

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Christopher Garcia (SBN 306082)
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: afeghali@moonlawgroup.com
E-mail: cgarcia@moonlawgroup.com

Attorneys for Plaintiff FLORENTINO LOPEZ

Justin F. Marquez (SBN 262417)
Benjamin H. Haber (SBN 315664)
Daniel J. Kramer (SBN 314625)
WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989
E-mail: justin@wilshirelawfirm.com
E-mail: benjamin@wilshirelawfirm.com
E-mail: dkramer@wilshirelawfirm.com

Attorneys for Plaintiff LUIS HERNANDEZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FLORENTINO LOPEZ, individually,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

UTILITY TREE SERVICE, LLC, a
Pennsylvania Limited Liability
Company; and DOES 1 through 10,
inclusive,

Defendant.

LUIS HERNANDEZ, individually,
and on behalf of all others similarly
situated,

Case No.: 3:22-cv-01404-JES-DDL

**DECLARATION OF KANE
MOON IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR (1)
FINAL APPROVAL OF CLASS
AND PAGA ACTION
SETTLEMENT AND (2) AWARD
FOR ATTORNEYS' FEES AND
COSTS, AND SERVICE AWARDS
TO PLAINTIFFS**

Date: May 22, 2024
Time: 9:00 a.m.
Action Filed: September 15, 2022

Hon. James E. Simmons, Jr.
Courtroom 4(B), 4th Floor
United States Courthouse

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Plaintiff,

vs.

UTILITY TREE SERVICE, LLC, a
Pennsylvania Limited Liability
Company; and DOES 1 through 10,
inclusive,

Defendant.

221 West Broadway
San Diego, California 92101

DECLARATION OF KANE MOON

I, KANE MOON, declare as follows:

1. I am an attorney at law duly licensed to practice as such before all Courts of the State of California and am one of the attorneys of record for Plaintiff Florentino Lopez and the putative Class.

2. I have personal knowledge of the matters set forth herein and could competently testify to the facts described herein.

3. This Declaration is submitted in support of two motions: (1) Plaintiffs' Motion for Final Approval of the Class and PAGA Action Settlement; and (2) Plaintiffs' Motion for an Award of Attorney's Fees and Costs, and Service Awards to Plaintiffs.

CASE BACKGROUND

4. Plaintiffs Florentino Lopez and Luis Hernandez ("Plaintiffs") seek final approval of the class action and Private Attorneys General Act ("PAGA") representative action settlement ("Settlement") between Plaintiffs and Defendant Utility Tree Service, LLC ("Defendant") (Plaintiffs and Defendant are hereinafter collectively referred to as the "Parties"). The Settlement, which was reached after extensive discovery and analysis, and an arm's-length mediation, provides substantial monetary payments to 996 participating class members. In addition, it meets the requisite criteria for settlement approval under California law. Plaintiffs further seek certification of the putative Class.

5. Defendant contracts with electrical utilities to trim trees around power lines. Plaintiff Florentino Lopez worked for Defendant as a maintenance employee for approximately 20 years from December 2001 to June 2021. Plaintiff Luis Hernandez worked for Defendant from approximately June 2017 to approximately August 2022. Plaintiffs were classified as non-exempt during the entirety of their employment and were subject to the alleged illegal policies and practices that form the basis of the claims asserted in this case.

1 6. Plaintiffs' claims include that Defendant failed to pay all wages owed
2 as evidenced by the time records and corresponding payroll records. Specifically,
3 Plaintiffs alleged that Defendant required employees to work off the clock by having
4 them come in before and stay after their scheduled shifts and failing to incorporate
5 all remunerations. Furthermore, Plaintiffs alleged that Defendant maintained an
6 improper meal and rest break practice by requiring employees to remain on the
7 premises and that Plaintiffs had missed, interrupted, or shortened meal and rest
8 periods. Moreover, Plaintiffs alleged that Defendant did not reimburse employees for
9 business-related expenses, particularly for the use of their personal cellphones. In
10 addition to the foregoing claims, Plaintiffs brought derivative claims against
11 Defendant for waiting time penalties, wage statement violations, and unfair business
12 practices.

13 7. Because of Defendant's alleged violations of various provisions of the
14 Labor Code, Plaintiff Florentino Lopez filed a complaint on August 1, 2022, in the
15 Superior Court of California, County of San Diego, Case No. 37-2022-00030456 and
16 was removed to federal court on September 15, 2022 (the "Lopez Matter" or the
17 "Action"), which, in its amended form and in addition to Mr. Lopez's individual
18 FEHA-related claims, alleges that Defendant: (5) Failed to Pay Minimum Wages
19 [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (6) Failed to Pay Overtime
20 Compensation [Cal. Lab. Code §§ 1194 and 1198]; (7) Failed to Provide Meal
21 Periods [Cal. Lab. Code §§ 226.7 and 512]; (8) Failed to Authorize and Permit Rest
22 Breaks [Cal. Lab. Code § 226.7]; (9) Failed to Indemnify Necessary Business
23 Expenses [Cal. Lab. Code § 2802]; (10) Failed to Timely Pay Final Wages at
24 Termination [Cal. Lab. Code §§ 201-203]; (11) Failed to Provide Accurate Itemized
25 Wage Statements [Cal. Lab. Code § 226]; (12) Engaged in Unfair Business Practices
26 [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and (13) Owes Civil Penalties Under
27 PAGA [Cal. Lab. Code §§ 2698, et seq.].
28

1 8. Separately, on December 22, 2022, Plaintiff Luis Hernandez filed a
2 Class Action Complaint currently pending in the Central District of California, Case
3 No. 2:22-cv-09283-JFW-KS (“Hernandez Matter”). The Hernandez Matter stated
4 class claims which overlapped with the claims set forth in the Lopez Matter.

5 9. The Parties in the Hernandez Matter and Lopez Matter engaged in a
6 global mediation, which resulted in a settlement. As part of the settlement, the Parties
7 in both matters agreed to file an amended complaint in the Lopez Matter whereby
8 Hernandez would be added as a plaintiff, and Hernandez’s counsel would be added
9 as putative class counsel for purposes of seeking approval in a single venue. Pursuant
10 to this Court’s September 29, 2023 order, Plaintiffs’ Third Amended Class Action
11 Complaint was deemed filed in this Action for purposes of seeking approval in a
12 single forum and under a single case number.

13 10. Defendant ardently opposes the merits of this case and denies Plaintiffs’
14 factual allegations. Defendant maintains that Plaintiffs and the putative class
15 members were paid all wages owed, that it complied with all of its meal and rest
16 period obligations, and that Plaintiffs and the putative class members were provided
17 with the opportunity to take all meal and rest periods to which they were entitled.
18 Further, Defendant asserts it complied with all of its reimbursement obligations, and
19 therefore, Plaintiffs and other Class Members were compensated for any and all
20 necessary business expenses incurred. Moreover, to the extent that Plaintiffs received
21 wage statements that were allegedly inaccurate, Defendant asserted that Plaintiffs
22 suffered no actual damage or harm as a result. *See, e.g., Angeles v. U.S. Airways, Inc.*,
23 No. C 12-05860 CRB, 2013 WL 622032, at *10 (N.D. Cal. Feb. 19, 2013) (“A
24 plaintiff must adequately plead an injury arising from an employer’s failure to
25 provide full and accurate wage statements, and the omission of the required
26 information alone is not sufficient.”) With respect to Plaintiffs’ claim for waiting
27 time penalties, Defendant asserted that its good-faith belief that it paid all wages
28 precluded the imposition of waiting time penalties since Plaintiffs could not prove

1 that Defendant's alleged failure to pay all final wages at the time of separation was
2 "willful." *See, e.g., Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK (DTBx),
3 2012 WL 9506073, *5 (C.D. Cal. June 14, 2012). For these reasons, Defendant
4 claimed that it did not engage in any unfair business practices. Defendant also
5 maintained that Plaintiffs' claims were improper for class treatment.

6 DISCOVERY AND INVESTIGATION

7 11. Prior to the completion of formal discovery, the Parties agreed to
8 participate in mediation. The Parties agreed to move forward with informal discovery
9 for which the Parties adhered to a protocol for exchanging documents and
10 information before the mediation. Defendant produced a sample of time and pay
11 records for class members, as well as policy manuals in effect during the statutory
12 period, and additional documents. Defendant also provided information regarding the
13 total number of current and former employees in its informal discovery responses.
14 The data provided by Defendant consisted of tens and thousands of time entries and
15 pay records, which was sufficient for Plaintiffs' counsel (or "Class Counsel") and
16 expert to assess the strengths and weaknesses of the claims and to perform a thorough
17 damages analysis.

18 12. After reviewing the documents regarding Defendant's wage and hour
19 policies and practices, and analyzing Defendant's time and pay records, Class
20 Counsel was able to evaluate the probability of class certification, success on the
21 merits, and Defendant's maximum monetary exposure for all claims. With the aid of
22 a statistics expert retained to analyze the records produced, Class Counsel prepared
23 a damage analysis prior to mediation. Class Counsel also investigated the applicable
24 law regarding the claims and defenses asserted in the litigation. Thus, Plaintiffs and
25 their counsel's familiarity with the facts of the case and the legal issues raised by the
26 pleadings allowed them to act intelligently in negotiating the settlement.

27 ///

28 ///

SETTLEMENT NEGOTIATIONS

13. On April 26, 2023, the Parties participated in private mediation with professional neutral mediator Lisa Klerman, Esq. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, a settlement was reached by the Parties.

14. After the agreement to settle, counsel for the Parties met and conferred extensively over the detailed terms of the settlement for purposes of finalizing a long-form settlement agreement and corresponding notice documents. Several drafts and revisions were circulated in order to arrive at the final settlement—the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”). The Settlement Agreement was fully executed on September 29, 2023, a true and correct copy of which is attached as **Exhibit 1** to this Declaration.

15. The Settlement has been submitted to the Labor & Workforce Development Agency (“LWDA”) by Class Counsel. A true and correct copy of the confirmation email my office received from the LWDA is attached to this Declaration as **Exhibit 2**.

16. Plaintiffs sent a PAGA Notice Letter to Defendant and the LWDA on October 28, 2022. A true and correct copy of the PAGA Notice Letter sent to Defendant and the LWDA is attached to this declaration as **Exhibit 3**.

KEY TERMS OF THE SETTLEMENT

17. The Gross Settlement Amount is \$850,000.00 to be paid by Defendant within twenty (20) days after the Effective Date. *See, Settlement*, ¶¶ 13, 34.

1 18. The Net Settlement Amount means the funds remaining in the Gross
2 Settlement Amount after the following deductions are made: Class Representative
3 Enhancement Payments to the named Plaintiffs, attorneys' fees and costs to Class
4 Counsel, Settlement Administration Costs, and the PAGA Settlement Amount. *Id.*, ¶
5 15.

6 19. The Settlement provides that, subject to approval by the Court, Class
7 Counsel will apply for an award of attorneys' fees of up to one-third (\$283,333.33)
8 of the Gross Settlement Amount, plus out-of-pocket costs not to exceed \$25,000.00.
9 *Id.*, ¶ 3. Currently, my office has forwarded costs amounting to \$12,342.69. A true
10 and correct copy of my office's costs to date is attached to this declaration as **Exhibit**
11 **4.**

12 20. The Settlement Administrator mutually selected by the Parties, subject
13 to Court approval, is Simpluris, Inc. ("Simpluris"). *Id.*, ¶ 28. Settlement
14 Administration Costs means the payment to be made to the Settlement Administrator
15 for its fees and expenses in administering the Settlement including, but not limited
16 to, printing, distributing, and tracking documents for the Settlement, tax reporting,
17 distributing payments, and providing necessary reports and declarations. *Id.*, ¶ 29.
18 Settlement Administration Costs are estimated not to exceed \$15,000.00. *Id.*
19 Currently, the Settlement Administration Costs are estimated to be \$12,267.00.¹
20 (Declaration of Gillian McCreedy in Support of Plaintiffs' Motion for Final Approval
21 of Class Action Settlement ["Admin Decl."], ¶ 15.) A true and correct copy of the
22 settlement administration quote from Simpluris is attached to this declaration as
23 **Exhibit 5.**

24
25
26 ¹ The Administrator's final costs, which includes fees and costs incurred to-date as well as
27 anticipated fees and costs for completion of the settlement administration has slightly increased
28 from at the time of the Motion for Preliminary Approval. (Admin Decl., ¶ 15, Exh. B.) This increase
in costs is due to the change in class size from when the Settlement Administrator initially provided
a quote (900 Class Members) to when the Settlement Administrator processed the Class Data (996
Class Members). (*Id.* at ¶ 15, Exh. B.)

1 21. The Settlement includes a class representative service award to the
2 named Plaintiffs. Subject to Court approval, Plaintiffs shall each be paid an incentive
3 award not to exceed \$5,000.00 (“Class Representative Enhancement Payment”). This
4 amount is for Plaintiffs’ time and effort, and exposure to substantial risk in bringing
5 and presenting the action. *See*, Settlement, ¶ 7.

6 22. The Settlement provides for a payment of \$25,000.00 from the Gross
7 Settlement Amount allocated to the resolution of claims arising under PAGA
8 (“PAGA Settlement Amount”). *Id.*, ¶ 18. Of this amount, 75% (\$18,750.00) will be
9 paid to the LWDA, and the remaining 25% (\$6,250.00) will be distributed to Class
10 Members that worked during the applicable PAGA limitations period, on a pro rata
11 basis. *Id.*, ¶ 38(a).

12 23. Individual Settlement Payment means each participating Class
13 Member’s share of the Net Settlement Amount, calculated based on the number of
14 workweeks a Class Member worked during the Class Period. *Id.*, ¶¶ 14, 42. All
15 Individual Settlement Payments will be allocated as follows: one-third allocated as
16 wages, one-third allocated as penalties, and the remaining one-third allocated as
17 interest. *Id.*, ¶ 55.

18 THE SETTLEMENT MERITS FINAL APPROVAL

19 24. The Settlement merits final approval because it is fair and reasonable.
20 The Settlement is fair and reasonable because it was reached after a thorough
21 investigation of the facts and applicable law by both Parties; a comprehensive data
22 and legal analysis completed by Class Counsel and their data expert using the records
23 produced by Defendant during informal discovery; a calculation of Defendant’s
24 maximum monetary exposure; a risk analysis by Class Counsel, which involved
25 evaluating the risk of not prevailing at class certification and trial; a holistic
26 evaluation by both Parties of the relative strength of Plaintiffs’ claims and
27 Defendant’s defenses; an understanding by both Parties of the potential cost, time-
28 commitment, inconvenience, delay and inherent uncertainty of further litigation,

1 including formal discovery, preparation for class certification, pretrial and trial
2 proceedings and summary judgment or appeal; and an arm's-length mediation lead
3 by highly experienced, neutral mediator, Lisa Klerman, Esq.

4 25. The Settlement is also fair and reasonable because its terms, including
5 the Gross Settlement Amount, Class Counsel attorneys' fees and costs, and Class
6 Representative Enhancement Payments, take into account various relevant mitigating
7 factors, including the risks inherent in obtaining certification, continuing through trial
8 and appeal, and Defendant's defenses, yet are also supported by discovery and data.

9 26. In addition to disputing the merits of Plaintiffs' claims at trial,
10 Defendant intended to aggressively challenge the case at the certification stage.
11 Defendant contends that Plaintiffs could not prevail on a certification motion. We
12 believe that the case was viable through to a trial. However, while Plaintiffs assert a
13 belief that this is a viable case for trial, we realize that there are always significant
14 risks associated with certification and trials, and those risks cannot be eliminated in
15 this case. Continued litigation of this lawsuit presented Plaintiffs and Defendant with
16 substantial legal risks and costs that were (and continue to be) difficult to assess. The
17 risks in this matter include:

- 18 • the risk that Plaintiffs would be unable to establish liability for allegedly
19 unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l*
20 *Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), *citing Dilts v.*
21 *Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing
22 certified off-the-clock claims based on proof at trial);
- 23 • the risk that Defendant's challenged employment policies might not
24 ultimately support class certification or a class-wide liability finding,
25 *see, Duran*, 59 Cal. 4th at 14 & fn. 28 (citing Court of Appeal decisions
26 favorable on class certification issue without expressing opinion as to
27 ultimate viability of proposition);
- 28 • the risk that uncertainties pertaining to the legality of Defendant's

1 policies and practices could preclude class-wide awards of penalties
2 under Labor Code §§ 203 and 226(e);

- 3 • the risk that individual differences between Class Members could be
4 construed as pertaining to liability, and not solely to damages, *see*,
5 *Duran*, 59 Cal. 4th at 19;
- 6 • the risk that any civil penalties award under the PAGA could be reduced
7 by the Court in its discretion, *see* Labor Code § 2699(e)(1);
- 8 • the risk that lengthy trial or appellate litigation could ensue; and,
- 9 • the substantial risk that differences in the work experiences of
10 employees assigned to different locations would make both certification
11 and proof of liability prohibitively unlikely.

12 These risks are non-exhaustive. While we remain confident that we possess credible
13 strategies for responding to the legal and factual risks facing them, those risks cannot
14 be disregarded. We carefully considered the risks created by all of these
15 uncontrollable factors when evaluating the reasonableness of this proposed
16 settlement. This Settlement provides a benefit to the Class Members that is very
17 reasonable in light of these particular risks.

18 THE GROSS SETTLEMENT AMOUNT IS FAIR AND REASONABLE

19 27. The Gross Settlement Amount is \$850,000.00. *See*, Settlement, ¶ 13.
20 This amount, as established below, reflects a discounted percentage of Defendant's
21 maximum monetary exposure, which was calculated by Class Counsel and their
22 expert before mediation and preliminary approval, taking into account the data
23 Defendant provided *at the time of mediation*: there were approximately 876 class
24 members and approximately 77,088 workweeks², approximately 83,451 total
25 workweeks, and a weighted average hourly rate of \$16.75. Based on Defendant's
26

27 ² At the time of preliminary approval, it was estimated that there are approximately 876 Class
28 Members eligible to participate in the Settlement who worked 77,088 workweeks. After the Class
Notice has been sent out, the Parties discovered that the Class consists of 996 Class Members
who collectively worked 102,320 workweeks. Admin Decl., ¶ 15.

payroll data, there are 267 former employees who fall within the 3-year statute of limitations period for Labor Code § 203 penalties, and 754 employees that fall within the 1-year statute of limitations period for penalties under Labor Code § 226 and PAGA. For PAGA Penalties, Defendant disclosed that a total of 38,576 pay periods were worked by Aggrieved Employees within the PAGA limitations period. Plaintiffs, accordingly, assume 38,576 pay periods in which violations giving rise to PAGA Penalties occurred. Accordingly, I calculated Defendant's potential exposure as follows:

Claim	Relevant Time Period	Rate	Number of Violations	Amount
Unpaid Wages (Off-the-Clock)	77,088 Workweeks	\$14.20 Average Minimum Wage	5,781.6 Net Unpaid Hours (assuming 5 minutes of off-the-clock work per shift)	**\$82,098.72 \$8,209.87
Unpaid Overtime Wages (Off-the-Clock)	77,088 Workweeks	\$32.50 Average Regular Rate or Pay / \$48.75 Average Overtime Rate or Pay	23,126.4 Net Unpaid Hours (assuming 5 minutes of off-the-clock work per shift)	**\$1,127,412.00 \$112,741.20
Meal Period Violations	77,088 Workweeks	\$32.50 Average Regular Rate or Pay	173,448 Unique Meal Break Violations (based on 50% violation rate)	*\$5,637,060.00 \$281,853.00
Rest Break Violations	77,088 Workweeks	\$32.50 Average Regular Rate or Pay	343,427 Unique Rest Break Violations (based on 99% violation rate)	*\$11,161,377.50 \$558,068.88
Unreimbursed Business Expenses Violations	77,088 Workweeks	\$20.00 / Employee/ Month	Violation Rate Based on Analysis of Records by Expert (assuming unreimbursed business expenses per employee per month)	**\$355,800.00 \$35,580.00

Labor Code §203 (Waiting Time Penalties)	Based On An Estimated 267 Terminated Class Members Within The 3-Year Statute Of Limitations	Violation Rate Based On Analysis Of Records By Expert	Violation Rate Based On Analysis Of Records By Expert For Each Pay Period for 267 Employees (as estimated at the time of mediation) During The 3-Year Statute Of Limitations	*\$2,277,844.00 \$113,892.20
Labor Code §226 (Inaccurate Wage Statements)	Based On An Estimated 754 Class Members Within The 1-Year Statute Of Limitations	\$100 Per Pay Period	\$100 For Each Pay Period for 754 Employees During The 1-Year Statute Of Limitations	*\$3,016,000.00 \$150,800.00
PAGA Civil Penalties	Based On An Estimated 754 Class Members Within The 1-Year Statute Of Limitations	\$100 for each pay period	\$100 For Each Pay Period For 754 Employees During The 1-Year Statute Of Limitations	*\$3,857,600.00 \$192,880.00 *\$9,151,444.00 \$457,572.20
Total for Class Claims				\$1,454,025.15
* These figures are discounted based on an 5% probability of prevailing on class certification and on the merits.				
** These figures are discounted based on a 10% probability of prevailing on class certification and the merits.				

28. The unpaid wages claim is based on the allegation that Defendant did not compensate Class Members for all hours worked. In particular, Plaintiffs alleged Defendant failed to compensate all Class Members for the full value of their off-the-clock work. For example, Plaintiffs allege that Plaintiffs and the Class were required to come to work before clocking in and/or to stay at work after clocking out to perform tasks that should have been completed on-the-clock. Plaintiffs estimated approximately 5 minutes of off-the-clock work occurred per shift, and that 1 of these 5 minutes per shift (or 20% of off-the-clock work) should have been paid at the straight time rate. Based on this assumption and by analyzing the records produced

1 by Defendant, Plaintiffs' expert determined that 5,781.6 net hours were unpaid as a
2 result of Plaintiffs and the rest of the Class working off-the-clock, assuming the
3 average minimum wage of \$14.20 during the relevant period. Accordingly, Plaintiffs'
4 expert determined that Defendant's potential liability for Plaintiffs' off-the-clock
5 claim is \$82,098.72. However, this amount was discounted by 90% ($\$82,098.72 * 0.10$) to account for the difficulty of certifying and the defenses to the claim.
6
7 Specifically, Defendant contended that all time worked was compensated, that
8 working off the clock was contrary to its strict written policies, and that proving any
9 such claim would prove that this issue is highly individualized and not susceptible to
10 class-wide treatment. Plaintiffs' counsel still contend that unpaid wages are owed due
11 to Defendant's unlawful practice of requiring employees to work off-the-clock.
12 **Accordingly, I arrived at a realistic damage estimate of \$8,209.87 for the off-the-**
13 **clock claim of unpaid wages.**

14 29. The additional claim for unpaid wages is based on the allegation that a
15 large amount of time spent off-the-clock should have been paid at the overtime rate.
16 Plaintiffs estimated approximately 5 minutes of off-the-clock work occurred per
17 shift, and that 4 of those 5 minutes (or 80% of all off-the-clock work) should have
18 been paid at the overtime rate. Based on this assumption and by analyzing the records
19 produced by Defendant, Plaintiffs' expert determined that 23,126.4 net hours were
20 unpaid as a result of Plaintiffs and the rest of the Class working overtime off-the-
21 clock. Accordingly, Plaintiffs' expert determined that Defendant's potential liability
22 for Plaintiffs' off-the-clock claim vis-à-vis the overtime cause of action is
23 \$1,127,412.00. However, this amount was similarly discounted by 90%
24 ($\$1,127,412.00 * 0.10$) to account for the difficulty of certifying and the defenses to
25 the claim. Specifically, Defendant contended that all time worked was compensated,
26 that working off the clock was contrary to its strict written policies, and that proving
27 any such claim would prove that this issue is highly individualized and not
28 susceptible to class-wide treatment. Although, we still believe that there were unpaid

1 wages violations due to Defendants' failure to incorporate all remunerations. I
2 understand that the foregoing issues create significant risk with respect to
3 certification due to the individualized nature of an off-the-clock claim. **Accordingly,**
4 **I arrived at a realistic damage estimate of \$112,741.20 for the off-the-clock claim**
5 **of unpaid overtime wages.**

6 30. The meal period claim is based on the allegation that Defendant failed
7 to provide or maintain sufficient meal period policies or practices, such that Class
8 Members were often not able to take code-compliant meal breaks, and instead were
9 subjected to late, short, or interrupted meal periods. For example, Plaintiffs allege
10 that Plaintiffs and the Class had 30-minute meal periods auto-deducted from each
11 day's work and that they were required to remain on the premises during meal
12 periods. An analysis of the sample records produced by Defendant revealed that
13 Defendant did not record start and end times of meal periods; accordingly, we were
14 unable to perform an analysis of the violation rates. For purposes of mediation, we
15 assumed a 50% violation rate based on conversations with Plaintiffs and class
16 members. In assuming a 50% violation rate, our expert determined that 173,448
17 unique meal period violations occurred during the relevant period. For purposes of
18 ascertaining the maximum potential liability, we assumed that no meal period
19 waivers existed. Accordingly, Plaintiffs' expert determined that Defendant's
20 potential liability for Plaintiffs' meal period claim is \$5,637,060.00 (173,448 unique
21 violations * \$32.50 average regular rate or pay). However, this amount was
22 discounted by 95% ($\$5,637,060.00 * 0.05$) to account for the difficulty of certifying
23 and the defenses to the claim. Specifically, Defendant argued that all work stopped
24 during meal periods and 30-minute completely duty-free meal breaks were properly
25 taken in each shift. Plaintiffs' counsel still contend that Defendant is liable for its
26 unlawful practices relating to the provision of meal periods, but understand that the
27 nature of Defendant's operation would not reach the severity of what was originally
28 contemplated and that establishing any systematic failure to provide meal periods

1 would essentially prove that the claim is highly individualized. **Accordingly, I**
2 **arrived at a realistic damage estimate of \$281,853.00 for the meal period claim.**

3 31. The rest break claim is based on the allegation that Defendant failed to
4 provide or maintain proper rest break policies or practices. For example, Defendant
5 regularly required Plaintiffs and other Class Members to work in excess of four
6 consecutive hours a day without Defendant authorizing nor permitting a ten-minute,
7 continuous, and uninterrupted rest period, or without compensating Plaintiffs and
8 other Class Members for rest periods that were not authorized or permitted. In
9 addition, Defendant required its employees to remain on the premises during rest
10 breaks. Plaintiffs' expert applied a 100% rest break violation rate. Based on the above
11 numbers, Defendant's maximum potential liability is \$11,161,377.50 (343,427
12 unique violations * \$32.50 average regular rate or pay). However, this amount was
13 discounted by 95% ($\$11,161,377.50 * 0.05$) to account for the difficulty of certifying
14 and proving rest break claims, particularly because rest periods do not have to be
15 recorded, and to account for the possibility of class members voluntarily choosing to
16 forego a rest break. Although Plaintiffs' counsel still believes that there were rest
17 break violations, Plaintiffs' counsel understands that the foregoing issues create
18 significant risk with respect to certification due to the individualized nature of the
19 rest break claim. Proof of this claim would require declarations from numerous class
20 members and obtaining such declarations would possibly reveal that each class
21 member had a different experience with respect to rest breaks. **Accordingly, I**
22 **arrived at a realistic damage estimate of \$558,068.88 for the rest break claim.**

23 32. The unreimbursed business expenses claim is based on the allegation
24 that Defendant did not reimburse Class Members for all expenses Class Members
25 incurred in direct consequence of the discharge of their duties. For example, Plaintiffs
26 alleged that Class Members were required to use their personal cell phones for work
27 communication. The precise value of all necessary business expenses Class Members
28 incurred could not be calculated, in light of the fact that Defendant did not document

1 the actual or average amount Class Members spent on usage of personal cell phones.
2 Therefore, in preparation for mediation, Class Counsel estimated that Defendant
3 should have reimbursed each Class Member a maximum of \$20.00 dollars per month.
4 Class Counsel and its data expert then estimated that, in light of the estimated
5 maximum reimbursement, estimated number of Class Members during the Class
6 Period, and total number of months during the Class Period that Defendant had a
7 reimbursement policy for expenses, Defendant has a potential liability of
8 \$355,800.00. However, this amount was discounted by 90% ($\$355,800.00 * 0.10$) in
9 light of Defendant's defenses and for purposes of settlement. Specifically, Defendant
10 contended that class members were provided with everything they reasonably needed
11 to perform their jobs such that there is no issue with respect to unreimbursed business
12 expenses. Moreover, Defendant argued that it maintained a reimbursement policy for
13 expenses, and further, that the reimbursement claim would be impossible to certify
14 because any use of personal cell phones would be an extremely rare and unique
15 instance such that the claim is not susceptible to class-wide treatment. **My realistic**
16 **damage estimate for the unreimbursed expenses claim is therefore \$35,580.00.**

17 33. The PAGA penalties in Plaintiffs' damage analysis were calculated by
18 assessing \$100 penalty per pay period for violation of Labor Code section 204, based
19 on Labor Code section 210; \$100 penalty per pay period for violation of Labor Code
20 section 1194, based on Labor Code section 1197.1; \$50 penalty per pay period for
21 violation of Labor Code section 512, based on Labor Code section 558; and \$250
22 penalty per pay period for violation of Labor Code section 226, based on Labor Code
23 section 226.3. Under this calculation, which is applying full stacking of penalties,
24 Defendant's maximum potential liability for PAGA Penalties alone exceeds \$19
25 million. However, in reviewing the reasonableness of PAGA settlements, some
26 courts have asked for an analysis of the stacking of all available penalties for
27 violations alleged in the case. See, e.g., *Gonzalez v. Corecivic of Tenn., LLC*
28 (E.D.Cal. 2018) 2018 U.S.Dist.LEXIS 156549, at *24-25 ("stacking' PAGA

1 penalties is not inappropriate under California law and, therefore, there is no obvious
2 reason to use ‘unstacked’ calculations to estimate the value of the case ... plaintiff
3 has not adequately explained why, in attempting to set out the total potential value of
4 the claims in this case, he both ‘unstacked’ them and suggested they might only be
5 worth a quarter of the statutory penalty.”). Thus, PAGA grants trial courts discretion
6 to reduce the amount of civil penalties to be imposed. Accordingly, Plaintiffs’
7 analysis at mediation was the more realistic possibility of the court imposing a \$100
8 penalty per pay period, which amounts to \$3,857,600.00 ($\$100 * 38,576$ Pay Periods
9 in PAGA Period).

10 34. With respect to Plaintiffs’ derivative claims for statutory penalties,
11 Plaintiffs estimated that Defendant’s total maximum liability is \$9,151,444.00, which
12 consists of Defendant’s maximum potential liability for the following: \$2,277,844.00
13 for waiting time penalties based on approximately 267 terminated class members
14 during the 3-year statute; \$3,016,000.00 for inaccurate wage statements based on
15 approximately 754 class members within the 1-year statute; and \$3,857,600.00 for
16 PAGA penalties based on assessing a \$100 penalty per pay period. Defendant
17 nonetheless contended that, in light of its defenses, the discretionary nature of
18 statutory and civil penalties, and the potential Due Process concerns that might arise
19 from a putative award, it would be unrealistic to expect the Court to award the full
20 \$9,151,444.00. Weighing these factors and applying a discount to account for the risk
21 and uncertainty of prevailing at trial, Class Counsel discounted the PAGA penalties
22 amount by 95% ($\$3,857,600.00 * 0.05$). **My realistic damage estimate for all**
23 **derivative penalties is therefore \$192,880.00.**

24 35. In total, these estimated figures aggregate to \$1,454,025.15, which
25 represents a realistic maximum recovery for all claims, including penalties. The
26 Gross Settlement Amount of \$850,000.00 therefore represents **58.46%** of the
27 realistic maximum recovery. In turn, an estimate of the Net Settlement Amount can
28

1 be calculated to be \$491,666.67 at this time.³ The Class is comprised of 996
 2 participating Class Members. Admin Decl., ¶ 15. In result, each Settlement Class
 3 Member is eligible to receive an average net benefit of approximately \$493.64, with
 4 the estimated highest Individual Settlement Payment being \$994.67. *Id.*, at ¶ 16.
 5 Considering the Class Members' average hourly rate of \$32.50, the average net
 6 benefit is approximately 15.19 hours of work. This amount will vary based on the
 7 duration of employment during the Class Period. Thus, Class Members who worked
 8 longer for Defendant during the Class Period will receive a net benefit greater than
 9 the average amount.

10 36. This result here is fully supportable as reasonable. Many risks are
 11 eliminated through settlement. And, with respect to those risks, certification rates in
 12 California are lower than conventional wisdom holds. *See, e.g., H. Scott Leviant,*
 13 *Second Interim Report on class actions in California sheds new light on certification*
 14 *(February 19, 2010),* www.thecomplexlitigator.com, available at
 15 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
 16 [class-actions-in-california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); *see also, Findings of the Study of California*
 17 *Class Action Litigation, 2000-2006,* available at
 18 <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf>
 19 (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions
 20 were certified either as part of a settlement **or** as part of a contested certification
 21 motion). In sum, well under 20% of all cases filed as proposed class actions are
 22 ultimately certified by way of a contested motion. Thus, the risk-adjusted recovery
 23 obtained here meets the expected outcome under that metric.

24
 25
 26 ³ The Net Settlement Amount is: \$85,000 minus \$10,000.00 for class representative enhancement
 27 payments to Plaintiffs, minus \$12,267.00 in administration costs, minus \$18,750.00 for PAGA
 28 portion sent to the LWDA, minus \$283,333.33 for attorneys' fees, and minus \$25,000 for
 maximum litigation expenses. Admin Decl. ¶ 16. The Net Settlement Amount calculated by the
 Settlement Administrator includes the maximum amount for litigation expenses. *See id.* Actual
 litigation expenses are less than the maximum allowed under the Settlement. As such, the actual
 net settlement amount will be slightly more than that calculated by the Settlement Administrator.

1 on Class Counsel's experience and qualifications and can be justified under both the
2 lodestar approach and common fund doctrine.

3 MY EXPERIENCE AND QUALIFICATIONS

4 40. I received a B.A. in History in 1998 from UCLA, and my J.D. from
5 Loyola Marymount Law School in 2006. I became an Active Member of the State Bar
6 of California in June 2007 and have been an Active Member in good standing
7 continuously since then. I have been selected to Super Lawyers each year from 2019
8 to 2023.

9 41. I co-founded Moon & Yang, APC—now Moon Law Group, PC—in
10 March 2010. My practice is focused exclusively on advocating for the rights of
11 employees in wage and hour litigation, almost entirely in class and/or PAGA
12 representative actions.

13 42. For the past decade, I have built my practice to have an emphasis on
14 employment and related civil litigation cases and have both prosecuted and defended
15 employment-related litigation cases. I have been heavily, successfully, and
16 continuously involved in active litigation and trial work, and have conducted bench
17 and jury trials on behalf of both employees and employers in wage and hour cases. My
18 current billing rate is \$725.00 per hour, which is my usual hourly rate in wage and
19 hour litigations.

20 43. I am experienced in prosecuting and defending employment matters,
21 particularly class and PAGA actions. My firm has focused a substantial percentage
22 of its practice on wage, hour, and working conditions violations. In addition to the
23 present case, I am also class counsel for other wage and hour class action lawsuits
24 pending in various counties throughout California, including in state and federal
25 courts. The following is a list of some of our recent class action settlements that have
26 received preliminary and final approval: *Aparicio v. Lineage Logistics, LLC* (LASC
27 No. BC722764) (class size approx. 155; lead counsel); *Black v. Mission Healthcare*
28 *Servs., Inc.* (LASC No. 19STCV04602) (class size approx. 1,000; lead counsel);

1 *Campa v. Bloomingdeals, Inc.* (LASC No. BC700366) (class size approx. 1,500; lead
 2 counsel); *Garcia v. Comfy U.S.A. Apparel, Inc.* (LASC No. BC709630) (class size
 3 approx. 210; lead counsel); *Gomez v. H Mart Cos., Inc.* (LASC No. BC671525) (class
 4 size approx. 2,500; co-counsel); *Jones v. Citiguard, Inc.* (LASC No. BC664890)
 5 (class size approx. 587; lead counsel); *Jones v. Fitness Alliance, LLC* (Riverside No.
 6 PSC1404079) (class size approx. 1,000; lead counsel); *Lagos v. ThyssenKrupp*
 7 *Elevator Corp.* (LASC No. BC682972) (\$750,000 for 79 class members; lead
 8 counsel); *Mark Brulee et al. v. DAL Global Servs., LLC* (C.D. Cal. Dec. 20, 2018)
 9 No. CV 17-6433 JVS(JCGx), 2018 WL 6616659, at *10 (class size approx. 2,650;
 10 lead counsel) (in approving my \$650 hourly rate in that case, the Court found: “Class
 11 Counsel’s declarations show that the attorneys are experienced and successful
 12 litigators. Other courts have approved the attorneys’ current rates for the Moon &
 13 Yang, APC attorneys”); *Martinez v. Bail Hotline Bail Bonds, Inc.* (LASC No.
 14 BC700131) (class size approx. 173; lead counsel); *Montoya v. Golden 1 Credit Union*
 15 (Sacramento No. 34-2018-00228252) (class size approx. 1,900; lead counsel);
 16 *Onofre v. Caitac Garment Processing, Inc.* (LASC No. BC702283) (class size
 17 approx. 750; lead counsel); *Rodriguez v. Rossmoyne, Inc.* (LASC No. BC699137)
 18 (class size approx. 220; lead counsel); *Sison v. Cha Hollywood Med. Ctr., L.P.*
 19 (LASC No. BC6441 29) (class size approx. 2,100; co-counsel); *Slaughter v. ACA*
 20 *Sec. Stems, LP* (LASC No. BC699137) (class size approx. 300; lead counsel); *Taylor*
 21 *v. Sherman’s Delicatessen & Bakery, LLC* (LASC No. BC722765) (class size approx.
 22 515; lead counsel); *Vargas v. AMS Paving, Inc.* (LASC No. BC722767) (case size
 23 approx. 260; lead counsel); *Vertti v. Bagcraft Papercon III, LLC* (LASC No.
 24 19STCV12729) (class size approx. 260; lead counsel); and *Wallick v. Campbell Soup*
 25 *Supply Co., LLC* (San Joaquin No. STK-CV-UOE-2021-0000865) (class size 435;
 26 lead counsel).

27 ALLEN FEGHALI’S EXPERIENCE AND QUALIFICATIONS

28

1 44. Allen Feghali is a partner at Moon Law Group, PC. He received his B.A.
2 in Global and International Studies in 2011 from UC Santa Barbara, and his J.D. from
3 University of La Verne College of Law in 2014. Mr. Feghali became an Active
4 Member of the State Bar of California in December 2014 and has been an Active
5 Member in good standing continuously since then. He was selected by Super
6 Lawyers as a “Southern California Rising Star” in 2020–2023.

7 45. Mr. Feghali began working at Moon Law Group, PC in May 2015, and
8 his practice has focused on advocating for the rights of employees at the trial-court
9 and appellate level. Prior to approximately June 2018, with the exception of a handful
10 of cases, his practice focused on individual FEHA and wrongful termination claims,
11 as well as individual wage and hour claims. In June 2018, Mr. Feghali became
12 heavily involved in the firm’s class and PAGA representative action practice.

13 46. Mr. Feghali’s current billing rate is \$675.00 per hour, which is his usual
14 hourly rate in wage and hour litigations. During Mr. Feghali’s tenure with Moon Law
15 Group, PC, he has played a critical role in obtaining outstanding results for employees
16 who have been wronged by their employers. Mr. Feghali’s litigation experience
17 includes, but is not limited to:

- 18 a. In March 2021, Mr. Feghali prepared the briefing in the matter of
19 *Rivera, et al. v. Clearpath Federal Credit Union* (LASC No.
20 19STCV33504), which resulted in a certification order on all causes of
21 action following contested briefing in a wage and hour class action.
22 b. Mr. Feghali prepared the briefing in a contested class certification
23 motion in the matter of *Dawson, et al. v. GoHealth, LLC, et al.* (No.
24 CGC-19-577790), which was argued and taken under submission by the
25 Court on February 3, 2022.
26 c. Mr. Feghali prepared the briefing in a contested class certification
27 motion in the matter of *Brown v. NTI-CA, Inc., et al.* (No.
28 21STCV04397), which is not currently scheduled for hearing.

- 1 d. Mr. Feghali was part of a team that prepared the briefing in a contested
2 class certification motion in the matter of *Thong, et al. v. Outlook*
3 *Resources, Inc., et al.* (No. 19STCV44400), which was granted, in part,
4 and denied, in part, in October 2022.
- 5 e. Mr. Feghali prepared the briefing which resulted in a remand order in
6 the matter of *Andrade v. Rehrig Pacific Corp.* (C.D. Cal. April 22, 2020)
7 No. CV 20-1448 FMP (RAOx), 2020 WL 1934954, where Defendant
8 removed a wage and hour class alleging that Plaintiff's claims were pre-
9 empted by the Labor Management Relations Act.
- 10 f. Mr. Feghali briefed, argued, and won the matter of *Lee, et al. v. The*
11 *Christian Herald, U.S.A., Inc.* (Cal. Ct. App. Dec. 12, 2017) No.
12 B266853, 2017 WL 6333905, at *1. There, the Court of Appeal reversed
13 a dismissal of an individual defendant following the trial court's
14 granting of a demurrer without leave to amend relating to alter ego
15 allegations.
- 16 g. Mr. Feghali prepared the briefing which resulted in a remand order in
17 the matter of *Sotelo v. Belfor USA Group, Inc.* (C.D. Cal. Mar. 13, 2018)
18 No. 2:17-cv-09056-RSWL-MRWx, 2018 WL 1352910. Defendants
19 there sought to remove the case based on the inclusion of a "sham
20 defendant," but the court agreed with Mr. Feghali's briefing which
21 argued that the individual defendant, who was alleged to have harassed
22 the plaintiff under FEHA, was a proper defendant.
- 23 h. Mr. Feghali has been the lead counsel, or co-lead counsel, in individual
24 cases that settled for \$850,000.00, \$375,000.00, and \$250,000.00. In
25 addition to the foregoing, Mr. Feghali has resolved or assisted in the
26 resolution of approximately 100 cases which has resulted in millions of
27 dollars of unpaid wages being returned to low-wage employees.
28

i. Mr. Feghali was part of a team that prepared the briefing in a contested class certification motion in the matter of *Hernandez v. CR Laurence, Inc., et al.* (No. 20STCV32372), which was granted, in part, and denied, in part, in February 2024.

47. Since June 2018, Mr. Feghali's practice has shifted to almost exclusively representing employees in wage and hour class and PAGA representative actions. His fee has been approved by Courts throughout the state. He has participated as lead, or co-lead counsel, in the litigation and resolution of over 100 wage and hour class actions, including obtaining preliminary and final approval of settlements. A selection of settled cases wherein Mr. Feghali served as lead or co-lead class counsel includes the following: *Barahona v. Methodist Hosp. of Cal.* (No. 20STCV09876) (\$5,000,000); *Vazquez v. St. Mar 2.0 Inc.* (No. 37-2021-00042702-CU-OE-CTL) (\$2,250,000); *Duncan v. Infineon Technologies Americas Corp.* (No. 21STCV16872) (\$2,500,000); *Aquino v. Coast King Packing, LLC* (No. 21CV002448) (\$2,300,000); *Martinez, et al. v. Curative LLC* (No. 21STCV20778) (\$1,500,000); *Calderon v. Installed Building Products* (No. 37-2021-00035844-CU-OE-CTL) (\$1,500,000); *Majdoub v. Argent Hotel Mgmt.* (No. CGC-20-582921) (\$1,800,000); *Fuentes v. Covid Clinic, Inc.* (No. CIVSB2106806) (\$1,526,317.57); *Rahman, et al. v. Gate Gourmet, Inc.* (No. 3:20-cv-03047) (\$3,850,000); *Pagoulatos v. Coast Hills Credit Union* (No. 20CV02801) (\$1,100,000); *Hammers v. Redwood Oil Co., Inc.* (No. SCV-269625) (\$1,180,000); *Cuadras v. R.C. Wendt Painting, Inc.* (No. BC705964) (\$1,400,000); *Zaragoza v. The Roman Catholic Bishop of Fresno* (No. 22CV-00282) (\$1,500,000); *Garcia v. San Jose Water Co.* (22CV396328) (\$1,200,000); *Garcia v. Tri-Valley Plastering, Inc.* (No. 22CECG00591) (\$1,250,000); *Garcia v. Tapia Enter., Inc.* (\$2,137,651 for 507 class members); *Cha v. Center Point, Inc.* (No. CIV2102081) (\$1,000,000); *Sison v. Cha Hollywood Med. Ctr., L.P.* (No. BC644129) (2,137 class members); *Lagos v. ThyssenKrupp Elevator*

1 Corp. (No. BC682972) (\$750,000 for 79 class members); and *Montoya v. Golden 1*
 2 *Credit Union* (No. 34-2018-00228252) (\$1,250,000).

3 THE LODESTAR AND PERCENTAGE METHODS

4 48. The total current lodestar for Moon Law Group, PC is not less than the
 5 following:

6 Attorney	Hours	Rate	Lodestar
7 Kane Moon	90.7	\$825.00	\$74,827.50
8 Allen Feghali	130.4	\$775.00	\$101,060.00
9 Total:	221.1 hours		\$175,887.50

10 49. There are additional hours devoted by me and my office to this litigation
 11 that are not reflected in Class Counsel's request for attorneys' fees.

12 50. We can provide complete, detailed billing records in the event the Court
 13 requests them but would request the opportunity to redact attorney-client privileged
 14 information and any other privileged information.

15 51. The lodestar method requires the Court to determine a "touchstone" or
 16 lodestar figure based on a compilation of time spent and reasonable hourly
 17 compensation for each attorney. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th
 18 Cir. 1996). Generally, hours are reasonable if they were "reasonably expended in
 19 pursuit of the ultimate result achieved in the same manner that an attorney
 20 traditionally is compensated by a fee-paying client." *Hensley v. Eckerhart*, 461 U.S.
 21 424, 431 (1983). The Court "should defer to the winning lawyer's professional
 22 judgment as to how much time he was required to spend on the case." *Moreno v. City*
 23 *of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

24 (a) Number of Hours Expended by Class Counsel are Reasonable: As
 25 set forth in this Declaration, Class Counsel expended a significant
 26 amount of time litigating the case to achieve an excellent result on
 27 behalf of the Class. To date, my firm has spent approximately 221.1
 28

1 hours litigating this case. In the event that Court grants final
2 settlement approval, Class Counsel will spend additional time
3 monitoring administration of the Settlement after final approval. The
4 number of hours that Class Counsel devoted to this case is
5 reasonable. *See, e.g., Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977)
6 (counsel are entitled to compensation for all hours reasonably
7 expended); *Hensley*, 461 U.S. at 435-36; *Caudle v. Bristow Optical*
8 *Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000); *Cabrales v. County of Los*
9 *Angeles*, 935 F.2d 1050, 1052-53 (9th Cir. 1991). As discussed
10 above, Class Counsel were required to expend considerable time and
11 resources to investigate, litigate, and successfully settle these claims
12 for the benefit of the Class.

13 (b) Class Counsel's Hourly Rates are Reasonable: The established
14 standard when determining a reasonable hourly rate is the "rate
15 prevailing in the community for similar work performed by attorneys
16 of comparable skill, experience, and reputation." *Camacho v.*
17 *Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008), quoting
18 *Barjon v. Dalton*, 132 F.3d 496, 502 (9th Cir. 1997). This rule applies
19 even when, as here, the attorneys representing the named plaintiff
20 performed the work on a contingency fee basis. *See, e.g., Blanchard*
21 *v. Bergeron*, 489 U.S. 87, 96 (1989). These hourly rates are
22 reasonable in light of the significant experience, expertise, and skill
23 my firm brought to this action. Rates are reasonable if they are
24 "within the range of reasonable rates charged by and judicially
25 awarded [to] comparable attorneys for comparable work." *Rios v.*
26 *City of Los Angeles*, No. 221CV05341RGKMAA, 2023 WL
27 3432164, at *4 (C.D. Cal. Mar. 2, 2023), quoting *Children's Hosp.*
28 *and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 783 (2002). The trial

1 court may “find hourly rates reasonable based on evidence of other
 2 courts approving similar rates.” *Parkinson v. Hyundai Motor*
 3 *America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010). The attorneys
 4 at Moon Law Group, PC are experienced litigators who specialize in
 5 employment law, with a substantial wage and hour class action
 6 practice. These rates are not opposed or challenged and have been
 7 approved by other courts.

8 52. Once the lodestar figure has been determined, the Court may take into
 9 account other “enhancement” factors to adjust the lodestar award. In *Stetson v.*
 10 *Grissom*, 821 F.3d 1157 (9th Cir. 2016), the Ninth Circuit collected Ninth Circuit
 11 authority addressing lodestar fee awards (as opposed to percentage of common fund
 12 awards) in the context of class action fee requests. After addressing issues regarding
 13 hours worked and hourly rates specific to counsel in that matter, the Court then
 14 discussed two bases for applying multipliers to base lodestar amounts, known
 15 separately as “risk multipliers” and “Kerr factors”:

16 3. *Risk multiplier*. “The district court *must* apply a risk multiplier to
 17 the lodestar ‘when (1) attorneys take a case with the expectation they
 18 will receive a risk enhancement if they prevail, (2) their hourly rate
 19 does not reflect that risk, and (3) there is evidence the case was risky.’
 20 Failure to apply a risk multiplier in cases that meet these criteria is an
 21 abuse of discretion.” *Stanger*, 812 F.3d at 741 (quoting *Fischel*, 307
 22 F.3d at 1008) (emphasis added). Here, there is some evidence of risk—
 23 after all, the district court initially dismissed the case before being
 24 reversed on appeal—but the record is not developed on the extent of
 25 that risk, or on the other two elements. The district court failed entirely
 26 to consider whether Class Counsel's representation merited a risk
 multiplier. On remand, the decision to apply a risk multiplier—or
 not—remains within the district court's discretion, but in either event
 it “must fully and adequately explain the basis for its decision.”
Stanger, 812 F.3d at 741.

27 4. *Kerr factors*. The district court also has discretion to adjust the
 28 lodestar upward or downward using a multiplier that reflects “a host
 of ‘reasonableness’ factors, including the quality of representation, the

benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941–42 (9th Cir.2011) (quotation marks omitted). These factors are known as the *Kerr* factors. See *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.1975), *abrogated on other grounds by City of Burlington v. Dague*, 505 U.S. 557, 112 S.Ct. 2638, 120 L.Ed.2d 449 (1992). Class Counsel provided a detailed analysis of these factors on pages 16–21 of their motion for attorney's fees; the district court briefly mentioned the factors and then, without any analysis, dismissed them. On remand, the court “must explicitly discuss why the *Kerr* reasonableness factors do or do not favor applying a multiplier (positive or negative) in this case.” See *Stanger*, 812 F.3d at 740.

Stetson v. Grissom, 821 F.3d 1157, 1166–67 (9th Cir. 2016). While generally focused on separate concerns – the first on pure risk issue and second on a more wholistic evaluation of the result and how it was obtained – there is undoubtedly some overlap in the tests, as the *Kerr* factors are likely impacted by the presence of some element of risk in a case.

53. The *Stetson* risk factors – which are a restatement of risk factors recognized in *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997 (9th Cir. 2002) – exist because of the nature of contingent class representation:

“It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases.” *Washington Public*, 19 F.3d at 1299; see also *Vizcaino*, 290 F.3d at 1051. This provides the “necessary incentive” for attorneys to bring actions to protect individual rights and to enforce public policies. *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 226, 236 (2d Cir.1987). In common fund cases, there is no concern about financially burdening a defendant to compensate for the risk of nonpayment, because the attorney's fee award is deducted from the plaintiffs' fund. *Washington Public*, 19 F.3d at 1300. In such cases, the plaintiffs “should share the wealth with the lawyers whose skill and effort helped create it.” *Id.*

Fischel, 307 F.3d at 1008 (9th Cir. 2002).

1 54. Separate from the *Stetson* factors, this Court is also authorized to adjust
2 lodestar based on the *Kerr* factors. In this regard, the *Kerr* factors analysis intersects
3 with the “evidence of risk” factor in the *Stetson* analysis. The result here should be
4 judged against the risk of non-recovery. In our opinion, the risk of non-recovery was
5 high. The likelihood that Plaintiffs could have certified even some of the claims in
6 this matter was questionable. That we obtained a class-wide settlement is, by that
7 measure, laudable, given the risk of no recovery. Thus, the “benefit obtained” and
8 the “risk of nonpayment” *Kerr* factors, as applied here, support a positive multiplier.

9 55. In addition, “[t]he Ninth Circuit directs district courts to apply state law
10 in determining not only the right to attorneys’ fees, but also in the method of
11 calculating the fees.” *Samson v. Wells Fargo Bank, N.A.*, No. CV 16-4839-GW-
12 AGRX, 2023 WL 2939225, at *2 (C.D. Cal. Mar. 14, 2023). The California Supreme
13 Court has held, contingency fees should be higher than fees for the same legal
14 services paid concurrently with the provision of the services. *See Ketchum v. Moses*,
15 24 Cal.4th 1122, 1132-33 (2001); *see also Fischel v. Equitable Life Assurance Soc’y*
16 *of the United States* 307 F.3d 997,1008 (9th Cir. 2002). “A lawyer who both bears
17 the risk of not being paid and provides legal services is not receiving the fair market
18 value of his work if he is paid only for the second of these functions. If he is paid no
19 more, competent counsel will be reluctant to accept fee award cases.” *Ketchum*, 24
20 Cal.4th at 1133. Application of that rule is particularly appropriate where the case is
21 brought to redress important rights of vulnerable persons. *Id.* A risk enhancement is
22 “earned compensation; unlike a windfall, it is neither unexpected nor fortuitous.
23 Rather it is intended to approximate market-level compensation for such services
24 which typically pay a premium for the risk of nonpayment or delay in payment of
25 attorneys’ fees.” *Id.* at 1138. **Multipliers normally range from two to four or**
26 **higher.** *Wershba*, 91 Cal.App.4th at 255; *see also Vizcaino*, 290 F.3d at 1051 n.6
27 (“most” common fund cases apply a multiplier of 1.0-4.0); *Been v. O.K. Industries,*
28 *Inc.*, 2011 WL 4478766, * 11 (E.D. Okla. 2011) (citing a study “reporting [an]

1 average multiplier of 3.89 in survey of 1,120 class action cases” and finding that a
 2 multiplier of 2.43 would be “per se reasonable”). Here, the lodestar multiplier
 3 required for the requested fee is ***less than 1.5***.⁵ Factors considered in determining
 4 whether a lodestar multiplier is appropriate generally include: (1) the risks presented
 5 by the contingent nature of the case; (2) the novelty and difficulty of the questions
 6 involved and the skill requisite to perform the legal service properly; (3) the nature
 7 of the opposition; (4) the preclusion of other employment by the attorney due to
 8 acceptance of the case; and (5) the result obtained and the importance of the lawsuit
 9 to the public. *Serrano III*, 20 Cal. 3d at 48-49.

10 (a) *Risks Presented by Contingent Nature of Case*: The major
 11 consideration in determining the necessity of a multiplier is the
 12 contingent nature of the award. *See Ketchum*, 24 Ca1.4th at 1132-
 13 33; *see also Fischel*, 307 F.3d at 1008. In determining what
 14 multiplier to award, the probability of success must be assessed *ex*
 15 *ante*, that is as viewed from the outset of the case. *See e.g., Harman*
 16 *v. Lyphomed. Inc.* 945 F.2d 969, 976 (7th Cir. 1991). Further, the
 17 possibility of no recovery is only one of the uncertainties involved
 18 in taking on such a case. Other uncertainties are the amount that will
 19 be recovered, uncertainty as to the cost, both in effort and expenses,
 20 and uncertainty about how much time will pass before the recovery
 21 is obtained. *See e.g., Ketchum*, 24 Ca1.4th at 1132-1133, 1138. Class
 22 Counsel’s outlay of time and money in this case has been significant.
 23 In all, my firm has spent approximately 221.1 hours investigating,
 24 analyzing, researching, litigating, and negotiating a favorable
 25 resolution of this case, and have incurred \$12,342.69 in necessary
 26 litigation expenses. Unsettled legal issues also presented risks to the
 27 claims in this case. Class Counsel bore the substantial risk of an

28
⁵ Specifically, the multiplier requested here is approximately 1.2.

1 uncertain outcome in agreeing to prosecute this class action case on
2 a contingency fee basis, as well as the difficulties and delay inherent
3 in such litigation. There was the prospect of the enormous cost
4 inherent in class action litigation, as well as extensive negotiations
5 with a corporate defendant who vigorously opposed Plaintiffs'
6 claims and resisted settlement from the outset. Class Counsel risked
7 significant time and expense to ensure the successful settlement. As
8 detailed above, the risks presented in this case were significant, and
9 Defendant's defenses posed serious risks to the success of this matter
10 on the merits. These risks illustrate the recognition by the California
11 Supreme Court in *Ketchum* that, if multipliers are not awarded to
12 class counsel in the cases that are successfully settled, counsel's fees
13 are essentially being cut because the lodestar in and of itself would
14 not account for contingent risk.

15 (b) Difficulty of the questions involved, and the skill required: Class
16 Counsel are skilled attorneys who have had success in wage-and-
17 hour class actions. This case required experienced and competent
18 lawyers and expertise in the issues presented herein. To obtain such
19 an attorney on the free market, a client must pay the market rate.
20 While most class actions are complex and involve some risk, Class
21 Counsel had to overcome several major obstacles in prosecuting this
22 case. Defendants' contentions underscore the risk of prevailing at
23 class certification and trial, and any of these obstacles could have
24 prevented recovery completely.

25 (c) Vigorous opposition by Defendant: Counsel who skillfully overcome
26 difficult issues or uncompromising opposition in the litigation are
27 entitled to a fee enhancement. *Serrano III*, 20 Cal.3d at 49. Here,
28 before eventually agreeing to the Settlement, Defendant asserted a

1 vigorous defense. The settlement effort was protracted, with
2 extended discussions and instances in which it appeared the Parties
3 would not reach a settlement. Further, proceeding to trial would have
4 added years to the resolution of this case because of the difficult legal
5 and factual issues raised and the likelihood of appeals. Indeed, even
6 if Plaintiffs prevailed at class certification and trial, Defendant may
7 be able to mount a credible appeal.

8 (d) The extent to which litigation precluded other employment would
9 justify an enhancement: There are only so many cases that Class
10 Counsel can take at any one time. Consequently, there were other
11 meritorious cases presented to Class Counsel that would have
12 generated substantial fees, but were declined, during the pendency
13 of this action in order to devote the attention necessary to achieve
14 favorable results.

15 (e) The result obtained would justify an enhancement: The results
16 obtained in litigation can properly be used to enhance a lodestar
17 calculation where an exceptional effort produced excellent results.
18 (*Graham*, 34 Cal.4th at p. 582.) Here, the final settlement fund figure
19 of \$850,000.00 represents approximately 58.46% of the maximum
20 potential monetary liability of claims. Considered against the size of
21 the class, the risks of continued litigation, and the importance of the
22 employment rights and a speedy recovery, the relief provided under
23 the Settlement represents a very strong result for the Class.

24 56. Additional time will be required by Class Counsel to monitor the
25 Settlement, respond to class member inquiries, oversee administration of the
26 Settlement, and oversee distribution of the fund. I estimate that my office will commit
27 no less than ten hours to those tasks. I have not included those hours above. Given
28

1 my firm's time spent on this case and the positive reaction by the Class, the requested
2 fee award is reasonable and fair.

3 57. As of the drafting of this motion, my office has incurred \$12,342.69 in
4 expenses litigating this action. These expenses were reasonably necessary to the
5 litigation and were actually incurred by my office. They should be reimbursed up to
6 the maximum amount allowed in the Settlement Agreement.

7 58. Including myself, Moon Law Group, PC includes 23 attorneys, all of
8 whom are actively and continuously practicing in employment litigation, exclusively
9 representing employee plaintiffs, in both individual and class actions, in this Superior
10 Court, and other Superior Courts throughout the state, in the Court of Appeal, and in
11 various federal courts.

12 59. My office is qualified to handle this litigation because we are
13 experienced in litigating Labor Code violations in both individual and class actions.
14 I have been appointed as lead or co-lead counsel in numerous wage and hour class
15 actions in state and federal courts, resulting in millions of dollars in class action
16 judgments or settlements.

17 60. My office invested significant time and resources into the case, with
18 payment deferred to the end of the case, and then, of course, contingent on the
19 outcome. My office's efforts included, without limitation, the following:

- 20 (a) Identifying and obtaining the contact information for numerous
21 witnesses;
- 22 (b) Conducting numerous interviews with the Plaintiffs and
23 reviewing of documents provided by Plaintiffs;
- 24 (c) Researching and investigating the law regarding Defendant's
25 practices at numerous points in the litigation;
- 26 (d) Preparing multiple drafts, finalizing, and filing the original
27 class action complaint;
- 28 (e) Preparing the amended complaints;

- 1 (f) Propounding initial set of discovery requests;
- 2 (g) Extensive “meet and confer” correspondence and discussions
- 3 with Defendant’s counsel to obtain relevant documents and
- 4 information through informal discovery;
- 5 (h) Analyzing and reviewing the timekeeping and payroll records
- 6 of the putative Class;
- 7 (i) Analyzing the audit results and preparing a damages model
- 8 with the aid of a statistics expert;
- 9 (j) Researching and preparing Plaintiffs’ mediation brief;
- 10 (k) Attending mediation;
- 11 (l) Drafting, negotiating, and reviewing multiple versions of the
- 12 Settlement Agreement and corresponding attachments;
- 13 (m) Drafting multiple versions of the motion for preliminary
- 14 approval; and
- 15 (n) Drafting the motion for final approval.

16 61. The risk to my office has been significant, particularly if we would not
17 be successful in pursuing this class action. In that case, we would have been left with
18 no compensation for all the time taken in litigating this case. Indeed, we have taken
19 on a number of class action cases that have resulted in thousands of attorney hours
20 being expended and ultimately having certification denied or the defendant company
21 going bankrupt. The contingent risk in these types of cases is very real and occurs
22 regularly. Furthermore, we were precluded from focusing on, or taking on, other
23 cases which could have resulted in a larger, and less risky, monetary gain.

24 62. In the high-risk, high-cost practice of class action litigation, my firm has
25 endured financial losses in several of its cases. I believe that the particular risk of
26 taking on this high-cost, high-risk case supports an upward adjustment of the lodestar
27 calculation.

64. I am informed and believe that the efforts of my office have resulted in substantial benefits to the settlement Class, in the form of a substantial settlement fund established to compensate Participating Class Members for the wage-and-hour violations noted above. Through the efforts of my office and Plaintiffs in this case, a fair and reasonable resolution has been reached. I am informed and believe that, without the efforts of my office, the Labor Code and Wage Order violations alleged in the Complaint would have gone completely unremedied. The attorneys' fees award provided for in the settlement is therefore reasonable given the result achieved.

65. Plaintiffs are seeking service payments of \$5,000 each (totaling \$10,000) to compensate the named Plaintiffs for the critical role they played in this case, and the time, effort, and risks undertaken in helping secure the result obtained on behalf of the Class Members. In agreeing to serve as Class Representatives, these individuals formally agreed to accept the responsibilities of representing the interests of all Class Members. Throughout this litigation, Plaintiffs, who were former employees of Defendant, have cooperated immensely with my office and the office

1 of Wilshire Law Firm, PLC and have taken many actions to protect the interests of
2 the class. Plaintiffs provided valuable information regarding their hours worked, and
3 what duties were performed during those hours. Plaintiffs also provided information
4 regarding meal and rest periods taken and missed by Plaintiffs and the Class.
5 Plaintiffs participated in decisions concerning this action, assisted in preparation for
6 the mediation, and provided my office with the names and contact information of
7 potential witnesses in this action. Before we filed this case, Plaintiffs worked with
8 my office and Wilshire Law Firm, PLC to determine the viability of their claims.
9 Plaintiffs also provided information and documents relating to their employment with
10 Defendant. The information and documentation provided by Plaintiffs were
11 instrumental in establishing the wage and hour violations alleged in this action, and
12 the recovery provided for in the settlement agreement would have been impossible
13 to obtain without their participation.

14 66. At the same time, Plaintiffs faced many risks in adding themselves as
15 the class representatives in this matter. Plaintiffs faced actual risks with their future
16 employment, as putting themselves on public record in an employment lawsuit could
17 also very well affect their likelihood for future employment.

18 67. In turn, class members will now have the opportunity to participate in a
19 settlement, reimbursing them for wage violations they may have never known about
20 on their own or been willing to pursue on their own. If these class members would
21 have each tried to pursue their legal remedies on their own, that would have resulted
22 in each having to expend a significant amount of their own monetary resources and
23 time, which were obviated by Plaintiffs putting themselves on the line on behalf of
24 these other class members.

25 68. In the final analysis, this class action would not have been possible
26 without the aid of Plaintiffs, who put their own time and effort into this litigation and
27 placed themselves at risk for the sake of the class members. The requested
28 enhancement award for Plaintiffs for their service as the class representatives is a

1 relatively small amount of money considering the time and effort put into the
 2 litigation and in comparison, to enhancements granted in other class actions. The
 3 requested incentive award is therefore reasonable to compensate Plaintiffs for their
 4 active participation in this lawsuit. Defendant does not oppose the requested
 5 payments to these representatives as reasonable service awards and in consideration
 6 of the full releases given by Plaintiffs.

7 THE THIRD-PARTY ADMINISTRATOR QUALIFICATIONS AND STATEMENT
 8 OF NO CONFLICTS OR AFFILIATION

9 69. The parties have agreed that administration will be handled by a third-
 10 party administrator. In counsel's experience as class counsel in similar wage-and-
 11 hour actions with a similar number of employees, Simpluris is fully capable of
 12 administering the settlement at a competitive and reasonable cost and should be
 13 approved by the Court to administer the settlement notice process. Simpluris was
 14 selected because it submitted a low bid in the amount of \$11,000⁶ for administration
 15 services. Simpluris has also provided a declaration confirming its experience and its
 16 implementation of measures designed to protect Class Member data and Class
 17 Settlement funds. Finally, this firm has no relationship with Simpluris other than as
 18 a client retaining a vendor of services via an arms-length transaction. We have no
 19 ownership interest in Simpluris.

20 I declare under penalty of perjury under the laws of the State of California that
 21 the foregoing is true and correct. Executed on April 19, 2024, at Los Angeles,
 22 California.

23
 24 /s/ Kane Moon

25 Kane Moon

26
 27
 28 ⁶ Due to the increase in the class size, the costs of administration have increased to \$12,267.00.
 Admin Decl., ¶ 15.