Participating Class Members, on behalf of
27 themselves and their respective former and present representatives, agents, attorneys, heirs,
28 administrators, successors, and assigns, release and discharge Released Parties, for the duration
 of the Class Period, claims based on the factual allegations and statutes asserted or that could have



1 been asserted in the Action and Operative Complaint, including failure to pay wages including
2 claims for off the clock work and failure to pay sick pay, vacation pay and/or overtime at the
3 regular rate of pay (Lab. Code §§ 501, 1194, 1197, and 1198), failure to pay overtime
4 compensation, failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to
5 authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to pay meal period
6 premium wages; (7) failure to pay rest period premium wages; failure to indemnify for business
7 expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage statements (Lab. Code § 226,
8 failure to timely pay wages (Lab. Code § 203), failure to maintain accurate payroll records and
9 unfair competition (Bus. & Prof. Code §§ 17200, et seq.), and associated penalties, whether civil
10 or statutory in nature, interest, attorneys' fees and costs, or any other associated damages, and all
11 other alleged violations of the Labor Code and Business and Professions Code section 17200, et
12 seq. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not
13 release any other claims, including claims for vested benefits, wrongful termination, violation of
14 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
15 workers' compensation, or claims based on facts occurring outside the Class Period. Settlement,
16 ¶ 6.2. Under the Settlement, the release to be given by the Participating Class Members (other than
17 the Class representative) is limited to the claim stated in the Operative Complaint, and those based
18 solely upon the facts alleged in the Operative Complaint. See above.

19 7. Under the Settlement, Plaintiff releases all claims for civil penalties that could
20 have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-
21 filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
22 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. The
23 PAGA Release states as follows: Release of PAGA Claim by Class Members. Plaintiff and Class
24 Members release and forever discharge, for the duration of the Class Period, all claims for civil
25 penalties that could have been sought by the Labor Commissioner under the PAGA based on the
26 factual allegations and statutes asserted or that could have been asserted in the Action, the
27 Operative Complaint and Plaintiffs PAGA Notice. The Release of PAGA Claims also includes a
28 release from the state of California (to the extent Plaintiff is permitted to provide such a release



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1 for the state of California for the Class period). Settlement, ¶ 6.3.

2 ***No Reversion***

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

5 ***Taxes***

6 9. The Settlement provides that Defendant will separately pay the employer's
7 share of any applicable payroll taxes. Settlement, ¶ 3.1.

8 10. The Settlement provides as follows with regard to the tax treatment of
9 settlement shares: Tax Allocation of Individual Class Payments. 20.00% of each Participating
10 Class Member's Individual Class Payment will be allocated to settlement of wage claims (the
11 "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an
12 IRS W-2 Form. 80.00% of each Participating Class Member's Individual Class Payment will be
13 allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-
14 Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
15 Participating Class Members assume full responsibility and liability for any employee taxes owed
16 on their Individual Class Payment. Settlement, ¶ 3.2.4.1.

17 ***Factual and Procedural Background***

18 11. Defendant employed Plaintiff as a landscaper and gardener from about February
19 18, 2018 until April 7, 2022.

20 12. On September 19, 2022, Plaintiff notified Defendant and the California Labor and
21 Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys
22 General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor
23 Code violations committed by Defendant. A true and correct copy of the letter to the LWDA dated
24 September 19, 2022 is attached hereto as **Exhibit 2**.

25 13. On September 22, 2022, Plaintiff filed a Class Action Complaint alleging causes
26 of action against Defendant for failure to pay wages (Lab. Code §§ 501, 1194, 1197, and 1198),
27 failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to authorize and
28 permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for business expenses



(Lab. Code §§ 1198 and 2802), failure to issue proper wage statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), and unfair competition (Bus. & Prof. Code §§ 17200, et seq.) On December 02, 2022, Plaintiff filed a First Amended Complaint adding an additional cause of action against Defendant for PAGA civil penalties (Lab. Code §§ 2698, et seq.). On December 14, 2022, upon stipulation of the Parties, Plaintiff filed a Second Amended Complaint which asserted the same claims but included a true and correct copy of Plaintiff's PAGA Notice. On March 23, 2023, the Court granted Defendant's motion to compel arbitration and dismissed Plaintiffs class claims. For settlement purposes only, on December 5, 2024, pursuant to the stipulation of the Parties and an order of the Court, Plaintiff reinstated class claims with the filing of a Third Amended Complaint (the "Operative Complaint."). This Settlement is contingent upon Preliminary and Final Approval. If the Settlement does not become final and Effective, for whatever reason, the fact that the Parties were willing to stipulate to the class action being reinstated shall have no bearing on and shall not be admissible or used in any way in connection with the question of whether the Action should proceed on a Class basis in light of existing arbitration agreements. Should the Settlement not become final and Effective, the Action will revert back to a PAGA action only which will be stayed pending arbitration of Plaintiffs individual claims. Settlement, ¶ 2.1.

14. On July 10, 2024, Plaintiff requested that Defendant informally disclose 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 reasonable, randomly selected sample of Defendant's time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies applicable to the claims at hand and asked Defendant identify any and all comparable claims against it.

15. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendant produced Plaintiff's entire personnel file (including policies and agreements he signed and acknowledged) and copies of its relevant company written policies.



1 16. **Sampling.** Defendant contends that it employed 123 putative class members
2 during the period of January 03, 2018 to June 12, 2024. Defendant produced the records of
3 20.00% of the putative class members for the period of January 03, 2018 to June 12, 2024. There
4 were records for 24 employees in the sample. Plaintiff chose the sample. The sample was
5 randomly selected. The sample consisted of Time cards, pay history and wage statements, and
6 related records.

7 17. Plaintiff retained Daniel Barad, a data analyst, to analyze the sample. Plaintiff also
8 employed the Raosoft⁶ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
9 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
10 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
11 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
12 of error of 43.3 percent was unacceptable. Using a margin of error of 32.4%, a confidence level
13 of 95%, and a population size of 123, the Raosoft Sample Size Calculator recommended a sample
14 of 9. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached
15 as **Exhibit 3** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that
16 Plaintiff's data analyst evaluated is statistically reliable. *Id.*

17 18. On July 22, 2024, following much of the foregoing informal discovery and
18 exchange of information, the Parties participated in a mediation session presided over by Mediator
19 David Phillips, an experienced class action mediator. During the mediation, the Parties had a full
20 day of productive negotiations and reached agreement on a class-wide settlement after the
21 mediation session. During the mediation sessions, each side, represented by his/its respective
22 counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and
23

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



1 all other matters covered by this Agreement pursuant to the terms and conditions of this
2 Agreement.

3 19. **Defendant's Financial Condition.** At the mediation, it became clear that that
4 Defendant had insufficient resources to cover the full extent of liability. Because Defendant's
5 business relies upon new home construction, its earnings had declined with the slowed market.
6 Based on this, Plaintiff, on his own behalf and on behalf of the Class Members, has agreed to
7 settle the lawsuit on the terms set forth in the Settlement.

8 ***Similar Actions***

9 20. I am not aware of any class, representative, or other collective action in any
10 other court, in this, or any other jurisdiction, that asserts claims similar to those asserted in
11 this action, on behalf of the class or group of individuals, some or all of whom would also be
12 members of the class to find in this action. I have made a reasonable inquiry of the other
13 members of my law firm and my counsel to determine whether they are aware of any such
14 similar actions. Based on these inquiries, I am aware of no such similar actions. The
15 Defendant disclosed that there have not been any comparable claims against it. Please see the
16 declaration of Defense Counsel on this subject.

17 ***Uncashed Checks***

18 21. The Settlement provides for the disposition of uncashed checks as follows: For
19 any Class Member whose Individual Class Payment check or Individual PAGA Payment check
20 is uncashed and cancelled after the void date, the Administrator shall transmit the funds
21 represented by such checks to the California Controller's Unclaimed Property Fund in the name
22 of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California
23 Code of Civil Procedure Section 384, subd. (b). Settlement, ¶ 4.4.3. In my view, sending funds
24 represented by uncashed checks to the Unclaimed Property Fund instead of a *cy pres* recipient is
25 the best way to insure that the Class Members and Aggrieved Employees actually receive their
26 portions of the Settlement.

27 ///

28 ///



1 *Ascertainable and Numerous Class*

2 22. A class is ascertainable when it may be readily identified without unreasonable
3 expense or time by reference to official records. Here, Plaintiff maintains that the above-defined
4 Class is ascertainable because its members may be identified by reference to Defendant's records
5 and Defendant has agreed to share the relevant information from its records to facilitate the
6 settlement process. Therefore, the Settlement Class is ascertainable.

7 23. The Settlement Class has sufficiently numerous members to render joinder
8 impractical. No set number is required as a matter of law to maintain a class action. The California
9 Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are
10 approximately 123 Class Members for the Class Period of September 28, 2021 to October 11,
11 2024. Plaintiff maintains that it would be impractical and economically inefficient to require each
12 Settlement Class Member to separately maintain an individual action or be joined as a named
13 plaintiff in this action. In light of these considerations, the Settlement Class' membership is
14 sufficiently numerous. Additionally, there are 123 Aggrieved Employees for the PAGA Period of
15 September 28, 2021 to October 11, 2024.

16 *Predominant Common Questions*

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



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1 failed to provide the class with one or more meal or rest periods in compliance with California
2 law; (4) Whether Defendant failed to indemnify the class for all necessary business expenditures
3 incurred during the discharge of their duties; (5) Whether Defendant knowingly and intentionally
4 failed to provide the class with accurate wage statements; (6) Whether Defendant willfully failed
5 to provide the class with timely final wages; and (7) Whether Defendant engaged in unfair
6 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
7 respect to the class.

8 *Typicality*

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

17 *Adequacy*

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

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



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1 has demonstrated his commitment to the Settlement Class by, among other things, retaining
2 experienced counsel, providing counsel with documents and extensively speaking with them to
3 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
4 well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit
5 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The
6 declaration of Plaintiff Joel Gutierrez Alarcon on this subject will be filed concurrently with this
7 declaration.

8 ***Background of Class Counsel***

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

12 29. In December of 1995, the Supreme Court for the State of California admitted me
13 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
14 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
15 2013, I became admitted to the New York State Bar.

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

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

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

25 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
26 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
27 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
28 discipline. The jury awarded compensatory damages. Court subsequently awarded additional





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

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

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

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



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

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

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

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

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

27 a. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
28 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action

1 settlement on behalf of assistant fitness manager employees).

2 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
3 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
4 court on behalf of nonexempt employees).

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

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

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

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

18 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
19 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
20 action settlement on behalf of medical devices employees).

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

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

27 j. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
28 Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action



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1 settlement on behalf of non-exempt hourly employees excluding truck drivers).

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

5 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
6 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
7 on behalf of dairy and agricultural laborers).

8 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
9 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
10 settlement on behalf of call concert rigging employees). *Nardone v. Sequoia Beverage Company,*
11 *LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted
12 final approval of class action settlement by the court on behalf of hourly employees).

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

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

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

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

27 r. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
28 Class Counsel and granted final approval by this Court of class action settlement involving alleged



misclassification of sales employees and unpaid vacation pay).

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

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

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

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

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

Class Action Treatment Is Superior

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



1 *The Settlement is Presumptively Fair*

2 37. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
3 from thorough, arms' length, negotiations between experienced counsel with the assistance of a
4 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
5 weaknesses of their respective cases and Defendant's estimated exposure. Both defense counsel
6 and I are particularly experienced in employment law and wage and hour class actions. We are
7 experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks
8 and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and
9 hour class settlements, including many involving the same issues presented here. Counsel on both
10 sides share the view that the Settlement is a fair and reasonable settlement in light of the
11 complexities of the case and uncertainties of class certification and litigation, and a fair result for
12 the Class Members.

13 *Exposure & Risk Analysis*

14 38. On September 22, 2022, Plaintiff filed a Class Action Complaint alleging causes
15 of action against Defendant for failure to pay wages (Lab. Code §§ 501, 1194, 1197, and 1198),
16 failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to authorize and
17 permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for business expenses
18 (Lab. Code §§ 1198 and 2802), failure to issue proper wage statements (Lab. Code § 226, failure
19 to timely pay wages (Lab. Code § 203), and unfair competition (Bus. & Prof. Code §§ 17200, et
20 seq.) On December 02, 2022, Plaintiff filed a First Amended Complaint adding an additional
21 cause of action against Defendant for PAGA civil penalties (Lab. Code §§ 2698, et seq.). On
22 December 14, 2022, upon stipulation of the Parties, Plaintiff filed a Second Amended Complaint
23 which asserted the same claims but included a true and correct copy of Plaintiff's PAGA Notice.
24 On March 23, 2023, the Court granted Defendant's motion to compel arbitration and dismissed
25 Plaintiffs class claims. For settlement purposes only, on December 5, 2024, pursuant to the
26 stipulation of the Parties and an order of the Court, Plaintiff reinstated class claims with the filing
27 of a Third Amended Complaint (the "Operative Complaint."). This Settlement is contingent upon
28 Preliminary and Final Approval. If the Settlement does not become final and Effective, for



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1 whatever reason, the fact that the Parties were willing to stipulate to the class action being
2 reinstated shall have no bearing on and shall not be admissible or used in any way in connection
3 with the question of whether the Action should proceed on a Class basis in light of existing
4 arbitration agreements. Should the Settlement not become final and Effective, the Action will
5 revert back to a PAGA action only which will be stayed pending arbitration of Plaintiffs
6 individual claims. Settlement, ¶ 2.1. Plaintiff prepared “damages” estimates in advance of the
7 mediation. Ex. 6. In advance of the mediation, Plaintiff determined Defendant’s maximum
8 exposure for restitution and penalties to be approximately \$11,347,255.52 (consisting of
9 \$1,044,908.04 in unpaid wages, \$1,044,908.04 in liquidated damages, \$234,629.35 in missed
10 meal period premium wages, \$949,916.40 in missed rest break premium wages, \$1,018,350.00
11 for wage statement penalties, and \$655,528.50 for waiting time penalties. True and correct copies
12 of the spreadsheets I prepared for mediation of this Action are collectively attached to this
13 declaration as **Exhibit 6**.

14 39. Plaintiff also determined Defendant’s maximum exposure for civil penalties to be
15 \$6,147,000.00. Please see the aforementioned exhibit in the prior paragraph.

16 40. The estimates are in essence “home run” projections that omit data points that will
17 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
18 involved in litigating this Action. Plaintiff calculated the damages based on the number of
19 workweeks and pay periods provided by Defendant, Plaintiff’s reports, and the sample data. *Id.*
20 Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix* campaign and
21 pursue individual release agreements from the Class Members. Defendant also represented that it
22 had interviewed its current employees regarding Plaintiff’s claims, all of whom would provide
23 declarations, under penalty of perjury, that were favorable to Defendant with respect to the
24 relevant factual issues at issue in Plaintiff’s action. Plaintiff’s Counsel applied discounts to the
25 maximum exposure to account for all other risks discussed below. While it is difficult to assign
26 anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the
27 risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and
28 alone justifies a significant discount because Defendant would likely by trial have gathered



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1 releases from the majority of the Class Members. A settlement for approximately 2.20% of the
2 potential recovery is a proportion substantially in excess of recovery proportions sanctioned by
3 existing case law.⁷

4 41. My initial estimates do not realistically account for the risks outlined below or the
5 risk that a class will not be certified. Therefore, I believe a class settlement for \$250,000.00 is fair
6 and reasonable.

7 42. **Risks Associated with the Arbitration Agreements.** The arbitration agreements
8 entered into between Defendant on the one hand, and the Class Members, on the other, present a
9 significant risk to the success of Plaintiff's class action litigation. According to Defendant, the
10 majority of the Class entered into arbitration agreements with Defendant. As the arbitration
11 agreements in question restrict potential litigants from bringing class actions against Defendant,
12 Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. Thus,
13 there is a significant risk the Court could determine that those Class Members who have not
14 entered into arbitration agreements with Defendant do not constitute a sufficiently numerous class
15 to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff
16 would run the high risk of suffering defeat due to the existence of the arbitration agreement.
17 Moreover, the arbitration agreements would pose danger to any class certification motion brought
18 by Plaintiff. Because different defenses would apply to some Class Members and not others – i.e.,
19 the existence of signed arbitration agreements – there is a risk that the Court could determine that
20 Plaintiff's claims present too many individualized inquiries to justify class certification.

21 43. **Risks Associated with Defendant's Financial Condition.** As stated above,
22 Defendant's financial condition was the key factor in reaching this Settlement. Due to
23

24 ⁷ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
25 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
26 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
27 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
28 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.”).



1 Defendant's financial condition, even if Plaintiff prevailed on all claims at trial, his may never
2 recover the damages due to the risk of insolvency. A very large class action judgment would
3 almost certainly put the company out of business and/or would interfere with the company's
4 ability to carry out its contractual obligations.

5 44. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's
6 recovery for unpaid wages would be extremely limited at best, largely because Defendant's
7 written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock
8 claims are difficult where a defendant requires in its written policies that all work must take place
9 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer
10 must have notice of off-the-clock work for it to be compensable). *Id.* In its written employment
11 policies, Defendant mandates that employees must record all time worked accurately on their time
12 records and strictly prohibit employees from performing any work off-the-clock. Moreover, while
13 Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock
14 was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th
15 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis*
16 defense even if compensable. (Stating that "We do not decide whether there are circumstances
17 where compensable time is so minute or irregular that it is unreasonable to expect the time to be
18 recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here
19 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
20 penalties seems unlikely with respect to this claim.

21 45. The difficulty inherent in proving that off-the-clock work occurred poses a
22 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
23 this claim. Generally, a court will not certify a class unless it can determine an appropriate
24 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
25 Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially
26 given the lack of records indicating when such off-the-clock work may have taken place.
27 Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine
28 if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there



1 is a significant risk that the Court would consider this evidentiary showing insufficient as a
2 classwide methodology.

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

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

22 48. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff's rest
23 period claim. Employers are not required to record rest periods and such periods are paid.
24 Defendant contends it provided non-exempt employees the opportunity to take rest periods in
25 accordance with California law. Further, Defendant's written policies on meal and rest periods
26 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
27 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
28 period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial



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1 has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys
2 to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
3 makes such claims risky from a trial management and due process perspective. *See Duran v. U.S.*
4 *Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist
5 to support class certification, it may be possible to manage individual issues through the use of
6 surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
7 *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

8 49. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
9 Court may consider Plaintiff’s claims as to Defendant’s alleged failure to indemnify for business
10 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that
11 Defendant required Plaintiff and the Class Members to use their personal items including cellular
12 phones and tools, and failed to indemnify them for these business expenses. Defendant presented
13 evidence that it has supplied its employees with tools, equipment, and other supplies and had an
14 expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff’s
15 claims to be individual in nature and unfit for class wide resolution.

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

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

25 52. **Risks Associated With the PAGA Claim.**

26 53. As the Operative Complaint makes clear, Plaintiff predicates his PAGA claim
27 on the same Labor Code violations as his other claims.

28 54. Plaintiff’s “damages” spreadsheet, **Exhibit 6**, states the length of the relevant time



1 period for the PAGA claim and the number of employees allegedly employed during that time
2 period.

3 55. Plaintiff's "damages" spreadsheet, **Exhibit 6**, states the total amount of civil
4 penalties for which the Defendant is potentially liable if all allegations are proven.

5 56. Plaintiff's "damages" spreadsheet, **Exhibit 6**, states the total amount of penalties
6 Defendant is likely to be found liable at trial considering the weight of the evidence, the clarity
7 of the applicable law, and the strength of any factual or legal defense likely to be asserted by
8 Defendant.

9 57. As I state above in connection with Plaintiff's claims for statutory penalties with
10 regard to proof Defendant's intent, knowledge and willfulness, there are serious risks to proving
11 Defendant acted intentionally, knowingly, and willfully in violating the rights of Class Members
12 under the Labor Code.

13 58. Plaintiff calculated the agreed-upon amount of civil penalties by considering the
14 risks outlined above and that the Settlement already provides substantial payments for the Labor
15 Code violations that the civil penalties claim is predicated on.

16 59. Regarding PAGA, a court has discretion to award a lesser amount than the
17 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
18 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has
19 posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus,
20 the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
21 consider the maximum civil penalty available to be confiscatory.

22 60. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
23 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
24 counsel estimated a maximum exposure of approximately \$6,147,000.00 in civil penalties. This
25 estimate did not take into account any of the risks discussed above and assumed a violation for
26 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
27 period for the same alleged violations of different Labor Code provisions and derivative
28 violations. Although two federal district court decisions held that "stacking" PAGA penalties in



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1 this fashion may be appropriate to determine the amount in controversy for purposes of removal
2 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
3 multiple PAGA penalties for the same violation for the same pay period under different Labor
4 Code provisions. This may be because the PAGA does not provide for what many employers
5 characterize as claim splitting and not merely stacking.

6 61. I am aware of only two significant awards under the PAGA in a contested
7 proceeding, both issued by federal district courts.⁸ PAGA penalty awards are often small even for
8 egregious, intentional violations of the Labor Code.⁹

9
10 ⁸ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
11 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,

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
Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
individual claims except for one. As a general matter, it would be excessively punitive
for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
the damages caused by that injury or set of injuries.

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

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

23 ⁹ 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 15**. The plaintiff
sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
26 Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
27 **16**, 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.
28 *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar
result could occur here.





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

63. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009)). As discussed above, Defendant may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 123 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

Allocation of the PAGA Payment

65. The settlement of PAGA penalties in the sum of \$25,000.00, of which 75%

1 (\$18,750.00) will be paid to the LWDA and 25% (\$6,250.00) will be distributed to the Aggrieved
2 Employees, is reasonable and appropriate under the circumstances. The Parties negotiated a good
3 faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved Employees. The
4 portion to be paid to the LWDA was not the result of self-interest at the expense of other
5 Aggrieved Employees.

6 *Attorneys' Fees and Costs*

7 66. I intend to request Class Counsel Attorneys' Fees of \$83,333.00 (one-third of the
8 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
9 estimate to be approximately \$15,231.23 and will be no more than \$17,500.00 at the conclusion
10 of matters related to the Settlement. In view of my efforts and risks in pursuing this case these
11 amounts are well within the range of reasonableness and thus warrant this Court's preliminary
12 approval. In addition, based on my experience in wage and hour class action matters, fee awards
13 of approximately one-third of the settlement fund are routinely approved as reasonable. I have
14 been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage
15 and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior
16 Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior
17 Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*,
18 San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v.*
19 *Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-
20 third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court,
21 Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles
22 County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources,*
23 *LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund);
24 *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-
25 third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-
26 third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
27 BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of
28 California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et



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al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. 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).

67. 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 Defendant's counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant and obtained through other sources, researched applicable law, and estimates of



1 “damages” for purposes of settlement discussions, among other tasks.

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

7 ***Class Representative Service Payment***

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

23 70. Plaintiff began his investigation and retention of attorneys to pursue the claims at
24 issue on approximately June 23, 2022. Awarding Plaintiff 2.00% of the GSA is entirely
25 reasonable given Plaintiff’s efforts in this case undertaken on behalf of absent Class Members. In
26 this case, Plaintiff has devoted several hours of his time advancing the interests of the Class
27 Members and also expects to devote additional hours of his time with Class Counsel overseeing
28 the administration of the Settlement if the Court grants final approval of the Settlement. *See*



1 *generally* Declaration of Joel Gutierrez Alarcon. Plaintiff has done this by, among other things,
2 retaining experienced counsel, providing them with extensive information about his work history
3 with Defendant and Defendant's policies and practices with respect to the wage and hour claims
4 at issue, assisting them in contacting absent Class Members to gather information, participating
5 in a full day of mediation, foregoing pursuit of his individual claims in favor of a fair class-wide
6 resolution, and being actively involved in the settlement process to ensure a fair result for the
7 Class Members as a whole.

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

23 72. In taking the actions outlined above, Plaintiff has exposed himself to significant
24 risks, including the risk that he could have been ordered to pay Defendant's attorneys' fees and
25 costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that
26 he could, in the future, face a potentially hostile work environment and worsened career prospects
27 for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class
28 action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up



1 receiving less than Defendant would have paid him at the beginning of the Action via a C.C.P. §
2 998 offer or other individual settlement offer to drop his class allegations. On many occasions,
3 California courts have ordered wage and hour plaintiffs and would be class representatives to pay
4 outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- 5 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
6 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
7 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
8 and correct copy of the court's order is attached to this declaration as **Exhibit 11**.
- 9 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
10 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and
11 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
12 of the court's order is attached to this declaration as **Exhibit 12**.
- 13 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
14 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs
15 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
16 correct copy of the court's order is attached to this declaration as **Exhibit 13**.
- 17 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721
18 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay
19 \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid
20 wages). A true and correct copy of the court's order is attached to this declaration
21 as **Exhibit 14**.

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

28 73. Plaintiff's individual share of the Net Settlement Amount will be less than that of



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1 some absent Participating Class Members. Under the Settlement, Participating Class Members
2 will receive a *pro rata* distribution of the Settlement proceeds proportionate to the period of time
3 he or she worked for Defendant during the Class Period, compared to the total of the total period
4 of time worked by all Participating Class Members during the Class Period, as reflected by
5 Defendant's records. Plaintiff estimates that there are 10,245 Work Weeks for the Class Period.
6 So, each Work Week has a value of approximately \$10.90 (\$111667.00 Net Settlement Amount
7 / 10,245 Work Week = \$10.90). Plaintiff had 27 Work Weeks during the Class Period. Based on
8 this, it is anticipated that Plaintiff Joel Gutierrez Alarcon will receive a Individual Class Payment
9 of approximately \$294.29 as a Participating Class Member (27 Work Week x \$10.90 = \$294.29)
10 while the average estimated Individual Class Payment to Participating Class Members will be
11 approximately \$907.86. Some Class Members – those who worked more Work Weeks during the
12 Class Period - will receive more, and some less. The highest possible Individual Class Payment
13 to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period)
14 will be approximately \$1,722.09. The lowest possible Individual Class Payment to a Participating
15 Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be
16 approximately \$10.90. Some Class Members – those who worked more Work Weeks during the
17 Class Period - will receive more, and some less. Because Plaintiff may have been employed for a
18 shorter period during the Class Period, some Class Members will have worked more Work Weeks
19 than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not*
20 *actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when he brought his
21 lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not
22 much greater than an absent Class Members' share of the recovery. To encourage employees like
23 Plaintiff to don the helm of class champions (and thereby advance the important public policies
24 behind class actions), the Court should award something substantial to Plaintiff for his readiness
25 to receive less than absent Class Members while assuming all the risk and delay of payment.

26 74. The average putative class member in this case would be unlikely to pursue
27 individually the claims Plaintiff brought against Defendant because such claims would be too
28 small to justify the cost and the risk. A putative class member will be unlikely to find an attorney

1 who is willing to pursue an individual's claims because the claims are too small to justify the
2 hundreds of hours of legal work necessary to prove each claim. Only the class action vehicle,
3 which allows for the aggregation of hundreds of risky small dollar value claims, makes such
4 claims advantageous for an attorney to pursue on a contingency basis and there can be no class
5 action without a class member assuming the great fiduciary responsibilities of as class
6 representative. This Court should allow the Class Representative Service Payment requested
7 because to do otherwise would discourage employees (and attorneys) from bringing class actions
8 in the first place.

9 75. If would-be class action plaintiffs are not adequately incentivized to advance the
10 public policy behind class actions in court in light of the time and risk it will entail, it is unlikely
11 that they will bring class action lawsuits in the first place. Once employers realize that such
12 lawsuits are unlikely, they will have no incentive to comply with wage and hour laws.

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

28 77. Class Counsel depended on Plaintiff's input to prosecute this lawsuit. Plaintiff



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1 made this case possible for a number of reasons. First, Plaintiff challenged his employers on an
2 unlawful practice that led to Defendant paying a large percentage of the unpaid wages in question
3 plus interest to the remainder of its employees – in spite of Defendant’s financial limitations.
4 Plaintiff provided Class Counsel with detailed descriptions of how Defendant’s business operates,
5 the hours and scheduling of employees, and the nature of the work Class Members performed.
6 *See generally* Declaration of Joel Gutierrez Alarcon.

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

12 79. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
13 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
14 Class Members and still Plaintiff achieved a settlement of \$250,000.00. This outstanding result
15 calls for significant awards to Plaintiff for making the result possible.

16 80. A true and correct copy of my spreadsheet outlining the anticipated division
17 of the settlement funds is attached as **Exhibit 7**.

18 81. Plaintiff outlines the anticipated average, high, and low Individual Class Payment
19 values above, along with Plaintiff’s anticipated Individual Class Payment.

20 82. At \$19.00 per hour (the average Class Member’s hourly wage), the average
21 estimated Individual Class Payment to Participating Class Members is the equivalent of over 47
22 hours of unpaid wages (the primary remedies sought) ($\$907.86 / \$19.00 = 47.78$ hours). Thus,
23 this is a result the Class can be proud of in view of the significant risks.

24 83. I estimate that the average Aggrieved Employee Individual PAGA Payment
25 will be \$50.81. *Id.* Plaintiff’s Individual PAGA Payment, his individual share of 25% of the
26 PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the
27 Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA
28 Penalties proportionate to the number of paychecks he or she had with Defendant during the

1 PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the
2 PAGA Period, as reflected by Defendant's records. Plaintiff estimates that there are 10,245
3 Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee
4 paycheck from the PAGA Period has a value of approximately \$0.61 (25% of \$25,000.00 in
5 PAGA Penalties / 10,245 Aggrieved Employee paychecks = \$0.61). It is anticipated that
6 Plaintiff Joel Gutierrez Alarcon will receive a Individual PAGA Payment of approximately
7 \$17.08 as an Aggrieved Employee (28 paychecks during the PAGA Period x \$0.61 paycheck
8 value = \$294.29) while the average estimated Individual PAGA Payment to an Aggrieved
9 Employee will be approximately \$50.81 (\$6,250.00, 25% of PAGA Penalties / Aggrieved
10 Employee paychecks during the PAGA Period = \$50.81 Individual PAGA Payment). Some
11 Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive
12 more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee
13 (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately \$97.17.
14 The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who
15 qualify for only one paycheck in the PAGA Period) will be approximately \$0.61.

16 84. If the Court is disinclined to award Plaintiff all or part of the Class Representative
17 Service Payment requested, Class Counsel request that the Court allocate the difference to
18 Plaintiff from Class Counsel's requested attorney fee award.

19 ***Individual Class Payment***

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

25 ***Proposed Preliminary Approval Order***

26 86. Plaintiff will file a proposed Preliminary Approval Order with this declaration.

27 87. The proposed Preliminary Approval Order includes the Notice Packet. The Notice
28 Packet consists of the Class Notice (Exhibit A to the Preliminary Approval Order), the Election



1 Not to Participate in Settlement form (Exhibit B to the Preliminary Approval Order), the Work
2 Week Dispute form (Exhibit C to the Preliminary Approval Order), and the Objection form
3 (Exhibit D to the Preliminary Approval Order) in English with Spanish translations. The Notice
4 Packet does not include any other forms.

5 88. The Settlement Agreement is not attached to the proposed Preliminary Approval
6 Order.

7 89. I have carefully reviewed both the terms and the terminology of the proposed
8 Preliminary Approval Order and accompanying Notice Packet to confirm that the various
9 documents are internally consistent, consistent with each other, and consistent with the
10 Settlement Agreement.

11 90. The proposed Preliminary Approval Order states the name of the
12 Administrator, and describes the nature of the services that the Administrator will be required
13 to perform, either directly or by reference to the Settlement Agreement.

14 91. The proposed Preliminary Approval Order provides that the Class Notice shall
15 be accompanied by the Election Not to Participate in Settlement form (Exhibit B to the
16 Preliminary Approval Order), the Work Week Dispute form (Exhibit C to the Preliminary
17 Approval Order), and the Objection form (Exhibit D to the Preliminary Approval Order) in
18 English with Spanish translations. The proposed Preliminary Approval Order provides that any
19 exclusion form shall be submitted to the Administrator rather than filed with the Court. The
20 proposed Preliminary Approval Order does not require the Class Member to send copies of
21 the exclusion form to counsel, but requires the Administrator to do so. The proposed
22 Preliminary Approval Order provides that the Administrator shall file a declaration
23 concurrently with the filing of Plaintiff's motion for final approval with a copy of every
24 exclusion form received by the Administrator.

25 92. The proposed Preliminary Approval Order provides that the Class Notice shall
26 be accompanied by the Objection form that the Class Members may use. The proposed
27 Preliminary Approval Order provides that any objection shall be submitted to the
28 Administrator rather than filed with the Court. The proposed Preliminary Approval Order



1 does not require the Class Member to send copies of the objection form to counsel, but
2 requires the Administrator to do so. The proposed Preliminary Approval Order provides that
3 the Administrator shall file a declaration concurrently with the filing of the motion for final
4 approval with a copy of every objection form received by the administrator.

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

8 94. Neither the proposed Preliminary Approval Order, the Class Notice, nor the
9 Objection form require an objecting party to, either personally or through counsel, to file or
10 serve, or to state in the objection, a notice of intention to appear at the hearing on the motion
11 for final approval.

12 95. The proposed Preliminary Approval Order provides a proposed date for the
13 Final Approval Hearing. The proposed Preliminary Approval Order requires the
14 Administrator to give notice to any objecting party of any continuance of the hearing of the
15 motion for final approval.

16 96. Neither the proposed Preliminary Approval Order nor the Class Notice
17 purports to enjoin the Class Members from filing any actions or administrative claims or
18 proceedings pending the final hearing on the settlement, or for any other period.

19 97. The Settlement does not require a claim form.

20 ***The Notice Packet***

21 98. The Settlement requires distribution of the Notice by First Class U.S. mail only.
22 Settlement, ¶ 8.4.2. Although there are current employee Class Members, it is uncertain whether
23 Defendant's records of their contact information include email addresses and Class Members,
24 who perform all of their work away from a desk, are not in a position to check their emails. As
25 such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as
26 Exhibits A, B, C, and D to the Settlement) provides Class Members with all pertinent information
27 that they need to fully evaluate their options and exercise their rights under the Settlement.
28 Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is



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1 about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to
2 submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement;
3 (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated;
4 (8) how the disputes will be resolved; and (9) the estimated settlement shares for each Class
5 Member. Additionally, the Notice will include the number of eligible Work Weeks a Class
6 Member had during the Class Period. Accordingly, the Notice should be approved because it
7 describes the Settlement with sufficient clarity and specificity to explain to Class Members what
8 this action is about, their rights under the Settlement, and how to exercise those rights. As such,
9 the Parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f)
10 and will allow Class Members to make informed responses to the proposed settlement.

11 99. The Settlement does not require Class Members to submit claims to
12 participate.

13 100. Each document in the Notice Packet is drafted in a manner that is likely to be
14 readily understood by the members of the Class. The Notice Packet does not contain any
15 Latin terms, legal terms of art, or unfamiliar symbols or abbreviations.

16 101. As stated above, the Class Notice includes an estimate of the likely recovery
17 by the individual Class Member. It also provides the estimated dollar value of a Work Week
18 and the estimated dollar value of a Pay Period.

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

22 103. The Class Notice advises the Class Members of where they can find the
23 Settlement Agreement, by describing the full title and filing date either of the settlement
24 agreement and this declaration to which the Settlement Agreement is attached. The Class
25 Notice also states the address of the courthouse to which the case is assigned, and the address
26 of the court's website at which the case file can be viewed on-line.

27 104. The Class Notice describes the releases by Plaintiff and the Class Members.

28 105. The lawsuit includes claim for civil penalties under PAGA. The Class Notice



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1 defines PAGA. It states that Class Members may not opt out of the PAGA provisions of the
2 Settlement. However, it does not bar them from objecting to the PAGA portions of the
3 Settlement. The Class Notice also describes the terms of the settlement of the PAGA claim,
4 including who is an Aggrieved Employee. The Class Notice provides an estimate of the
5 individual Aggrieved Employee's share of 25% of the PAGA Penalties and advises
6 Aggrieved Employees that the payments will be reported on a Form 1099.

7 106. The Objection form instructs the objecting Class Member that the objection
8 must be delivered to the Administrator. The Objection form states the name and address of
9 the Administrator. It also states the date by which the objection must be mailed or otherwise
10 delivered.

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

15 108. The Election Not To Participate form (i) instructs the Class Member seeking
16 exclusion that the exclusion form must be mailed or delivered to the Administrator, (ii) states
17 the name and address of the Administrator, and (iii) states the date by which the exclusion
18 form must be mailed or otherwise delivered.

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

22 110. The Election Not To Participate form indicates that exclusion from the Class
23 Settlement will not result in exclusion from the PAGA portion of the Settlement.

24 ***Settlement Administration Duties***

25 111. The duties of the Settlement Administrator are spelled out in section III(C) of the
26 Settlement and in the bid provided by Phoenix Class Action Administration Solutions a true and
27 correct copy of which is attached hereto as **Exhibit 8**.

28 ///



1 *Settlement Administration Costs*

2 112. With regard to the settlement administration costs provision (Settlement §3.2.3),
3 it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions the Parties
4 sought and reviewed bids from other reputable third-party administrators: (A) ILYM Group, Inc.
5 = \$6,850.00; (B) Phoenix Class Action Administration Solutions = \$7,000.00; and C) Simpluris
6 = \$7,000.00. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as
7 **Exhibit 9**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit**
8 **10**. The bid provided by Phoenix Class Action Administration Solutions was the lowest. Thus,
9 the settlement administration costs provision should be given preliminary approval.

10 113. The declaration of Michael Moore of Phoenix Class Action Administration
11 Solutions, to be filed concurrently with my declaration, describes Phoenix Class Action
12 Administration Solutions' experience.

13 114. The declaration of Michael Moore of Phoenix Class Action Administration
14 Solutions explains that Phoenix Class Action Administration Solutions' fee is capped.

15 115. The declaration of Michael Moore of Phoenix Class Action Administration
16 Solutions explains how Phoenix Class Action Administration Solutions' calculated its bid.

17 *PAGA Provisions of the Settlement*

18 116. The memorandum of points and authorities that accompanies this declaration
19 explains the terms of the provisions of the Settlement that apply to PAGA and civil penalties.

20 117. The Settlement provides that 25% of the PAGA Penalties shall be distributed
21 among all Aggrieved Employees, even those who opt out of the Class Settlement. See Settlement,
22 ¶ 3.2.5.

23 118. The Settlement states as follows with regard to the release of the PAGA claim:
24 Release of PAGA Claim by Class Members. Plaintiff and Class Members release and forever
25 discharge, for the duration of the Class Period, all claims for civil penalties that could have been
26 sought by the Labor Commissioner under the PAGA based on the factual allegations and statutes
27 asserted or that could have been asserted in the Action, the Operative Complaint and Plaintiffs
28 PAGA Notice. The Release of PAGA Claims also includes a release from the state of California



1 (to the extent Plaintiff is permitted to provide such a release for the state of California for the
2 Class period). Settlement, ¶ 6.3.

3 119. The PAGA Release is limited to the Defendant named in the Operative
4 Complaint, together with Defendant's officers, directors, employees and agents. See
5 Settlement, ¶ 1.4.2 ("Released Parties").

6 120. The Settlement states: Release of PAGA Claim by Class Members. Plaintiff and
7 Class Members release and forever discharge, for the duration of the Class Period, all claims for
8 civil penalties that could have been sought by the Labor Commissioner under the PAGA based
9 on the factual allegations and statutes asserted or that could have been asserted in the Action, the
10 Operative Complaint and Plaintiffs PAGA Notice. The Release of PAGA Claims also includes a
11 release from the state of California (to the extent Plaintiff is permitted to provide such a release
12 for the state of California for the Class period). Settlement, ¶ 6.3.

13 *Notice of Settlement to the LWDA*

14 121. Pursuant to Labor Code § 2699(1)(2), Plaintiff has provided notice of this
15 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
16 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 17**.

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

19 Executed on Tuesday, March 11, 2025 at New York, New York.

20 

21 DAVID SPIVAK,
22 Declarant



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