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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOANA RIOS LAGUNAS, on behalf of
herself and the Class members;

Plaintiff,

vs.

YOUNG ADULT INSTITUTE, INC.; and
DOES 1–100, inclusive,

Defendants.

Case No. 3:23-cv-00654-RS

Hon. Richard Seeborg

DECLARATION OF CAROLYN H.
COTTRELL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

Date: March 7, 2024

Time: 1:30 p.m.

Courtroom: 3, 17th Floor

Complaint Filed: February 14, 2023

Trial Date: None Set

DECLARATION OF CAROLYN H. COTTRELL

I, Carolyn H. Cottrell, hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of California (SBN 166977) and am admitted to practice law before this Court, the United States District Court, Northern District of California.

2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK specializes in class, collective, and PAGA litigation in state and federal court.

3. I am counsel of record for Plaintiff Joana Rios Lagunas, on behalf of herself and the Class members (“Plaintiff”), in the above-captioned case. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”). I am familiar with the file, the documents, and the history related to the case. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.

4. Attached hereto as **Exhibit 1** is a true and correct copy of the Class Action and PAGA¹ Settlement Agreement and Release (the “Settlement Agreement” or the “Settlement”), executed by the Parties on January 18, 2024.

QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class actions and employment class actions. In November 2012, the Recorder listed the firm as one of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.

6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions includes: *Beissel v. Western Flyer Express, LLC* (Case No. 5:21-cv-00903-R) (Western District of Oklahoma, November 3, 2023) (final approval of Oklahoma class and FLSA collective action settlement for deceptive trade practices, unlawful sale

¹ “PAGA” means the Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.*

of business opportunities, and wage and hour claims on behalf of independent contractor truck drivers); *Sishi, et al. v. Eskaton Props. Inc., et al.*, (Case No. RG21100764) (Alameda County Superior Court, August 4, 2023) (final approval of California class and PAGA representative action settlement); *Wright, et al. v. Frontier Mgmt LLC, et al.*, (Case No. 2:19-cv-01767-JAM-CKD) (Eastern District of California, March 13, 2023) (final approval of California, Illinois, Oregon, and Washington class and FLSA collective action settlement); *Campos v. Extra Express (Cerritos) Inc.*, (Case No. BC715057) (Los Angeles Superior Court, Jan. 18, 2023) (final approval of California law wage and hour class action settlement alleging misclassification of short haul delivery drivers); *Huddleston v. John Christner Trucking, LLC*, (Case No. 4:17-cv-00549-GKF-CDL) (Northern District of Oklahoma, October 31, 2022) (final approval of California and Oklahoma class and FLSA collective action settlement where Plaintiff obtained class certification on behalf of misclassified truck drivers); *Tinaco v. Quik Stop Markets, Inc.* (Case No. RG20061119) (Alameda County Superior Court, June 23, 2022) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Ramirez, et al. v. Rite Aid Corp., et al.*, (Case No. CV 20-3531-GW-SKx) (Central District of California, May 19, 2022) (final approval of California class action and PAGA representative action settlement); *Madrigal v. Mission Lakes Country Club, Inc.* (Case No. RIC2003428) (Riverside County Superior Court, May 18, 2022) (final approval of California class action and PAGA representative action); *Hazel v. Himagine Sols., Inc.* (Case No. RG20068159) (Alameda County Superior Court, Nov. 2, 2021) (final approval of a California class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI Mgmt., Inc.* (Case No. 34-2018-00237315) (Sacramento County Superior Court, October 20, 2021) (final approval of a California class action settlement in action that alleged improper billing for workers compensation charges by an apartment complex management company); *Etcheverry v. Franciscan Health Sys., et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of Washington, October 19, 2021) (final approval of hybrid Fair Labor Standards Act and Washington

class action); *Jean-Pierre, et al. v. J&L Cable TV Servs., Inc.* (Case No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021) (final approval of hybrid Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-WQH-AHG) (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Commcn's CA, Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid Fair Labor Standards Act and California Labor Code class action); *Villafan v. Broadspectrum Downstream Servs., Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California, April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Commc'ns, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Servs., Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked,

failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enters., Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras Grp., Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Sys., Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to

provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clock work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements to retention specialists working for cable companies); *Friend, et al. v. The Hertz Corp.*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers

1 allegedly misclassified as independent contractors); among many others.

2 7. Nearly my entire legal career has been devoted to advocating for the rights of
3 individuals who have been subjected to illegal pay policies, discrimination, harassment, and
4 retaliation, and representing employees in wage and hour and discrimination class actions. I have
5 litigated hundreds of wage and hour, employment discrimination, and civil rights actions, and I
6 manage many of the firm's current cases in these areas.

7 8. I am a member of the State Bar of California, and have had memberships with Public
8 Justice, the National Employment Lawyers Association, the California Employment Lawyers
9 Association, and the Consumer Attorneys of California. I served on the Board of Directors for the
10 San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of
11 the "Top Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman
12 Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super
13 Lawyer every year since 2014. I earned my bachelor's degree from the University of California, and
14 I am a graduate of the University of the Pacific, McGeorge School of Law.

15 **CASE SUMMARY**

16 **The Operative Complaint**

17 9. Plaintiff filed her initial Class Action Complaint on February 14, 2023 in this Court,
18 alleging violations under California wage and hour laws on behalf of a putative California class against
19 Young Adult Institute, Inc. On April 4, 2023, Plaintiff filed her PAGA Action in Alameda County
20 Superior Court, alleging claims against Defendant on behalf of herself, the State of California, and
21 Aggrieved Employees (the "PAGA Action").

22 10. For purposes of Settlement, the Parties agreed to stipulate to amend the Complaint in
23 this Action to include the PAGA claims asserted in the PAGA Action and add additional claims for
24 failure to maintain accurate payroll records and failure to provide sick pay.

25 **Discovery and Investigation**

26 11. Following the Parties' agreement to participate in early mediation of this matter, the
27 Parties engaged in informal discovery, through which Defendant produced hundreds of pages of
28 documents, including all time and pay records for the Class, handbooks and written policies, and

1 Plaintiff's personnel file. Documents produced by Defendant prior to mediation included time-punch
2 records (*i.e.*, clock-in and clock-out times), payroll information, timekeeping, compensation, and meal
3 and rest break policies applicable to hourly, non-exempt employees, as well as Defendant's financial
4 documents.

5 12. Plaintiff's Counsel has made a thorough and independent investigation of the facts and
6 law relating to the allegations in the Action. In agreeing to the Settlement, Plaintiff has considered: (a)
7 the facts developed during pre-mediation informal discovery and the Parties' mediation process and
8 the law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the
9 outcome of the claims alleged against Defendant; (c) the desirability of consummating the Settlement
10 according to its terms; and (d) Defendant's financial condition and ability to pay a settlement.

11 13. Plaintiff's counsel extensively reviewed this information and documents to perform a
12 detailed investigation of Defendants' timekeeping and payroll policies and practices, which included
13 a comprehensive damages analysis. Based on the information analyzed, Plaintiff and Class Counsel
14 have concluded that the terms of the Settlement are fair, reasonable and adequate, and that the
15 Settlement is in the best interests of Plaintiff, the Class Members, and the Aggrieved Employees to
16 resolve their claims against Defendant.

17 **Mediation and Settlement**

18 14. On September 1, 2023, the Parties participated in a full-day mediation with Steve Pearl,
19 a highly skilled mediator with years of experience in wage-and-hour actions. The case did not settle
20 that day, but the Parties subsequently agreed to the mediator's proposal, which included the
21 substantive terms of the Settlement, on September 11, 2023.

22 15. The Parties then spent several months negotiating the Settlement Agreement, with
23 several rounds of edits related to the terms and details of the Settlement. The Parties negotiated the
24 specific terms of the Settlement at arms' length and executed a long-form agreement (the Settlement),
25 subject to the Court's approval, on January 18, 2024.

26 16. Throughout the mediation process, the Parties engaged in serious and arm's-length
27 negotiations, culminating in the Settlement.
28

THE SETTLEMENT

Basic Terms and Value of the Settlement

17. Defendant has agreed to pay a non-reversionary Gross Settlement Amount of \$850,000.00 to settle all aspects of the case. The Net Settlement Amount is defined as the Gross Settlement Amount, less deductions for: Service Award to Plaintiff (not to exceed \$10,000.00), attorneys' fees to Class Counsel (not to exceed 33 1/3%, or \$283,333.33), Class Counsel's costs (not to exceed \$12,000.00), administrative expenses to the Settlement Administrator (estimated not to exceed \$12,050.00), the LWDA PAGA Payment for its 75% share of the PAGA penalties (\$15,000.00), and the Net PAGA Amount distributed to the Aggrieved Employees (\$5,000.00). After deducting these figures from the \$850,000.00 Gross Settlement Amount, the Net Settlement Amount to be paid to participating Class Members – *i.e.*, Class Members who do not exclude themselves from the Settlement – is currently estimated to be approximately \$512,616.67.

18. Defendant's documents and time and pay data indicate that there are approximately **299** Class Members who worked approximately 9,972 workweeks.

19. The Parties agreed to use Phoenix Class Action Administration Solutions to administer the settlement. Plaintiff's Counsel obtained the proposals of three different settlement administrators that Plaintiff's Counsel has successfully used in prior actions. Plaintiff's Counsel provided the same type of notice and claims payment information to each potential settlement administrator, with the exact same parameters required under the settlement. Plaintiff's Counsel has successfully worked with Phoenix on multiple settlement and notice administrations in the past, including most recently, in the settlement administration in the hybrid class and FLSA action *Rodriguez v. Tri-Wire Eng'g Sols., Inc., et al.*, Case No. 1:21-cv-10752 (District of Massachusetts) and in the hybrid class and FLSA action *Randall v. Integrated Commc'n Servs. Inc.*, Case No. 3:20-cv-05438-DGE (Western District of Washington). Having chosen Phoenix's proposed lower bid for settlement administrators with whom Plaintiff's Counsel has worked with successfully in the past, I am confident that the figure provided by Phoenix is reasonable in relation to the value of the Gross Settlement Amount.

PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE SETTLEMENT CLASS**Certification**

20. The approximately 299 Class Members render the class so large as to make joinder impracticable. The Class Members are readily identifiable from Defendant's payroll records.

21. Defendant has uniform policies applicable to all Class members. Specifically, Defendant's uniform policies apply to all non-exempt employees, including: Defendant's policy of not paying Class Members overtime premiums for working more than 8 hours per day and for requiring Class Members to attend weekly meetings and perform work while off-the-clock before and after shifts, Defendant's policy of requiring employees to use common time recording devices, Defendant's policy, until December 2022, of requiring Class Members to remain on the clock and continue working during meal periods, and Defendant's alleged policies that still require Plaintiff and Class Members to routinely skip their meal and rest periods, take them late, or cut them short Plaintiff's derivative claims will rise or fall with the primary claims. Because these questions can all be resolved at the same juncture, Plaintiff contends the commonality requirement is satisfied for the Class. Plaintiff alleges that the wage and hour violations are in large measure borne of Defendant's standardized policies, practices, and procedures, creating pervasive issues of fact and law that are amenable to resolution on a class-wide basis. These issues include: whether Defendant's practice of failing to pay Class Members for time worked over 8 hours in a day at the proper overtime rate, and failure to pay premium payments at the regular hourly rate for non-compliant meal and rest periods violate California law.

22. Plaintiffs' claims are typical of those of all other Class Members. They were subject to the alleged illegal policies and practices that form the basis of the claims asserted in this case. Defendant's overtime policies and practices and the timekeeping and payroll data confirm that Plaintiff and other Class Members were subjected to the same alleged illegal policies and practices to which Plaintiff was subjected.

23. Plaintiff's claims are in line with the claims of the Class, and Plaintiff's claims are not antagonistic to the claims of Class Members. Plaintiff has prosecuted this case with the interests of the Class Members in mind. Moreover, Plaintiff's Counsel has extensive experience in class action and employment litigation, including wage and hour class actions, and do not have any conflict with the

1 class.

2 24. Plaintiff contends the common questions raised in this action predominate over any
3 individualized questions concerning the Class. Resolution of Plaintiff's claims hinges on the uniform
4 policies and practices of Defendant, rather than the treatment the putative Class Members experienced
5 on an individual level. As a result, the resolution of these alleged class claims would be achieved
6 through the use of common forms of proof, and would not require inquiries specific to individual class
7 members.

8 25. Plaintiff contends that the class-action mechanism is a superior method of adjudication
9 compared to a multitude of individual suits. Issues raised by the present case are much better handled
10 collectively by way of a settlement. The Settlement presented by the Parties provides finality, ensures
11 that workers receive redress for their relatively modest claims, and avoids clogging the legal system
12 with numerous cases.

13 **The Settlement is Fair, Reasonable, and Adequate.**

14 26. A review of the Settlement shows the fairness, reasonableness, and adequacy of its
15 terms.

16 27. The Gross Settlement Amount of \$850,000 represents approximately 31% of the
17 \$2,715,817.00 total that Plaintiff calculated for core claims for unpaid meal and rest premiums, unpaid
18 overtime wages, and unreimbursed business expenses.

19 28. When adding the calculated derivative penalties, this settlement amount represents
20 approximately 14.2% of Defendant's total potential exposure of \$6,006,623.00. The PAGA Amount
21 of \$20,000.00 also represents 2.3% of the Gross Settlement Amount.

22 29. Based on the discovery produced, including payroll and timekeeping data, as well as
23 review of relevant documents and policies, Plaintiff made reasonable assumptions regarding the wage-
24 and-hour violation rates, including that Class Members worked an average of 4 hours off-the-clock
25 each week, which includes one to one and a half hours spent per week attending meetings while off
26 the clock, as well as work performed before clocking in and after clocking out of shifts and while off-
27 the-clock during meal periods. Plaintiff's Counsel's analysis of the records also found noncompliant
28 meal periods 73% of the time, and that Class Members were subject to noncompliant rest periods 85%

1 of the time. Plaintiff also calculated that the 299 Class Members worked approximately 9,972 work
2 weeks during the relevant time period, at an average hourly rate of \$27.05.

3 30. Using these assumptions and other datapoints derived from the timekeeping and payroll
4 information, and further assuming that Plaintiff and Class Members would certify all of their claims
5 and prevail at trial, Plaintiff's Counsel calculated the total substantive potential exposure if Plaintiff
6 prevailed on all of her claims of approximately \$2,715,817.00 and the total exposure of \$6,006,623.00.

7 31. This total exposure is further broken down as follows: approximately \$548,415.00 for
8 unpaid meal break premiums; approximately \$904,295.00 for unpaid rest break premiums;
9 approximately \$1,200,783.00 for unpaid off-the-clock work at the overtime rate; approximately
10 \$62,324.00 for unpaid business expenses; approximately \$452,613.00 for failure to provide accurate
11 wage statements; approximately \$795,375.00 for waiting time penalties; and approximately
12 \$2,042,818.00 for PAGA penalties.²

13 32. The derivative and PAGA claims – totaling approximately \$3,290,806.00 – are
14 premised on, and rise and fall with, the substantive violations.

15 33. These figures are based on Plaintiff's assessment of a best-case-scenario. To obtain
16 such a result at trial, Plaintiff would have to, at the minimum: (1) certify all claims and withstand any
17 decertification motions; (2) prove that each Class Member worked off-the-clock attending unpaid
18 meetings, before and after shifts, and during meal and rest breaks; (3) prove that each Class Member
19 did not receive overtime premium payment pursuant to California law; (4) prevail on the merits on all
20 claims; (5) prove that Defendant acted knowingly or in bad faith; and (6) prove that all Class Members
21 experienced the violations at the levels described above for every shift.

22 34. The Gross Settlement Amount is a negotiated amount that resulted only after arm's
23 length negotiations following a full-day mediation session with a well-respected mediator, and
24

25 ² Given that courts decline to "stack" PAGA penalties for single substantive violations, Plaintiff assumed
26 one PAGA violation per pay period, per PAGA Employee for purposes of its analysis. *See Smith v. Lux*
27 *Retail N. Am., Inc.*, No. C 13-01579 WHA, 2013 U.S. Dist. LEXIS 83562, at *9 (N.D. Cal. June 13, 2013)
28 ("For the single mistake of failing to include commissions in the overtime base, plaintiff has asserted five
(count them, five) separate labor code violations that could lead to statutory penalties. One is a penalty for
failure to pay overtime at the appropriate rate []. Another is for denying employees minimum wage and
overtime []. But is it plausible that we would really pile one penalty on another for a single substantive
wrong?").

1 significant investigation and analysis by Plaintiff's counsel. Plaintiff and her counsel considered the
 2 significant risks of continued litigation when considering the proposed Settlement. These risks were
 3 front and center, particularly given the nature of the off-the-clock work, that the Class Members work
 4 in separate facilities throughout California, which could invariably complicate certification efforts and
 5 proving the claims on the merits. In contrast, the Settlement will result in immediate and certain
 6 payment to Class Members of meaningful amounts.

7 35. The average recovery is approximately \$1,714.60 per Settlement Class Member.³ This
 8 amount provides significant compensation to the Class Members, and the Settlement provides an
 9 excellent recovery in the face of expanding and uncertain litigation. The final settlement amount
 10 considers the substantial risks inherent in any class-action wage-and-hour case, as well as the
 11 procedural posture of the Action and the specific defenses asserted by Defendant, many of which are
 12 unique to this case.

13 36. The Parties here engaged in informal discovery that has enabled both sides to assess
 14 the claims and potential defenses in this action, including extensive review of all time and pay records
 15 for the Class, handbooks and written policies, Plaintiff's personnel file, and Defendant's financial
 16 documents. This allowed the Parties to accurately assess the legal and factual issues that would arise
 17 if the case proceeded to trial.

18 37. In addition, in reaching this Settlement, Plaintiff's Counsel relied on their substantial
 19 litigation experience in similar wage-and-hour class actions. Plaintiff's Counsel's liability and
 20 damages evaluation was premised on a careful and extensive analysis of the effects of Defendant's
 21 policies and practices on Class Members' pay. Ultimately, facilitated by mediator Steve Pearl, the
 22 Parties used this information and discovery to fairly resolve the litigation.

23 38. The monetary value of the proposed Settlement represents a fair compromise given the
 24 risks and uncertainties posed by continued litigation, especially given Defendant's non-profit structure
 25 and that the company's financial documents show that it has suffered losses over the last few years.

26 39. If the Action were to go to trial as a class action, Plaintiff's Counsel estimates that fees

27 ³ This amount divides the Net Settlement Amount of approximately \$512,666.67 by total number of 299
 28 putative Class Members. The averages provided here assume all Class Members participate in the
 Settlement and worked identical lengths of employment.

1 and costs would well exceed the fees and costs requested here. Litigating the class action claims would
2 require substantial additional preparation and discovery. Plaintiff would need to complete fact and
3 expert discovery. This would include: (1) written discovery to and depositions of Class Members; (2)
4 depositions of Defendant's 30(b)(6) witnesses, managers, and executives; (3) third party discovery to
5 Defendant's timekeeping and payroll custodians of records, and (4) expert discovery. Finally, Plaintiff
6 would need to prepare for trial, which would require the presentation of percipient and expert
7 witnesses, as well as the consideration, preparation, and presentation of voluminous documentary
8 evidence and the preparation and analysis of expert reports.

9 40. Even if Plaintiff successfully overcame these procedural obstacles, recovery of the
10 damages and penalties previously referenced would also require complete success and certification of
11 all of Plaintiff's claims, a questionable feat in light of developments in wage and hour and class and
12 collective action law as well as the legal and factual grounds that Defendant has asserted to defend
13 this action. Off-the-clock claims may pose difficulty to certify for class treatment, given that the nature,
14 cause, and amount of the off-the-clock work may vary based on the individualized circumstances of
15 the worker, which can be a considerable hurdle here, where Class Members carried many different job
16 titles and worked at different facilities throughout California. Plaintiff would face fundamental
17 logistical difficulties in reviewing and analyzing the massive amounts records to provide evidence that
18 Defendant, indeed, failed to pay Class Members wages for all worked hours during that time period.

19 41. In addition, certification of off-the-clock work claims is complicated by a similar lack
20 of documentary evidence and reliance on employee testimony. While Plaintiff is confident that she
21 would establish that common policies and practices give rise to the overtime violations and off-the-
22 clock work for Class Members, Plaintiff faces the risk that the Court would decline to certify the
23 Settlement Class altogether, or for at least some claims.

24 42. As to Plaintiff's PAGA claims, Plaintiff would first need to overcome similar
25 procedural hurdles, including completing substantial amounts of written discovery and depositions.
26 Unique to PAGA as a result of developing case law, however, Defendant would also likely move to
27 strike Plaintiff's PAGA claims for lack of due process.

28 43. Plaintiff would further likely need to move for and defend against motions for summary

1 judgment or adjudication, and would have been further required to take their claims to trial. Trials are
 2 inherently risky for all parties. Although Plaintiff believes that she could have been successful in
 3 proving these claims, and that Defendant's evidence would not have been as persuasive, a trial on the
 4 off-the-clock claims and meal and rest periods would have carried a high degree of risk.

5 44. In contrast to litigating this suit, resolving this case by means of the Settlement will
 6 yield a prompt, certain, and very substantial recovery for the Class Members. Such a result will benefit
 7 the Parties and the court system. It will bring finality to the Action and will foreclose the possibility
 8 of expanding litigation.

9 45. Plaintiff is represented by experienced and respected litigators of representative wage
 10 and hour actions. I feel strongly that the proposed Settlement achieves an excellent result for the
 11 Settlement Class Members.

12 **SERVICE AWARD**

13 46. The service payment not to exceed \$10,000.00 for Plaintiff is intended to compensate
 14 her for the critical role she played in this case, including but not limited to the time, effort, and risks
 15 undertaken in helping secure the result obtained on behalf of the Class Members.

16 47. Plaintiff's proposed enhancement payment represents only 1% of the Gross Settlement
 17 Amount.

18 48. Plaintiff agreed to a general release, unlike other Class Members.

19 49. Defendant indicated they do not oppose the requested payment to the Plaintiff as a
 20 reasonable service award.

21 **ATTORNEYS' FEES AND COSTS**

22 50. In their fee motion to be submitted with the final approval papers, Class Counsel will
 23 request a percentage of the common fund, up to 33 1/3% of the Gross Settlement Amount, or
 24 \$283,333.33, plus reimbursement of costs up to \$12,000.00.

25 51. With their fee motion, Class Counsel will provide detailed lodestar information to show
 26 the requested fee is reasonable under both the percentage method and a lodestar "cross-check."

27 52. There was no guarantee of compensation or reimbursement. Rather, counsel undertook
 28 all the risks of this litigation on a completely contingent fee basis. These risks were front and center.

1 Plaintiff's counsel incurred the risk of non-recovery after a substantial investment of time, money, and
2 resources, and have done so since the inception of the case without any payment or compensation.
3 Defendant's defenses further confronted Class Counsel with the prospect of recovering nothing or
4 close to nothing for their commitment to and investment in the case. This is no easy burden for any
5 firm. Plaintiff and Class counsel committed themselves to developing and pressing Plaintiff's claims
6 to enforce the employees' rights and maximize the class recovery.

7 53. The amount of fees and costs requested are clearly set forth in the Settlement Notice,
8 and Plaintiff's fee motion will be uploaded onto the corresponding website – which is also provided
9 on the Settlement Notice – prior to the close of the notice deadline. Accordingly, Plaintiff respectfully
10 requests that the Court preliminarily approve the terms of the Settlement, including the request for
11 fees and costs.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct.

15 Executed this 1st day of February, 2024 in Auburn, California.

16
17 /s/ Carolyn Hunt Cottrell
18 Carolyn Hunt Cottrell
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