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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**
12 **(UNLIMITED JURISDICTION)**

13 MARGARITA PEREZ and MARIA DE LA
14 LUNA HUERTA on behalf of themselves and all
15 others similarly situated, and the general public,
16 and as “Aggrieved Employees” on behalf of
17 other “Aggrieved Employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 WORKFORCE PERSONNEL, INC., California
21 Corporation; DIAMOND WIPES
22 INTERNATIONAL, INC., California
Corporation; and DOES 1–50, inclusive,

23 *Defendant(s).*
24
25
26
27
28

Case No. CIVSB2220822

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF MARIA
DE LA LUNA HUERTA’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: July 6, 2026
Hearing Time: 1:30 p.m.
Hearing Dept.: 17, The Honorable
Joseph T. Ortiz



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1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF MARIA DE LA**
2 **LUNA HUERTA’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
3 **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 Maria De La Luna Huerta (“Plaintiff”) in her lawsuit against
7 Diamond Wipes International, Inc. (“Defendant”). Plaintiff and Defendant are collectively
8 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 does not provide that any portion
13 of the consideration paid or deposited by the Defendant may revert to the Defendant.

14 ***Factual and Procedural Background***

15 4. Defendant DWI has been producing wipes and other personal care products.
16 Defendant employed Plaintiff as an operator and packer in California from about August 2022
17 until January 2023.

18 5. On September 07, 2022, named plaintiff Margarita Perez notified Defendant.
19 Workforce Personnel, Inc. (“Workforce”) (Defendant and Workforce are hereafter referred to as
20 “named Defendants”), and the California Labor and Workforce Development Agency
21 (“LWDA”), pursuant to the California Private Attorneys General Act of 2004, California Labor
22 Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations committed by
23 Defendant. A true and correct copy of the letter to the LWDA dated September 07, 2022 is
24 attached hereto as **Exhibit 2**.

25 6. On September 19, 2022, named plaintiff Margarita Perez filed a Class Action
26 Complaint in the San Bernardino County Superior Court, Case No. CIVSB2220822, against
27 Defendant on behalf of herself and others similarly situated, alleging causes of action on a class-
28 wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510,
29 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3)
30 Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify
31 (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6)
32 Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code



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1 §§ 17200, et seq.). A true and correct copy of the complaint is attached hereto as **Exhibit 3**. On
2 November 22, 2022, named plaintiff Perez filed a second complaint against the same named
3 Defendants under Private Attorneys General Act. A true and correct copy of Plaintiff's PAGA
4 complaint is attached hereto as **Exhibit 4**. On June 22, 2025, another former employee of
5 Defendant, Plaintiff Maria De La Luna Huerta, through Counsel, sent a letter to the LWDA and
6 the named Defendants alleging specific provisions of the California Labor Code named
7 Defendants violated. A true and correct copy of the letter to the LWDA dated June 22, 2025 is
8 attached hereto as **Exhibit 5**. On November 14, 2025, and per the stipulation of the Parties, named
9 plaintiff Margarita Perez filed a First Amended Complaint to add 1) Huerta as a plaintiff and 2)
10 PAGA claims in this action (with all supporting facts). A true and correct copy of the First
11 Amended Complaint is attached hereto as **Exhibit 6**. Defendant denies all of Plaintiff's
12 allegations and strongly contends that its wage and hour policies, practices and procedures are
13 fully compliant with all applicable laws.

14 7. Before agreeing to mediation, the Parties engaged in formal written discovery,
15 including the discovery of the names and contact information of the putative class members
16 though the *Belaire-West* notice process. On July 01, 2024, Plaintiff also requested that Defendant
17 informally disclose documents and data to enable Plaintiff to prepare for settlement discussions,
18 including the number of putative class members and aggrieved employees, the number of
19 paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims.
20 Plaintiff also requested a reasonable, randomly selected sample of Defendant's time and payroll,
21 and related personnel records. Finally, Plaintiff requested Defendant's written policies applicable
22 to the claims at hand and asked Defendant identify any and all comparable claims against it. The
23 Parties thereafter engaged in an informal, voluntary exchange of information in the context of
24 privileged settlement discussions to facilitate an early mediation.

25 8. Defendant contends that based on its records, there are 335 Class Members and
26 48,777 Total Work Weeks as of March 19, 2025 (i.e., as of the date the Parties participated in
27 mediation). Defendant produced the records of approximately 44 class members. The sample was
28 randomly selected. The sample consisted of time and payroll records, and related records.

9. Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff



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1 also employed the Raosoft⁹ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
2 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
3 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
4 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
5 of error of 43.3 percent was unacceptable. Using a margin of error of 15%, a confidence level of
6 95%, and a population size of 335, the Raosoft Sample Size Calculator recommended a sample
7 of 43. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached
8 as **Exhibit 7** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that
9 Plaintiff's data analyst evaluated is statistically reliable. *Id.*

10 10. On March 19, 2025, following much of the foregoing informal discovery and
11 exchange of information, the Parties participated in a mediation session presided over by Mediator
12 Steven G. Mehta, Esq, an experienced class action mediator. During the mediation, the Parties
13 had a full day of productive negotiations and reached agreement on a class-wide settlement after
14 the mediation session. During the mediation sessions, each side, represented by her / its respective
15 counsel, recognized the risk of an adverse result in the Action. The Parties ultimately agreed to
16 settle the Action and all other matters covered by this Agreement pursuant to the terms and
17 conditions of this Agreement.

18 *Similar Actions*

19 11. **Relevant Litigation and Claims.** I am not aware of any class, representative,
20 or other collective action in any other court, in this, or any other jurisdiction, that asserts
21 claims similar to those asserted in this action, on behalf of the class or group of individuals,
22 some or all of whom would also be members of the class to find in this action. I have made
23 a reasonable inquiry of the other members of my law firm and my counsel to determine
24 whether they are aware of any such similar actions. Based on these inquiries, I am aware of
25 no such similar actions. Defense Counsel and Defendant also represent that they are not aware

26 ⁹ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
27 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
28 programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage
advertises that is it "database web survey software for gathering information."
<http://www.raosoft.com/> . It also advertises, "The parameters of the sample size calculation are
something that you choose." <http://www.raosoft.com/suggestreading.html>.



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1 of any other pending matter or action asserting claims that will be extinguished or adversely
2 affected by the Settlement. Settlement, section 7.1.

3 *Ascertainable and Numerous Class*

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

9 13. **Numerosity.** The Settlement Class has sufficiently numerous members to render
10 joinder impractical. No set number is required as a matter of law to maintain a class action. The
11 California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that
12 there are approximately 335 Class Members for the period of September 19, 2018 to February 21,
13 2025. Plaintiff maintains that it would be impractical and economically inefficient to require each
14 Settlement Class Members to separately maintain an individual action or be joined as a named
15 plaintiff in this action. In light of these considerations, the Settlement Class' membership is
16 sufficiently numerous. Additionally, there are 244 Aggrieved Employees for the PAGA Period.

17 *Predominant Common Questions*

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



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1 incurred during the discharge of their duties; (5) Whether Defendant knowingly and intentionally
2 failed to provide the class with accurate wage statements; (6) Whether Defendant willfully failed
3 to provide the class with timely final wages; and (7) Whether Defendant engaged in unfair
4 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
5 respect to the class.

6 *Typicality*

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

15 *Adequacy*

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

21 17. Neither Plaintiff nor I have any conflicts of interest with the absent Settlement
22 Class Members. Plaintiff contends that she is an adequate class representative. Plaintiff and the
23 Class Members have strong and co-extensive interests in this litigation because they all worked
24 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from
25 the same alleged course of conduct, and there is no evidence of any conflict of interest between
26 Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated her commitment to the
27 Settlement Class by, among other things, retaining experienced counsel, providing counsel with
28 documents and extensively speaking with them to assist in identifying the claims asserted in this
case, assisting them in identifying witnesses, as well as exposing herself to the risk of attorneys'
fees and costs awards against her if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate
to serve as settlement class representative. The declaration of Plaintiff Maria De La Luna Huerta



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on this subject will be filed concurrently with this declaration.

Background of Class Counsel

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

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

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

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

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

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

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



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1 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
2 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
3 1999.

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

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

16 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
17 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
18 Agent, followed by an award of Attorneys' fees and costs.

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

23 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
24 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
25 first and only case to be successfully prosecuted through trial under the Labor Code Private
26 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
27 aggrieved employees against someone other than an employer for civil penalties including unpaid
28 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid



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1 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
2 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

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

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

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

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

17 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
18 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
19 court on behalf of nonexempt employees).

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

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

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



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

4 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
5 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
6 action settlement on behalf of medical devices employees).

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

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

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

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

19 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
20 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
21 on behalf of dairy and agricultural laborers).

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

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

o. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.



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1 BC511072 (appointed Class Counsel and granted final approval of class action settlement on
2 behalf of bobtail truck drivers).

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

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

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

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

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

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

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

27 w. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior
28 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

26. A class action is also superior to other means of adjudicating the issues in this



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

8 *The Settlement is Presumptively Fair*

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

19 *Exposure & Risk Analysis*

20 28. Plaintiff prepared “damages” estimates in advance of the mediation. Plaintiff
21 determined Defendant’s maximum possible exposure for restitution and penalties to be
22 approximately \$43,930,779.41 (consisting of \$10,044,902.12 in unpaid wages, \$11,941,866.66
23 in missed meal period premium wages, \$12,175,638.93 in missed rest break premium wages,
24 \$18,425.00 in unreimbursed expenses, \$1,358,700.00 for wage statement penalties, \$825,446.70
25 for waiting time penalties, and \$7,565,800.00 for civil penalties under PAGA. Plaintiff calculated
26 the damages based on the number of workweeks and pay periods provided by Defendant,
27 Plaintiff’s reports, and the sample data. True and correct copies of the spreadsheets I prepared for
28 mediation of this Action are collectively attached to this declaration as **Exhibit 8**.

29. The estimates are in essence “home run” projections that omit data points that will



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undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample data. However, based on the difficulties of proof, the Defendant's defenses, and the other attendant risks Plaintiff identifies below, Plaintiff estimates the likely awards at trial should Plaintiff prevail to be the following amounts:

- a. Unpaid wages with interest in the amount of \$1,004,490.21;
- b. Meal period premium wages with interest in the amount of \$1,194,186.67;
- c. Rest period premium wages with interest in the amount of \$1,217,563.89;
- d. Unreimbursed expenses with interest in the amount of \$1,842.50;
- e. Statutory pay stub penalties in the amount of \$135,870.00;
- f. Waiting time penalties in the amount of \$82,544.67; and
- g. Civil penalties in the amount of \$137,560.00.

The total of these amounts is \$3,774,057.94. The Gross Settlement Amount of \$595,079.40 is 15.77% of this amount. DS, ¶ 29. Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, Plaintiff believes a class settlement for \$595,079.40 is fair and reasonable.

30. **Risks Associated with Unpaid Wages Claim.** Plaintiff claims that Defendant required Plaintiff and the putative class members to work off the clock and complete these tasks before they could clock in at the beginning of their shifts: 1) submit to Covid-19 temperature checks, 2) don their protective gear, 3) place their personal belongings and cellphones in lockers, and 4) stand in long lines. There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, especially if Defendant can prove that its policies throughout the relevant time period prohibited off-the-clock work. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide



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1 whether there are circumstances where compensable time is so minute or irregular that it is
2 unreasonable to expect the time to be recorded.”). Following *Troester*, Defendant contends that
3 the *de minimis* doctrine may apply here because the time spent off the clock were minute and
4 insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim.

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

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

25 33. Defendant contends it did not impede or discourage Plaintiff, or any other
26 employees, from taking their meal or rest periods. Defendant’s policies mandate that employees
27 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
28 of their meal breaks each day on their time records. The time records that comprise the random
sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
taken the vast majority of the time. Of the time records that show a late, short or no lunch,
individualized evidence may be necessary to determine whether they occurred due to conduct of



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1 the Defendant or each of the employees concerned. Accordingly, there is a significant risk that
2 the value of Plaintiff's meal period claim would be substantially reduced at trial.

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

17 35. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
18 Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business
19 expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that
20 Defendant required Plaintiff and the Class Members to use their personal items including
21 protective gear and tools, and failed to indemnify them for these business expenses. Defendant
22 presented evidence that it has supplied its employees with tools, equipment, and other supplies.
23 As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature
24 and unfit for class wide resolution.

25 36. **Risks Associated with the Statutory Wage Statement Penalty Claims.** Plaintiff
26 also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties.
27 Under Labor Code section 226, wage statements must include various information, including the
28 applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff's wage
statement claim has the same underlying risks as the above claims, as it is derivative of them. On
their face, the wage statements issued by Defendant comply with the requirements of Labor Code
§ 226.



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1 37. **Risks Associated with the Waiting Time Penalties Claims.** Without proof
2 willful behavior, Plaintiff will be unable to recover these penalties.

3 38. **Risks Associated With the PAGA Claim.** As the Operative Complaint makes
4 clear, Plaintiff predicates her PAGA claim on the same Labor Code violations as her other
5 claims. Plaintiff's "damages" spreadsheet, Exhibit 8, states the length of the relevant time period
6 for the PAGA claim and the number of employees allegedly employed during that time period.
7 Plaintiff's "damages" spreadsheet, Exhibit 8 also states the total amount of civil penalties for
8 which the Defendant is potentially liable if all allegations are proven. As I state above in
9 connection with Plaintiff's claims for statutory penalties with regard to proof Defendant's intent,
10 knowledge and willfulness, there are serious risks to proving Defendant acted intentionally,
11 knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff
12 calculated the agreed-upon amount of civil penalties by considering the risks outlined above and
13 that the Settlement already provides substantial payments for the Labor Code violations that the
14 civil penalties claim is predicated on. Regarding PAGA, a court has discretion to award a lesser
15 amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit*
16 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth
17 above, Defendant has posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA
18 allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the
19 Court would consider the maximum civil penalty available to be confiscatory.

20 39. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
21 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
22 counsel estimated a maximum possible exposure of approximately \$7,135,700.00 in civil
23 penalties. This estimate did not take into account any of the risks discussed above and assumed a
24 violation for every single pay period. Plaintiff's counsel also assessed multiple penalties for the
25 same pay period for the same alleged violations of different Labor Code provisions and derivative
26 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
27 this fashion may be appropriate to determine the amount in controversy for purposes of removal
28 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
multiple PAGA penalties for the same violation for the same pay period under different Labor
Code provisions. This may be because the PAGA does not provide for what many employers
characterize as claim splitting and not merely stacking.



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40. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.¹⁰ PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.¹¹ 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.

¹⁰ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

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

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

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

¹¹ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 9**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 10**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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1 41. **Risks Associated With A Pick-Up Stix Campaign.** Plaintiff also considered the
2 possibility that Defendant could launch a *Pick Up Stix* campaign and pursue individual release
3 agreements from the Class Members. An employer enjoys the right to settle a putative class
4 member's disputed wage claims individually, without the consent or involvement of class
5 counsel. See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above,
6 Defendant may launch a "pick off" settlement campaign to pursue individual release agreements
7 from the Class Members, thereby potentially narrowing the size of the Settlement Class – 244
8 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may
9 not have sufficient number of employees to represent. This led to a significant reduction of claim
value in settlement negotiations.

10 42. Plaintiff's Counsel applied discounts to the maximum possible exposure to
11 account for all other risks discussed below. While it is difficult to assign anything but crudely-
12 determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up*
13 *Stix* campaign would preclude recovery for such employees is substantial and alone justifies a
14 significant discount because Defendant would likely by trial have gathered releases from the
15 majority of the Class Members. A settlement for approximately 15.77% of the potential recovery
16 is a proportion substantially in excess of recovery proportions sanctioned by existing case law.¹²

17 43. While the evidence gathered through Plaintiff's discovery supports the merits of
18 the claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation
19 presents significant risks that support a downward departure from Defendant's estimated liability
20 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
21 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
22 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

23
24 ¹² 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.").



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1 approval. *Id.*, *Torrise v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
2 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
3 *Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's
4 financial stability "strongly supports the reasonableness of the settlement"); *See Laguna v.*
5 *Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

6 *Allocation of the PAGA Payment*

7 44. The settlement of PAGA penalties in the sum of \$5,000.00, of which 75%
8 (\$3,750.00) will be paid to the LWDA and 25% (\$1,250.00) will be distributed to the Aggrieved
9 Employees, is reasonable and appropriate under the circumstances. The Parties negotiated a good
10 faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved Employees. The
11 portion to be paid to the LWDA was not the result of self-interest at the expense of other
12 Aggrieved Employees.

13 *Attorneys' Fees and Costs*

14 45. I intend to request Class Counsel Attorneys' Fees of \$198,359.80 (one-third of the
15 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
16 estimate to be approximately \$11,000.00¹³ and will be no more than \$15,000.00 at the conclusion
17 of matters related to the Settlement. In view of my efforts and risks in pursuing this case these
18 amounts are well within the range of reasonableness and thus warrant this Court's preliminary
19 approval. In addition, based on my experience in wage and hour class action matters, fee awards
20 of approximately one-third of the settlement fund are routinely approved as reasonable. I have
21 been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage
22 and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior
23 Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior
24 Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*,
25 San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v.*
26 *Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-
27 third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court,
28 Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles
County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources,*

¹³ This is half of the costs I have incurred in this case. The remaining half will be requested in the settlement with Workforce.



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1 *LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund);
 2 *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-
 3 third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-
 4 third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
 5 BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of
 6 California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et
 7 al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal*
 8 *Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund);
 9 *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third
 10 of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund);
 11 *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King*
 12 *v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay &*
 13 *Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin*
 14 *Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight*
 15 *Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of
 16 fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No.
 17 RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for
 18 the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v.*
 19 *Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern
 20 District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v.*
 21 *American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund);
 22 *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No.
 23 BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
 24 BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case
 25 No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San
 26 Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

26 46. The amount of fees and costs requested are commensurate with (1) the risk Class
 27 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case,
 28 (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



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1 information from putative class members, met and conferred with Defendant's counsel on
2 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
3 by Defendant and obtained through other sources, researched applicable law, and estimates of
4 "damages" for purposes of settlement discussions, among other tasks.

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

10 48. Pursuant to the Attorney Consultation and Fee Contract for Contingency Cases
11 signed by Plaintiff, the Spivak Law Firm will receive 75% of the attorneys' fees awarded by this
12 Court. Benowitz Law Corporation will receive the remaining 25%. A true and correct copy of the
13 Attorney Consultation and Fee Contract for Contingency Cases signed by Plaintiff is attached to
14 this declaration as **Exhibit 11**.

15 49. Class Counsel's request for attorneys' fees is reasonable as a percentage of the
16 Settlement and those efforts that occasioned payment of individual settlements to employees of
17 Defendant in advance of this Class Settlement. Plaintiff and the Class, as the prevailing party
18 plaintiffs in settlement, are entitled to recover attorneys' fees and costs for their wage claims, and
19 the associated interest and penalties. *See* Lab. Code §§ 218.5, 1194, 2699(g); Code Civ. Proc. §
20 1021.5(a); *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420. An attorneys' fees award is
21 justified where the legal action has produced its benefits by way of a voluntary settlement. *See*,
22 *e.g.*, *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-1291; *Westside Cmty. for Indep. Living, Inc.*
23 *v. Obledo* (1983) 33 Cal.3d 348, 352-353. California law provides that when a party is entitled to
24 statutory fees, the party must be compensated for all time reasonably spent seeking to accomplish
25 the desired result. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 624.

26 50. Class Counsel's request for attorneys' fees of \$198,359.80 is also fair and
27 reasonable based on their lodestar as cross-checked against the percentage of the recovery.
28 "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class
actions average around one-third of the recovery." *See Chavez v. Netflix, Inc.* (2008) 162
Cal.App.4th 43, 66, fn.11 ("Chavez"); *Laffitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1
Cal.5th 480, 376 P.3d 672, No. S222996, 2016 WL 4238619, at *17 (holding that courts can use



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1 the percentage method for the calculation of attorneys' fees); *In re Pacific Enter. Sec. Litig.* (9th
2 Cir. 1995) 47 F.3d 373, 379 (“*Pacific*”) (affirming 33% fee award); *Williams v. MGM-Pathe*
3 *Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund
4 amount). The Court in *Laffitte*, recognizing the advantage of the percentage method in
5 encouraging counsel “to seek an early settlement and avoid[ing] unnecessarily prolonging the
6 litigation,” held that “the percentage method is a valuable tool that should not be denied our trial
7 courts.” *Id.* This is also consistent with Class Counsel’s experience in wage and hour class actions
8 in which attorneys are typically awarded one third of the Gross Settlement Amount in State Court.

9 51. Under California law, lodestar multipliers can range from 2 to 4 or even higher.
10 *See, e.g., Chavez, supra*, 162 Cal.App.4th at 49; *Wershba v. Apple Computer, Inc.* (2001) 91
11 Cal.App.4th 224, 255. In class actions such as this one, where the value of the benefit conferred
12 to the class “can be monetized with a reasonable degree of certainty,” a court may “adjust the
13 lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
14 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
15 litigation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557. In doing so, “the court
16 determines, retrospectively, whether the litigation involved a contingent risk or required
17 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to
18 approximate the fair market rate for such services.” *Id.* at p. 556.

19 52. Class Counsel’s requested attorneys’ fees will also be justified under the lodestar
20 method. In this case, Class Counsel have a total lodestar of approximately \$194,282.75 ¹⁴without
21 the use of any multiplier, which results in a multiplier of 1.02 when compared against the Class
22 Counsel request for attorneys’ fees. A detailed report of the costs incurred and a general summary
23 showing of the pre-multiplier lodestar by Class Counsel will be provided at final approval.

24 ***Class Representative Service Payment***

25 53. The Settlement provides that Plaintiff may seek a Class Representative Service
26 Payment of \$5,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this Action
27 and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
28 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
retaining experienced counsel, providing them with information about her work history with

¹⁴ This is half of my firm’s lodestar in this case. The remaining half will be reported in the settlement with Workforce.



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1 Defendant and Defendant's policies and practices with respect to the wage and hour claims at
2 issue, assisting counsel in identifying witnesses, and being actively involved in the settlement
3 process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been
4 exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and
5 costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks
6 that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
7 Representative Service Payment is fair, adequate, and reasonable, and thus warrant preliminary
8 approval. Plaintiff Maria De La Luna Huerta's declaration, filed concurrently with mine, provides
9 further information supporting her request for the Class Representative Service Payment.

10 54. Awarding Plaintiff 1.47% of the GSA is entirely reasonable given Plaintiff's
11 efforts in this case undertaken on behalf of absent Class Members. In this case, Plaintiff has
12 devoted several hours of her time advancing the interests of the Class Members and also expects
13 to devote additional hours of her time with Class Counsel overseeing the administration of the
14 Settlement if the Court grants final approval of the Settlement. *See generally* Declaration of Maria
15 De La Luna Huerta. Plaintiff has done this by, among other things, retaining experienced counsel,
16 providing them with extensive information about her work history with Defendant and
17 Defendant's policies and practices with respect to the wage and hour claims at issue, assisting
18 them in contacting absent Class Members to gather information, participating in a full day of
19 mediation, foregoing pursuit of her individual claims in favor of a fair class-wide resolution, and
20 being actively involved in the settlement process to ensure a fair result for the Class Members as
21 a whole.

22 55. As Class Representative, Plaintiff agreed to (1) consider the interests of the class
23 just as she would consider her own interests and, in some cases, to put the interests of the class
24 before her own interests; (2) actively participate in the lawsuit, as necessary, by among other
25 things, answering interrogatories, producing documents to named Defendants and giving
26 deposition and trial testimony *if requested*; (3) travel to give such testimony *if requested*; (4)
27 recognize and accept that any resolution of the lawsuit by dismissal or settlement, is subject to
28 court approval, and must be designed in the best interest of the class as a whole; (5) follow the
progress of the lawsuit and provide all relevant facts to Class Counsel; (6) champion many other
people with similar claims and injuries because of the importance of the case and that necessity
that all Class Members benefit from the lawsuit; and (7) fight for a resolution in which the



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1 individual recovery to each Class Members, including Plaintiff, may be relatively small. Plaintiff
2 agreed to shoulder all of these responsibilities in exchange for a proportionate share of funds made
3 available for distribution to the Class Members. *See generally* Declaration of Maria De La Luna
4 Huerta. Plaintiff had no guarantee of a Class Representative Service Payment. This justifies the
5 Class Representative Service Payment sought.

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

- 16 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
17 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
18 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
19 and correct copy of the court's order is attached to this declaration as **Exhibit 12**.
- 20 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
21 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and
22 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
23 of the court's order is attached to this declaration as **Exhibit 13**.
- 24 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
25 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs
26 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
27 correct copy of the court's order is attached to this declaration as **Exhibit 14**.
- 28 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721
(U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay
\$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid
wages). A true and correct copy of the court's order is attached to this declaration



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as **Exhibit 15.**

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

57. As I explain further below, Plaintiff’s individual share of the Net Settlement Amount will be less than that of some absent Participating Class Members. Under the Settlement, Participating Class Members will receive a *pro rata* distribution of the Settlement proceeds proportionate to the period of time he or she worked for Defendant during the Class Period, compared to the total of the total period of time worked by all Participating Class Members during the Class Period, as reflected by Defendant’s records. Because Plaintiff was employed for a shorter period during the Class Period, some Class Members worked more Work Weeks than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when she brought her lawsuit, it is unfair to limit Plaintiff’s recovery to an amount not much greater than an absent Class Members’ share of the recovery. To encourage employees like Plaintiff to don the helm of class champions (and thereby advance the important public policies behind class actions), the Court should award something substantial to Plaintiff for her readiness to receive less than absent Class Members while assuming all the risk and delay of payment.

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



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1 in the first place.

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

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

21 61. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
22 made this case possible for a number of reasons. First, Plaintiff challenged her employers on an
23 unlawful practice that led to Defendant paying a large percentage of the unpaid wages in question
24 plus interest to the remainder of its employees. Plaintiff provided Class Counsel with detailed
25 descriptions of how Defendant’s business operates, the hours and scheduling of employees, and
26 the nature of the work Class Members performed. *See generally* Declaration of Maria De La Luna
27 Huerta.

28 62. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
has given up the right to pursue individual claims and recover substantially more in unpaid wages,
interest, waiting time penalties, pay stub penalties, and civil penalties that she will release as part
of the Settlement. Plaintiff did not seek an individual settlement for her claims at all, instead



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1 choosing to prosecute the claims on behalf of the Class Members.

2 63. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
3 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
4 Class Members and still Plaintiff achieved a settlement of \$\$595,079.40 . This outstanding result
5 calls for significant awards to Plaintiff for making the result possible. If the Court is disinclined
6 to award Plaintiff all or part of the Class Representative Service Payment requested, Class
7 Counsel request that the Court allocate the difference to Plaintiff from Class Counsel's requested
8 attorney fee award.

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

10 64. **Individual Class Payments.** At 21.06 per hour (the average Class Members's
11 hourly wage), the average estimated Individual Class Payment to Participating Class Members is
12 the equivalent of over 50 hours of unpaid wages (the primary remedies sought) (\$1,073.79/ \$21.06
13 = 50.98 hours). Thus, this is a result the Class can be proud of in view of the significant risks.

14 65. Defendant estimates that there are 48,777 Work Weeks for the Class Period. So,
15 each Work Week has a value of approximately \$7.37 (\$359,719.60 Net Settlement Amount /
16 48,777 Work Weeks = \$7.37). Plaintiff had approximately 22 Work Weeks during the Class
17 Period. Based on this, it is anticipated that Plaintiff Maria De La Luna Huerta will receive an
18 Individual Class Payment of approximately \$160.75 as a Participating Class Member (22 Work
19 Week x \$7.37 = \$162.14) while the average estimated Individual Class Payment to Participating
20 Class Members will be approximately \$1,073.79. Some Class Members – those who worked more
21 Work Weeks during the Class Period - will receive more, and some less. The highest possible
22 Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Work
23 Weeks in the Class Period) will be approximately \$2,703.33. The lowest possible Individual Class
24 Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in
25 the Class Period) will be approximately \$7.37. Some Class Members – those who worked more
26 Work Weeks during the Class Period - will receive more, and some less.

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



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67. **Individual PAGA Payments.** I estimate that the average Aggrieved Employees Individual PAGA Payments will be \$5.12. Plaintiff's Individual PAGA Payments, her individual share of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employees will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendant during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendant's records. Plaintiff estimates that there are 13,756 Aggrieved Employees paychecks for the PAGA Period. So, each Aggrieved Employees paycheck from the PAGA Period has a value of approximately \$0.09 (25% of \$5,000.00 in PAGA Penalties / 13,756 Aggrieved Employees paychecks = \$0.09). It is anticipated that Plaintiff Maria De La Luna Huerta will receive an Individual PAGA Payment of approximately \$0.91 as an Aggrieved Employees (10 paychecks during the PAGA Period x \$0.09 paycheck value = \$0.91) while the average estimated Individual PAGA Payments to an Aggrieved Employees will be approximately \$5.12 (\$1,250.00, 25% of PAGA Penalties / 244 Aggrieved Employees during the PAGA Period = \$5.12 Individual PAGA Payments). Some Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive more, and some less. The highest possible Individual PAGA Payments to an Aggrieved Employees (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately \$10.74. The lowest possible Individual PAGA Payments to an Aggrieved Employees (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately \$0.09..

The Notice Packet

68. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 4.4.1. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as Exhibits A, B, C, and D to the Settlement) provides Class Members with all pertinent information both in English and Spanish that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Members; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object



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1 to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members
2 will be calculated; (8) how the disputes will be resolved; and (9) the estimated settlement shares
3 for each Class Members. Additionally, the Notice will include the number of eligible Work Weeks
4 a Class Members had during the Class Period. Accordingly, the Notice should be approved
5 because it describes the Settlement with sufficient clarity and specificity to explain to Class
6 Members what this action is about, their rights under the Settlement, and how to exercise those
7 rights. As such, the Parties' proposed Notice fully complies with California Rules of Court
8 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed
9 settlement.

Administrator Duties

10 69. The duties of the Settlement Administrator are spelled out in the Settlement and in
11 the bid provided by Apex Class Action a true and correct copy of which is attached hereto as
12 **Exhibit 18**.

Administration Costs

13 70. With regard to the settlement administration costs provision, it is reasonable.
14 Before agreeing to Apex Class Action the Parties sought and reviewed bids from other reputable
15 third-party administrators: (A) Phoenix Class Action Administration Solutions = \$9,500 and (B)
16 Simpluris = \$17,479. A true and correct copy of the bid from Phoenix Class Action
17 Administration Solutions is attached hereto as **Exhibit 19**. A true and correct copy of the bid from
18 Simpluris is attached hereto as **Exhibit 20**.

Notice of Settlement to the LWDA

19 71. Pursuant to Labor Code § 2699(1)(2), Plaintiff has provided notice of this
20 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
21 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 21**.

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

24 Executed on Tuesday, June 09, 2026 at New York, New York.



25
26 **DAVID SPIVAK,**
27 **Declarant**



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